

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.73 of 2014**

Arising Out of PS. Case No.-123 Year-2009 Thana- GOPALPUR District-  
Bhagalpur

=====

Sikandar Sah @ Mohammad Sikandar Sah S/O Late Imaman Sah, R/O  
Mumtaz Mohalla, P.O.+P.S. Naugachia, Distt. Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr.Ramanand Poddar, Advocate  
Mr.Rudra Pratap Singh, *Amicus Curiae*  
For the Respondent/s : Mr.Abhay Kumar, APP

=====

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH  
CAV JUDGMENT**

**Date:09-04-2026**

Heard Mr. Ramanand Poddar, learned counsel and Mr.  
Rudra Pratap Singh, learned *Amicus Curiae* appearing on behalf  
of the appellant and Mr. Abhay Kumar, learned APP for the  
State.

2. The present appeal has been filed under Section  
374 (2) and 389(1) of Code of Criminal Procedure, challenging  
the judgment of conviction and order of sentence dated  
16.12.2013 and 23.12.2013 passed by the learned Adhoc. Addl.  
District & Sessions Judge, Naugachia, District Bhagalpur in  
Sessions Trial No. 923 of 2010 (arising out of Gopalpur P.S.  
Case No. 123 of 2009) whereby and whereunder the sole  
accused Md. Sikander Sah has been convicted for the offence



punishable under Section 376 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for the period of ten years along with a fine of Rs.10,000/- and in default payment of fine or to further undergo six months Rigorous Imprisonment.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present Appeal before this Court, assailing the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

4. The prosecution case, in brief, is that the *fardbeyan* of the informant, Bibi Bobina Khatoon (P.W. 13) was recorded by S.I. Srikant Mandal, S.H.O., Gopalpur Police Station, on 09.04.2009 at about 4:00 P.M. The informant, aged about 30 years and resident of Village Bobura, P.S. Dhankund, District Banka, stated that her sister was married in Village Noor Nagar, P.S. Sanhaua, where the sister of the accused Md. Sikander Sah was also married. She further stated that after the death of her father one of her sisters remained unmarried and for arranging



the marriage of that unmarried sister, she went to Village Noor Nagar where on 06.04.2009 she met with the accused/ appellant and requested him to help in finding out a suitable bridegroom. Th accused/ appellant allegedly informed her that he knew a suitable match and asked her to accompany him to meet the said individual and on 07.04.2009 at about 4:00 P.M. the informant accompanied the accused on his motorcycle towards Naugachia. Allegedly, at about 7:00 P.M. the accused stopped the motorcycle near an *Imali* tree of Village Lattipakar within the jurisdiction of Gopalpur Police Station and asked the informant to walk with him through a mango orchard towards a nearby village where the prospective bridegroom resided. While she was proceeding through the mango orchard, the accused caught hold of the informant near a well, embraced her, closed her mouth when she protested, pushed her to the ground, tore her blouse and forcibly committed rape upon her. After the occurrence, the accused fled away on his motorcycle and the informant raised alarm, upon which some villagers came and took her to Village Lattipakar where she stayed that night at the house of one Md. Aslam. On the next morning, she went to her matrimonial home at Village Puraini and narrated the occurrence to her family members, thereafter she went to



Naugachia Court and then to Naugachia Police Station from where she was sent to Gopalpur Police Station where her fardbeyan was recorded. On the basis of the fardbeyan of the informant, Gopalpur P.S. Case No.123 of 2009 was instituted under Section 376 IPC against the accused and after investigation, the police submitted final form on 10.11.2009 declaring the case false, however the learned A.C.J.M., Naugachia by order dated 16.01.2010 took cognizance under Section 376 IPC and subsequently committed the case to the Court of Sessions on 26.07.2010 for trial.

**ARGUMENT ON BEHALF OF THE APPELLANT**

5. Learned Counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction dated 16.12.2013 and order of sentence dated 23.12.2013 passed by the learned Adhoc Additional District & Sessions Judge, Naugachia in Sessions Trial No. 923/2010 is illegal, perverse and unsustainable in law. Learned counsel further contended that the alleged occurrence took place on 07.04.2009 whereas the fardbeyan was recorded on 09.04.2009 and the prosecution failed to offer any satisfactory explanation for such delay. It was further submitted that the medical evidence does not support the allegation of rape as the Doctor concerned did not find any



external or internal injury on the person of the informant nor any sign of recent sexual intercourse or sexual assault. Learned counsel also pointed out that the Investigating Officer, after investigation, submitted final form finding the allegation to be false and the learned trial court failed to properly appreciate this vital aspect of the case.

6. Learned Counsel further submitted that several prosecution witnesses did not support the case and were declared hostile, including the witness in whose house the informant allegedly stayed after the occurrence. The testimony of the informant itself is full of material contradictions and inconsistencies regarding the manner of occurrence and lodging of the case, which renders her evidence unreliable. Learned counsel also submitted that there is a land dispute between the appellant and one Rustam and the appellant has been falsely implicated due to the said dispute. In such circumstances, the prosecution failed to prove the charge beyond reasonable doubt and therefore the conviction of the appellant under Section 376 of the Indian Penal Code is liable to be set aside.

**ARGUMENT ON BEHALF OF THE STATE**

7. Learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits has rightly



convicted the appellants as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

**ANALYSIS AND CONCLUSION**

8. Heard the parties.

9. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

10. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment of conviction dated 16.12.2013 for the offences under Section 376 of the IPC on 23.12.2013.

11. During the trial, the prosecution has examined altogether sixteen witnesses, namely:

(i) (P.W.-1)- Md. Unus- (hostile)

(ii) (P.W.-2)- Md. Komal

(iii) (P.W.-3)- Mohsina

(iv) (P.W.-4/- Nasida

(v) (P.W.-5)- Md. talav

(vi) (P.W.-6)- Amar Moshraf

vii) (P.W.-7)- Bibi Sabina

viii) (P.W. -8) – Md. Mustaque



- ix) (PW-9)- Md. Sajid
- x) (PW-10)- Malika Khatoon
- xi) (PW-11) -Binay Kumar Singh (I.O)
- xii) (PW-12) - Sony Thakur
- xiii) (PW-13)- Baby Bobina
- xiv) (PW-14)- Dr. Anita Kumari ( M.O)
- xv) (PW-15)- Shaikh Ekbal (Hostile)
- xvi) (PW-16)- Shaikh Asgar (Hostile)

12. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Medical Report (Exhibit-1),
- (ii) FIR (Exhibit-2),
- (iii) Chargesheet (Exhibit-3),

13. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

14. The provisions of Section 376 of the IPC is reproduced hereinafter as follows :-

**“376. Punishment for rape.—**  
(1) *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of*



*either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]*

*(Subs. by Act 22 of 2018, s. 4, for “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine” (w.e.f. 21-4-2018)*

*(2)Whoever;—*

*(a)being a police officer, commits rape—*

*(i)within the limits of the police station to which such police officer is appointed; or*

*(ii)in the premises of any station house; or*

*(iii)on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or*

*(b)being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*

*(c)being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*

*(d)being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*

*(e)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*

*(f)being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*

*g)commits rape during communal or sectarian violence; or*

*(h)commits rape on a woman knowing her to be pregnant; or*

*(i)commits rape on a woman when she is under sixteen years of age; or*

*(j)commits rape, on a woman incapable of*



*giving consent; or*

*(k)being in a position of control or dominance over a woman, commits rape on such woman; or*

*(l)commits rape on a woman suffering from mental or physical disability; or*

*(m)while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*

*(n)commits rape repeatedly on the same woman,*

*shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

*Explanation.— For the purposes of this subsection, —*

*(a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;*

*(b)"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;*

*(c)"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);*

*(d)"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.*

*(3)Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall*



*not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:*

*Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*

*Provided further that any fine imposed under this sub-section shall be paid to the victim.”*

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal

16. From the perusal of records, the statements of the prosecution witnesses are as under:

P.W.1 – Mohd. Umar- This witness has been declared hostile. He did not support the prosecution case and denied knowledge of the alleged occurrence.

P.W.2- This witness was tendered for cross-examination and did not depose anything material in support of the prosecution case.

P.W.3 – Mohsina-This witness, in her examination-in-chief, admitted that no rape was committed by the accused, Mohd. Sikendar Sah, upon the victim. Thus, she has not supported the prosecution case.



P.W.4 – Nasida- This witness also stated in her examination-in-chief that no occurrence of rape took place. She has not supported the prosecution version.

P.W.5 – Mohd. Talav-This witness is a resident of village Lattipakar (place of occurrence). He deposed that about 3–4 years prior, the victim (Bobina) came to the village and informed him that she had been raped by the accused. He further stated that he had not seen the occurrence himself and is not an eye-witness. He took the victim to the Sarpanch, who then sent her to the police station. In cross-examination, he admitted that he did not know the accused earlier and had only heard about the occurrence from the victim. His testimony is thus hearsay in nature.

P.W.6 – Amar (Name inferred)-This witness admitted that no such occurrence took place with the informant (Bobina). He has not supported the prosecution case.

P.W.7 – Bibi Sabina- This witness did not support the prosecution case and her testimony does not advance the prosecution story.

P.W.8 – Mohd. Mustaque- This witness was tendered and did not give any substantive evidence in support of the



prosecution.

P.W.9 – Mohd. Sajid (Tender Witness)- This witness was also tendered and did not depose anything material.

P.W.10 – Malika Khatoon- This witness deposed that there existed prior litigation between Rustam and the accused, Sikendar. She further stated that the informant (Bobina), being the sister-in-law of Rustam, had falsely implicated the accused. Thus, she has supported the defence case.

P.W.11 – Binay Kumar Singh (Investigating Officer)- This witness conducted the investigation of the case. He inspected the place of occurrence and recorded statements of witnesses. He deposed that no signs of violence were found at the place of occurrence. He submitted the case diary and initially found the case to be untrue. However, cognizance was later taken by the learned Magistrate.

P.W.12 – Sony Thakur- This witness admitted that no rape was committed by the accused upon the victim. Hence, this witness has not supported the prosecution case.

P.W.13 – Baby Bobina (Victim/Informant)- This is the star witness of the prosecution. She deposed that on the date of occurrence, the accused took her on a motorcycle to a secluded



place near an “*Imli tree*” and committed forcible rape upon her. She described the manner of assault, stating that the accused caught her, tore her blouse, assaulted her, and committed sexual intercourse against her will. She further stated that after the occurrence, she went to village Lattipakar, informed villagers, and subsequently lodged the FIR. In cross-examination, she admitted several facts, including absence of prior acquaintance with villagers of Lattipakar and lack of physical evidence at the place of occurrence. However, she remained consistent regarding the allegation of rape.

P.W.14 – Dr. Anita Kumari (Medical Officer)- This witness medically examined the victim on 10.04.2009. She found no external injury on the body of the victim and no signs of violence on private parts. No foreign hair or semen was detected, and no evidence of recent sexual intercourse was found. She opined that the age of the victim was above 18 years.

P.W.15 – Shaikh Ekbal- This witness was declared hostile and did not support the prosecution case.

P.W.16 – Shaikh Asgar- This witness was also declared hostile and failed to support the prosecution version.

17. On careful perusal of the materials available on record, it appears that the prosecution case mainly rests upon the



testimony of the prosecutrix. It is well settled principle of law that conviction can be based upon the sole testimony of the prosecutrix provided that such testimony is trustworthy, reliable and inspires confidence.

18. Based on an analysis of the evidence, facts, and applicable law, it appears that several prosecution witnesses have not supported the prosecution's case, with P.W.-1, P.W.-15, and P.W.-16 having been declared hostile. The medical evidence also fails to corroborate the allegations, as the examining doctor found no external or internal injuries on the victim's body, nor any indication of recent sexual intercourse. Moreover, from the depositions on record, it is evident that most of the prosecution witnesses, including key and material witnesses, have either turned hostile, been tendered, or otherwise failed to support the prosecution's version of events. Consequently, the case rests primarily on the sole testimony of the victim (P.W.-13), where she has deposed that on the date of occurrence, the accused took her on a motorcycle to a secluded place near an "*Imli tree*" and committed forcible rape upon her. She described the manner of assault, stating that the accused caught her, tore her blouse, assaulted her, and committed sexual intercourse against her will. She further stated that after the occurrence, she went to village



Lattipakar, informed villagers, and subsequently lodged the FIR, without any corroboration from medical evidence or independent eyewitness testimony.

19. In such circumstances, can the testimony of the victim PW-13 be said to be reliable and trustworthy. The Apex Court in case of *Krishan Kumar Malik v. State of Haryana*, reported in *(2011) 7 SCC 130*, held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

*“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellants guilty of the said offences.*

*32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won*



over by the appellants.”

20. In the case of **Rai Sandeep v. State (NCT of Delhi)**, reported in, **(2012) 8 SCC 21**, the Apex Court found totally conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a ‘sterling witness’, the Court opined as under:

*“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a ‘sterling witness’ whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said*



*witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”*

*(emphasis supplied)*

21. The Apex Court further in case of **Ganesan v. State**, reported in, **(2020) 10 SCC 573**, held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

22. What emerges from the aforesaid decisions is that where witnesses are found to be neither completely trustworthy nor entirely unreliable, the Court must make a careful effort to ascertain the true origin of the incident. A victim may be treated as a “sterling witness” and her testimony can be relied upon without additional corroboration, provided its quality and credibility are of an exceptionally high standard. The statement of the prosecutrix should remain consistent throughout, from the initial version to the oral evidence, barring minor discrepancies, and should not give rise to any doubt regarding the prosecution’s case. Although, in cases of sexual offences, the testimony of the victim is generally sufficient, a version that is unreliable or inadequate, suffering from evident



shortcomings and gaps, may render it difficult to sustain a conviction.

23. Having considered the submissions advanced on behalf of the parties and upon a careful re-appraisal of the evidence available on record, I find that the medical evidence tendered by PW-14, the Medical Officer, assumes considerable significance. PW-14 has categorically stated in her medical report, as well as, during her deposition that she did not find any internal or external injury on her body. During examination doctor found that abortion of two months pregnancy was done on 02.04.2009 at village Sanhaura by medical staff. No injury was found on *vurva perineum* and inner part of thigh. No *spermatozoa* was found on vaginal swab of the victim. The evidence of PW-14, therefore, does not lend corroboration to the prosecution case. It is true that conviction for the offence of rape can be based on the sole testimony of the victim if it is trustworthy and inspires confidence. In the present case even the medical evidence fails to support the prosecution version creating a serious doubt about the occurrence. When the medical expert clearly states that there is no clinical indication suggestive of rape, the Court is required to examine the prosecutrix's testimony with greater caution. The



inconsistencies between the ocular and medical evidence create uncertainty which goes to the root of the prosecution case

24. A reference has been made by the learned *Amicus Curiae* that in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra***, reported in ***(2006) 10 SCC 92***, the Hon'ble Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

25. Applying the aforesaid legal principles to the facts of the present case and in light of the settled principle of law that conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, results in material inconsistencies and cannot be relied upon and also considering the unequivocal medical evidence of PW-14 indicating absence of injuries or signs of sexual assault, also don't corroborate with the versions of the prosecutrix, I am of the view that the prosecution has failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled



to the benefit of doubt and the conviction of the appellant cannot be sustained.

26. In view of aforesaid discussions of factual and legal aspects, it appears that the prosecution has miserably failed to establish the charges levelled against the appellant/accused during the trial.

27. Accordingly, the present appeal is allowed.

28. The impugned judgment of conviction dated 16.12.2013 and order of sentence dated 23.12.2013, passed by learned Adhoc Additional District and Sessions Judge, Naugachhia, Bhagalpur in S.T. No.923 of 2010, arising out of Gopalpur P.S. Case No. 123/2009, is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, he is discharged from the liability of his bail bond. The fine deposited by the appellant, if any, shall be refunded to him.

29. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand) to Mr. Rudra Pratap Singh, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service for disposal of the present appeal.

30. Office is directed to send back the lower court



records along with a copy of the judgment to the learned District  
Court forthwith.

**(Purnendu Singh, J)**

chn/-

|                              |            |
|------------------------------|------------|
| <b>AFR/NAFR</b>              | AFR        |
| <b>CAV DATE</b>              | 24.03.2026 |
| <b>Uploading Date</b>        | 09.04.2026 |
| <b>Transmission<br/>Date</b> | 09.04.2026 |

