IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.529 of 2015
CNR No. BRHC010876672015

Arising Out of PS. Case No.-387 Year-2010 Thana- MADHEPURA District- Madhepura

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Sambhu Sada, Son of Kari Sada, Resident of Village Khopaiti, P.S. Madhepura, District Madhepura.

... ... Appellant

Versus

The State Of Bihar

... ... Respondent

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Appearance :
Amicus for the Appellant : Mr. Paritosh Parimal, Adv.
For the Respondent : Ms. Anita Kumari Singh, APP,

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 27-10-2026

Heard the parties.

2. The present appeal has been preferred against the judgment of conviction dated 23.06.2015 and order of sentence dated 09.07.2015 passed by the learned Second Additional Sessions Judge, Madhepura in Sessions Trial No. 53A of 2011, arising out of Madhepura P.S. Case No. 387 of 2010, whereby the appellant has been convicted for the offences punishable under Sections 366-A and 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for four years with fine for the offence under Section 366-A IPC and rigorous imprisonment for five years with fine for the offence under Section 376 IPC, the sentences having been directed to run concurrently.

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The appellant has questioned the aforesaid finding of conviction and sentence primarily on the ground that the prosecution evidence, when examined in its entirety, does not inspire confidence and is insufficient to sustain the conviction beyond reasonable doubt.

3. The prosecution case, in brief, as emerging from the written report, is that the informant, namely, Vidyanand Bhagat, father of the victim Soni Kumari, alleged that on the night of 12.09.2010 his minor daughter had been taken away by the accused persons. The allegation was that the victim had been taken away by Sambhu Sada, Rajan Sada, Kari Sada and Sandeep Sada and that certain amount of money was also found missing from the house. On the basis of the written report, Madhepura P.S. Case No. 387 of 2010 came to be instituted under Sections 366-A, 379 and 376 of the Indian Penal Code. The prosecution thereafter proceeded with the investigation and the matter ultimately culminated in trial. The record discloses that the victim was recovered on 17.09.2010 and was thereafter medically examined on 18.09.2010.

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4. The prosecution, in order to substantiate its case, examined altogether ten witnesses. **PW-1** Sonu Kumar is the brother of the victim; **PW-2** Mala Devi is her mother; **PW-3** Lalo Bhagat is her cousin brother; **PW-4** Vidyanand Bhagat is the informant and father of the victim; **PW-5** Dr. A.K. Verma, **PW-6** Dr. Nisha and **PW-7** Dr. B.K. Gupta are the medical witnesses; **PW-8** Brij Banshi Kumar Singh is the Investigating Officer; **PW-9** Soni Kumari is the victim herself and **PW-10** Manshur Alam is the learned Judicial Magistrate who recorded the statement of the victim under Section 164 Cr.P.C. The prosecution also brought on record the medical documents and the statement of the victim under Section 164 Cr.P.C.

5. Learned counsel appearing for the appellant has submitted that the learned Trial Court has not properly appreciated the evidence available on the record. It has been submitted that **PW-1** to **PW-4** are members of the same family and, except **PW-4** who subsequently claimed himself to be an eye-witness, the other family witnesses admittedly had no personal knowledge of the occurrence. It has further

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been submitted that **PW-4** has materially improved his version during trial and his conduct is wholly inconsistent with the conduct of a father who had actually witnessed his minor daughter being forcibly taken away. It has also been submitted that the victim herself has materially varied her version, particularly with regard to the persons who allegedly committed rape upon her. Whereas in her deposition she attributed rape to all the three persons, her statement under Section 164 Cr.P.C. confined the allegation of rape to Sambhu Sada. The learned counsel has further relied upon the medical evidence and the absence of any finding of recent intercourse, as well as the deficiencies in investigation.

6. Learned counsel has also submitted that the essential ingredients of Section 366-A IPC are not established. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Sat Parkash v. State of Haryana and another, (2015) 16 SCC 475 : 2015 SCC OnLine SC 1310**, particularly paragraphs 5 and 6, wherein the Hon'ble Supreme Court has held that for attracting

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Section 366-A IPC, the inducement of the minor girl must be with the requisite intent that she may be forced or seduced to illicit intercourse with another person.

7. Per contra, learned Additional Public Prosecutor has supported the judgment of conviction and has submitted that the victim was admittedly a minor and her evidence regarding commission of rape by the appellant deserves to be accepted. It has further been submitted that minor discrepancies in the statements of the prosecution witnesses should not be given undue importance and the testimony of the victim of sexual assault, if otherwise credible, can by itself form the basis of conviction.

8. I have given anxious consideration to the rival submissions and have carefully gone through the evidence available on the record. The appellate jurisdiction in a criminal appeal carries with it a duty to independently scrutinize the entire evidence and to arrive at its own conclusion regarding the reliability of the prosecution case. The presumption of innocence is not effaced merely because the Trial Court has recorded a conviction. It continues until

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the prosecution succeeds in establishing guilt beyond reasonable doubt before the appellate court also. The Hon'ble Supreme Court in **Kamlesh Prabhudas Tanna v. State of Gujarat, (2013) 15 SCC 263**, relying upon **Padam Singh v. State of U.P**., has reiterated that the appellate court has to independently examine whether the evidence can be relied upon and whether the prosecution has proved its case beyond reasonable doubt.

9. Before examining the evidence of the victim, it would be appropriate to notice the broad contours of the prosecution evidence. There are ten prosecution witnesses, but **PW-1 to PW-4** are closely related to the victim. **PW-1, PW-2 and PW-3** admittedly do not claim to have witnessed the occurrence. Their evidence, therefore, cannot independently establish either the taking away of the victim or the commission of rape upon her. The Investigating Officer, **PW-8**, also admitted during cross-examination that none of the witnesses had claimed before him to have seen the accused persons taking away the victim. The co-ordinate Bench, while considering the Criminal Appeal (SJ) No.468 of

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2015 of co-accused Sandeep Sada, has specifically noticed this aspect of the investigation.

10. PW-1 Sonu Kumar, the brother of the victim, has stated that he came to know about the occurrence and has narrated what was subsequently disclosed regarding the victim being taken away. He is not an eye-witness. **PW-2** Mala Devi, mother of the victim, is also not an eye-witness and her evidence substantially rests upon what she subsequently came to know. **PW-3** Lalo Bhagat, cousin brother of the victim, similarly does not claim to have witnessed the actual occurrence and his evidence is based upon information received from others. Thus, the evidence of these witnesses, though relevant to the subsequent circumstances, does not furnish direct corroboration to the allegation that the present appellant forcibly took away the victim or committed rape upon her.

11. The most important evidence, therefore, is that of **PW-4** Vidyanand Bhagat, the informant and father of the victim, and **PW-9** Soni Kumari, the victim herself. Their evidence requires close and cautious scrutiny because

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the conviction of the appellant substantially rests upon the acceptance of this evidence.

12. PW-4 has claimed himself to be an eye-witness. According to his deposition, while he was sleeping at his Darwaja, he woke up and allegedly saw the appellant Sambhu Sada and Sandeep Sada along with his daughter on a motorcycle, taking her away. However, the difficulty which arises is that the claim of **PW-4** as an eye-witness does not satisfactorily stand the test of his own cross-examination. He has admitted that it was a dark night and that he had seen the occurrence from a considerable distance. The co-ordinate Bench while deciding the appeal of co-accused Sandeep Sada has also noticed that **PW-4's** assertion of being an eye-witness was an improvement over the earlier version and that his conduct, in the circumstances narrated by him, was improbable.

13. The question which assumes significance is as to why, if **PW-4** had actually witnessed his minor daughter being forcibly taken away in front of him, he did not raise an alarm, did not chase the persons allegedly taking her away

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and did not immediately approach the police. The prosecution case itself is that the occurrence took place at night. Yet the written report was lodged on 14.09.2010 in respect of an occurrence stated therein to have taken place on 12.09.2010. Thus, there is a delay of two days. Ordinarily, delay by itself cannot be treated as fatal in a case of sexual offence; however, when the person explaining the occurrence claims to be an eye-witness and the prosecution does not furnish a convincing explanation for his conduct in remaining silent or inactive, such delay assumes significance in assessing the overall credibility of the prosecution version.

14. It is well settled that delay in lodging the FIR is not an inflexible ground for rejection of the prosecution case, particularly in cases involving sexual offences. The Hon'ble Supreme Court has repeatedly held that the circumstances causing delay must be examined. At the same time, where the alleged eye-witness had the immediate opportunity to report the occurrence but his conduct is inconsistent with the natural course of human behaviour, such delay becomes one of the surrounding circumstances

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requiring careful consideration. In the present case, the delay is not being considered in isolation; it is being considered along with the material improvement made by **PW-4**, his inability to satisfactorily explain his conduct and the other contradictions appearing in the prosecution evidence.

15. PW-4 has further stated that the victim was taken away towards Bishunpur. He has also stated about the alleged missing money and, subsequently, ornaments. However, the prosecution has not produced any satisfactory material showing recovery of the alleged money or ornaments. **PW-8**, the Investigating Officer, has admitted that the amount allegedly taken away was not recovered. He has further stated that none of the witnesses had claimed to have seen the accused persons taking away the victim. He also admitted that no document regarding the age of the victim was seized during investigation.

16. The conduct of **PW-4** becomes still more relevant when considered in the light of the alleged manner of occurrence. If the father had actually awakened upon

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hearing some sound and thereafter seen his daughter being taken away in his immediate presence, the natural human response would ordinarily have been to raise an alarm, attempt to prevent the taking away, pursue the alleged offenders or immediately approach the police or neighbours. None of these circumstances finds satisfactory support from the evidence. The absence of such contemporaneous conduct, coupled with the unexplained delay and the subsequent improvement in the version of **PW-4**, creates a serious dent in his claim of being an eye-witness.

17. The evidence of **PW-9**, the victim, now requires consideration. It is undoubtedly true that in a prosecution for rape the testimony of the victim occupies a position of considerable importance. There is no requirement of law that the testimony of a prosecutrix must invariably be corroborated before it can be acted upon. If the testimony is natural, cogent, consistent and of sterling quality, conviction can be based upon it. But the converse proposition is equally important: the status of a prosecutrix does not dispense with the judicial duty of testing the intrinsic worth of her

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evidence. Where her testimony suffers from material contradictions, improvements and circumstances which create a reasonable doubt about the prosecution version, the Court cannot convict merely because the allegation is of a serious nature.

18. The Hon'ble Supreme Court in ***Nirmal Premkumar and another v. State represented by Inspector of Police, 2024 SCC OnLine SC 260***, has recently reiterated that oral testimony can broadly be examined in three categories, namely, wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. In the third category, the Court has to be circumspect and look for corroboration in material particulars. The Hon'ble Supreme Court further observed that a victim can be relied upon as a "sterling witness" without further corroboration only when the quality and credibility of her evidence is exceptionally high and her statement remains substantially consistent from the beginning to the end. Material contradictions and missing links may make conviction unsafe. It would be apposite to reproduce paragraph no. 22

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of the ***Nirmal Premkumar case (supra)*** which are as under*:-*

> *"22. This Court was tasked to adjudicate a matter involving gang rape allegations under Section 376(2)(g)IPC in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] . The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint 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: (SCC p. 29, para 22)*
> *"22 [**Ed.**: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.] . 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*

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> *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."*

19. The present case, in my considered view, does not fall within the category of a case where the testimony of **PW-9** can safely be characterised as wholly reliable or of sterling quality. **PW-9**, in her deposition before the learned Trial Court, initially attributed the commission of rape to all the three persons, but during the course of her evidence she corrected herself and stated that it was Sambhu Sada who had committed rape and that the others were merely present. Her statement under Section 164 Cr.P.C., however, contains an allegation regarding the present appellant alone. Thus, the statement before the Magistrate and the deposition before the Trial Court cannot be mechanically treated as identical versions. The expansion of the allegation before the Trial Court regarding the participation of all the accused, followed by correction during the same deposition, is not a minor variation when the very identity and participation of the persons allegedly committing the sexual assault are in issue. The co-ordinate Bench has specifically

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noticed this aspect of **PW-9's** evidence.

20. It is true that a statement recorded under Section 164 Cr.P.C. is not substantive evidence and the same cannot be treated as a substitute for evidence recorded during trial. Nevertheless, the earlier statement can be used for the purposes recognised by law, including testing the consistency and credibility of the witness. In the present case, it is not being treated as substantive evidence against the appellant; rather, it is being considered as one of the circumstances while testing whether the subsequent testimony of **PW-9** is consistent, natural and trustworthy.

21. There are other circumstances which require consideration. The prosecution case as set out in the written report places the occurrence on 12.09.2010, whereas **PW-9** in her deposition has referred to 14.09.2010 as the date of occurrence. **PW-1** has spoken about the occurrence in a different manner and at a different point of time. Such variations regarding the date and circumstances of the alleged occurrence assume importance because the prosecution seeks to rely upon the testimony of the victim as

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the principal evidence connecting the present appellant with the offence.

22. The recovery of the victim on 17.09.2010 is, no doubt, a relevant circumstance. However, recovery of a victim by itself does not establish who committed rape upon her. The prosecution was required to establish the connecting link between the appellant and the commission of the offence by evidence which inspires confidence. The Investigating Officer has not brought on record any independent witness to the recovery. The place where the victim allegedly remained during the intervening period was also not satisfactorily established through objective investigation. The co-ordinate Bench has noticed that the prosecution remained silent regarding the precise mode of recovery and that the Investigating Officer had failed to locate the place where the victim was allegedly confined.

23. Coming to the medical evidence, **PW-5** estimated the age of the victim at about 14-15 years. **PW-6** Dr. Nisha found the hymen to be torn, but no sign suggestive of recent intercourse was found. **PW-7**, another

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member of the Medical Board, essentially proved his signature. The medical examination was conducted on 18.09.2010, i.e. soon after the recovery of the victim on 17.09.2010. However, on the date of occurrence as mentioned in the FIR, namely 12.09.2010, the medical examination was several days thereafter. Thus, the medical evidence does not furnish any direct connecting circumstance showing that the appellant had committed rape upon the victim at the alleged place and time.

24. This Court is conscious of the settled legal position that absence of injuries or absence of medical findings suggestive of recent intercourse cannot, by itself, be treated as proof that rape did not occur. The medical opinion is essentially expert and corroborative in nature. In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, the Hon'ble Supreme Court cautioned that the evidence of the prosecutrix in a sexual offence must be appreciated with sensitivity and that irrelevant or minor discrepancies should not be magnified. The converse, however, is equally true: where the oral testimony itself suffers from material

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infirmities, the Court cannot use the medical evidence to supply the missing credibility.

25. In the present case, therefore, the medical evidence is not being used to hold that rape was medically impossible. Rather, its significance lies in the fact that it does not provide the corroborative assurance which could have become material once the oral evidence is found to suffer from inconsistencies. The absence of any finding of recent intercourse, coupled with the absence of any other scientific or independent material connecting the appellant with the alleged act, assumes significance in the peculiar facts of the present case.

26. The principle governing appreciation of a sole eye-witness is also well settled. In **Vadivelu Thevar v. State of Madras, AIR 1957 SC 614**, particularly paragraphs 17 and 18, the Hon'ble Supreme Court classified witnesses into three broad categories—wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable—and held that where the witness falls in the third category, corroboration in material particulars is required as

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a matter of prudence. The principle has subsequently been reiterated in **Sunil Kumar v. State (Govt. of NCT of Delhi), (2003) 11 SCC 367**, particularly paragraph 9, that there is no legal impediment in acting upon the testimony of a single witness, but where doubts arise regarding his testimony, the Court may insist upon corroboration. The settled rule is that evidence is to be weighed and not counted; it is the quality and not the quantity which matters.

27. It would be apposite to reproduce paragraph nos. 17 and 18 of the **Vadivelu Thevar case (supra)** which are as under:-

> *"17. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as in 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence, 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134 quoted above. The section enshrines the well-recognised maxim that "Evidence has to be weighed and not counted". Our legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where*

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the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.

18. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way—it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

28. It would be apposite to reproduce paragraph no. 9 of the **Sunil Kumar case (supra)** which are as under:-

"9. Vadivelu Thevar case [AIR 1957 SC 614 : 1957 Cri LJ 1000] was referred to with approval in the case of Jagdish Prasad v. State of M.P. [1995 SCC (Cri) 160 : AIR 1994 SC 1251] This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly

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> *reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."*

29. The same principle has been reiterated in **Gulam Sarbar v. State of Bihar (now Jharkhand), (2014) 3 SCC 401**, paragraph 19, and in subsequent decisions of the Hon'ble Supreme Court. The law, therefore, does not require plurality of witnesses, but it certainly requires the quality of the evidence to cross the threshold of reliability. Thus, even a sole witness can sustain conviction where the evidence has a ring of truth and is wholly reliable. Conversely, several witnesses cannot sustain conviction if their evidence does not inspire confidence.

30. Tested on the aforesaid principles, **PW-4** cannot be treated as a wholly reliable eye-witness. His claim of witnessing the occurrence is surrounded by circumstances which render his presence in the manner claimed doubtful. His conduct immediately after the alleged occurrence is not

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consistent with the ordinary course of human conduct. The delay of two days in lodging the written report, in the facts of the present case, remains unexplained. His evidence regarding the occurrence does not stand in harmony with the earliest version. More importantly, the Investigating Officer has stated that none of the witnesses had claimed before him to have seen the accused taking away the victim.

31. PW-9 also cannot be treated as a witness whose testimony is free from material infirmity. Her version regarding the persons who committed rape is not consistent throughout. Her Section 164 statement is confined to the present appellant, whereas her deposition initially attributes rape to all three persons and thereafter contains a correction. There are also variations regarding the date and circumstances of the occurrence. These are not being treated as mere discrepancies arising out of lapse of memory. They relate to the core prosecution story concerning the occurrence and the participation of the accused persons.

32. It is also significant that the prosecution story regarding the taking away of the victim on a motorcycle

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suffers from inherent difficulties. The evidence on record indicates that more than one person was allegedly involved in taking the victim away on a motorcycle. The co-ordinate Bench, while examining the same prosecution occurrence in the appeal preferred by Sandeep Sada, found the manner of alleged kidnapping to be improbable and also noticed the absence of any hue and cry or satisfactory evidence regarding the recovery and place of confinement.

33. I am conscious that the judgment rendered by the co-ordinate Bench in **Criminal Appeal (SJ) No. 468 of 2015, Sandeep Sada v. The State of Bihar, dated 29.03.2017**, is not to be mechanically applied to the present appellant. The present appellant's liability has to be determined independently on the evidence led against him. Nevertheless, the findings recorded therein regarding the same occurrence, the same victim, the same informant and substantially the same set of witnesses constitute a relevant circumstance which cannot be ignored while examining whether the prosecution version as a whole carries the required ring of truth. The co-ordinate Bench ultimately

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allowed the appeal and set aside the conviction after finding material infirmities in the prosecution evidence.

34. So far as Section 366-A IPC is concerned, the statutory requirement cannot be diluted. The prosecution was required to establish that the minor girl was induced by the accused to go from any place or to do any act with the intent that she may be, or knowing that she was likely to be, forced or seduced to illicit intercourse with another person. In **Sat Parkash v. State of Haryana and another, (2015) 16 SCC 475 : 2015 SCC OnLine SC 1310**, paragraphs 5 and 6, the Hon'ble Supreme Court has categorically held that the element of "another person" is an essential part of the statutory requirement and, in absence of such allegation and proof, Section 366-A cannot be sustained.

35. It would be apposite to reproduce paragraph nos. 5 and 6 of the **Sat Parkash case (supra)** which are as under:-

> *"5. The charge with reference to Section 366-A of the Penal Code needs a closer examination. Section 366-A of the Penal Code is extracted hereunder:*
> *"**366-A.Procuration of minor girl**.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act*

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> *with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."*
>
> *A perusal of the aforesaid section reveals that the inducing of the minor to constitute an offence under Section 366-A should have been with reference to an intent to force or seduce her "… to illicit intercourse with another person …". In fact, there is no mention of any other person in the sequence of allegations levelled against the appellant.*
>
> *6. In the above view of the matter we are satisfied that the charge under Section 366-A IPC was also not sustainable against the appellant. For the reasons recorded hereinabove, we are of the view that the impugned order [Sarla v. State of Haryana, 2011 SCC OnLine P&H 124] passed by the High Court convicting the appellant under Section 366-A of the Penal Code is also liable to be set aside. The same is accordingly hereby set aside."*

36. In the case at hand, the prosecution evidence does not establish the necessary mens rea of the present appellant for procuring the victim for illicit intercourse with another person. The allegation ultimately emerging against the appellant is that he himself committed rape. There is no clear and trustworthy evidence demonstrating that the appellant induced the victim to go from one place to another with the intention that she would be forced or seduced to illicit intercourse with some other person. The necessary statutory ingredient, therefore, remains unproved. The conviction of the appellant under Section 366-A IPC cannot be sustained.

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37. The matter concerning Section 376 IPC requires a still more cautious approach. The seriousness of an allegation of rape cannot be permitted either to dilute the standard of proof or to substitute moral conviction for legal proof. Equally, the Court cannot approach the testimony of a prosecutrix with a predetermined notion that her evidence must necessarily be accepted irrespective of its intrinsic infirmities. The correct approach is one of sensitivity coupled with judicial scrutiny.

38. The Hon'ble Supreme Court in **Nirmal Premkumar case (supra)** has aptly recognised that a victim's testimony may be sufficient when it possesses exceptional consistency and credibility, but where material contradictions and missing links exist, the same may render conviction unsafe. In the present case, the Court is not rejecting the testimony of **PW-9** merely because there is no independent eye-witness to the rape. The difficulty is deeper. Her version, when examined from its earliest available statement up to her deposition, is attended by material variation regarding the participation of the accused persons

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and the circumstances of the occurrence. Her testimony is also not supported by the surrounding evidence to such an extent that the Court may safely conclude that the appellant's guilt has been proved beyond reasonable doubt.

39. The prosecution has thus failed to bridge the gap between suspicion and proof. The appellant may have been named in the prosecution case and the victim may have subsequently attributed the act of rape to him, but criminal conviction cannot rest upon the mere possibility that the prosecution version may be true. The Hon'ble Supreme Court in **Santosh @ Bhure v. State (NCT of Delhi), 2023 INSC 443**, particularly in paragraphs 24, 25 and 86, while reiterating the principles laid down in **Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 and Devi Lal v. State of Rajasthan, (2019) 19 SCC 447**, has held that the accused must be and not merely may be guilty before a Court proceeds to convict and that the prosecution has to elevate its case from the realm of "may be true" to the plane of "must be true", as is indispensably required for conviction on a criminal charge. The Hon'ble

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Supreme Court has further reiterated that suspicion, however grave, cannot substitute proof. Where the evidence admits of a reasonable doubt regarding the participation of the accused, the benefit necessarily goes to him.

40. It would be apposite to reproduce paragraph nos. 24, 25 and 86 of the **Santosh @ Bhure case (supra)** which are as under:-

> *" 24. In addition to the above, while dealing with a criminal trial, a Court must not be oblivious of the most fundamental principle of criminal jurisprudence, which is, that the accused 'must be' and not merely 'may be' guilty before the Court proceeds to convict him. In Shivaji Sahabrao Bobade & Another v. State of Maharashtra6, this Court, elaborating upon the above principle, observed that the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.*
>
> *25. Adding on to the aforesaid legal principles, in Devi Lal v. State of Rajasthan7, a three-judge Bench of this Court held that in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favourable to him. The relevant portion of the judgment is extracted below:-*
>
> > *"18. … Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.*
> >
> > *19. … in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him."*
>
> *86. In light of the discussion above, we have no hesitation in holding that the prosecution has failed to prove a chain of incriminating circumstances as*

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> *to conclusively point out that in all human probability it was the two accused or any one of them, and no one else, who had committed the murder. In such circumstances, even if Santosh failed to explain as to how the dead body of the deceased was found in his apartment, an inference of his guilt cannot be drawn. In a nutshell, it is a case where the prosecution failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required for conviction on a criminal charge."*

41. The principle *ei incumbit probatio qui dicit, non qui negat*—the burden of proof lies upon the person who asserts and not upon the person who denies—is embedded in the criminal justice system. The burden throughout remains upon the prosecution to establish every essential ingredient of the offence. The appellant is not required to establish his innocence by proving an alternative version beyond reasonable doubt. Equally relevant is the principle in *dubio pro reo*, meaning that where two reasonable views are possible on the evidence, the view favourable to the accused must prevail.

42. These principles are not merely technical rules of evidence. They form part of the constitutional guarantee of a fair criminal process under Article 21 of the Constitution. Personal liberty cannot be taken away except by a procedure which is fair, just and reasonable. A

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conviction based upon conjecture, suspicion or materially infirm testimony would be inconsistent with the constitutional requirement of fairness. The criminal process must protect the victim's right to justice, but at the same time it must protect the accused from conviction on evidence which does not attain the requisite standard of proof. The two principles are not contradictory; rather, they constitute the balance upon which the administration of criminal justice rests.

43. The learned Trial Court, in my considered view, has not adequately appreciated the cumulative effect of the aforesaid infirmities. The evidence of **PW-4** has been accepted without sufficiently considering his claim of being an eye-witness vis-à-vis his own conduct, the delay in lodging the report and the contradictions appearing in his testimony. Likewise, the material variation in the evidence of **PW-9** and the limited nature of the Section 164 statement have not been given their proper evidentiary significance. The Trial Court has also not sufficiently examined whether the prosecution evidence establishes the ingredients of Section 366-A in the light of the statutory requirement

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explained by the Hon'ble Supreme Court in **Sat Parkash case (supra)**.

44. There is another aspect which this Court cannot lose sight of. The learned Trial Court, while imposing sentence under Section 376 IPC, awarded five years' rigorous imprisonment. As the law then applicable to the offence prescribed a minimum sentence of seven years, the sentence imposed by the learned Trial Court was lesser than the statutory minimum. This error was subsequently noticed by the Hon'ble Co-ordinate Bench of this Court and clarification was also sought from the learned Trial Court in respect thereof. The said aspect, however, does not call for any further adjudication in view of the conclusion reached by this Court on the merits of the conviction. The conviction itself having failed, the question of enhancement or correction of sentence does not survive.

45. On a cumulative consideration of the entire evidence, this Court finds that the prosecution has not been able to establish the guilt of the present appellant beyond reasonable doubt. The evidence of **PW-4** does not inspire confidence as a reliable eye-witness. **PW-1** to **PW-3** are not

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eye-witnesses. The evidence of **PW-9** suffers from material variations between her earlier statement and her deposition. The medical evidence does not provide the necessary corroborative assurance in the factual setting of the present case. The recovery of the victim, by itself, does not establish the appellant's participation in the alleged offence. The investigation also leaves material gaps. The statutory ingredients of Section 366-A IPC are not established.

46. Criminal jurisprudence does not permit a Court to convict merely because an offence appears to have occurred or because the accused had an opportunity to commit it. The prosecution must establish the accused's participation through evidence which is cogent, credible and trustworthy. Suspicion, however strong, cannot take the place of proof. Where the chain of evidence leaves a reasonable possibility inconsistent with the guilt of the accused, the Court is bound to give effect to that doubt.

47. Accordingly, this Court is of the considered view that the judgment of conviction dated 23.06.2015 and the order of sentence dated 09.07.2015 passed by the learned Second Additional Sessions Judge, Madhepura in Sessions Trial

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No. 53A of 2011 cannot be sustained and are hereby set aside. The appellant Sambhu Sada is acquitted of the offences for which he has been convicted.

48. Accordingly, bailors and sureties are discharged from their liabilities, fine, if any, paid by appellant be returned forthwith.

49. Before parting with the matter, this Court records its appreciation for the assistance rendered by the learned *Amicus Curiae*. The Patna High Court Legal Services Committee is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand) to Mr. Paritosh Parimal, *Amicus Curiae* towards his/her fee and expenses.

50. The appeal stands allowed.

51. Let the trial court records be transmitted to the court concerned forthwith along with a copy of this judgment.

(Chandra Shekhar Jha, J.)

Aniket/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.10.2026
Transmission Date	30.10.2026

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