

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2977 of 2023

Arising Out of PS. Case No.-8 Year-1992 Thana- CHOUTARWA District- West Champaran

- 1. Gauri Shankar Choudhary @ Gauri Shankar Chowdhary @ Gauri Choudhary, Son of Late Baidhnath Chowdhary @ Baidhnath Chowdhary R/o village - Patilar Tola, Sitapur, P.S.- Chautarwa, District - Bettiah
- 2. Amar Singh Chowdhary, Son of Late Baidhnath Chowdhary @ Baidhnath Choudhary R/o village - Patilar Tola, Sitapur, P.S.- Chautarwa, District - Bettiah
- 3. Parshuram Chowdhary, Son of Late Jagdish Chowdhary, R/o village - Patilar Tola, Sitapur, P.S.- Chautarwa, District - Bettiah
- 4. Shambhu Chowdhary, Son of Late Bishwanath Chowdhary, R/o village - Patilar Tola, Sitapur, P.S.- Chautarwa, District - Bettiah

... .. Appellant/s

Versus

1.	The State of Bihar
2.	XXX- wife of YYYY, Resident of Patilar Tola, Nariani, P.S.- Chautarwa, District – West Champaran, Bettiah

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 3048 of 2023

Arising Out of PS. Case No.-8 Year-1992 Thana- CHOUTARWA District- West Champaran

Surendra Dubey @ Benga Pandit, Son of Late Ramavatar Dubey, Resident of village - Patilar, P.S. - Chautarwa, Distt. - West Champaran

... .. Appellant/s

Versus

1.	The State of Bihar
2.	XXX- wife of YYYY, Resident of Patilar Tola, Nariani, P.S.- Chautarwa, District – West Champaran, Bettiah

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (SJ) No. 2977 of 2023)
For the Appellant/s : Mr. Bashishtha Narayan Mishra, Adv.
Mr. Brij Kishor Mishra, Adv.
Mr. Avinash Raj, Adv.
For the State : Mr. Binay Krishna, SPP
(In CRIMINAL APPEAL (SJ) No. 3048 of 2023)
For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.



For the State : Mr. Rahul Singh, Adv.
Mr. Mayank Raj, Adv.
Mr. Binay Krishna, SPP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 16-06-2026

1. The instant appeals have been preferred against the judgment of conviction dated 05.06.2023 and the consequent order of sentence dated 09.06.2023 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Court, Bettiah, District-West Champaran, in connection with Trial No. 207 of 1993 arising out of Chautarwa P.S. Case No. 08 of 1992, whereby and whereunder the appellants have been convicted for the offences punishable under Sections 148, 323 and 376 of the Indian Penal Code (in short, 'IPC') and section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (in short, 'SC/ST Act'). All the appellants have been sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 1000/- (Rupees One Thousand) under section 148 of IPC and in default of payment of fine, they have been directed to undergo rigorous imprisonment for two months and further, they have been sentenced to undergo rigorous imprisonment for six months under section 323 of IPC with a fine of Rs. 1000/- (Rupees One Thousand) and in default of



payment of fine, they have been directed to undergo rigorous imprisonment for two months and further, they have been sentenced to undergo rigorous imprisonment for ten years under section 376(2)(g) of IPC with a fine of Rs. 10,000/- (Rupees Ten Thousand) and in default of payment of fine, they have been directed to undergo rigorous imprisonment for six months and further, they have been sentenced to undergo rigorous imprisonment for one year under section 3(i)(xi) of SC/ST Act with a fine of Rs. 2000/- (Rupees Two Thousand) and in default of payment of fine, they have been directed to undergo rigorous imprisonment for two months. All the sentences have been directed to run concurrently.

Prosecution Story:

2. The prosecution case, as disclosed in the fardbeyan of the informant/victim recorded before her husband on 18.01.1992 at about 9:00 A.M., is that on the night of 18.01.1992 at about 2:00 A.M., the accused persons, namely, Gauri Chaudhary, Shambhu Chaudhary, Vipat Sah, Ramadhar Turha, Parshuram Chaudhary, Prahlad Chaudhary and two others, namely, Suresh Yadav and Surendra Dubey, armed with lathis, a wooden club (kunda), and iron rods, forcibly entered her house. They caught hold of her, dragged her out of the



house, and assaulted her with lathis, the wooden club, and iron rods. They also assaulted her mother-in-law. As a result of the assault, she sustained injuries on her right cheek, abdomen, back, and ribs and started bleeding.

2.1. The informant stated that there was some delay in approaching the police station as the occurrence had taken place during the night. The motive behind the occurrence was a dispute relating to land. She further stated that about one month prior to the occurrence, accused Gauri Chaudhary had threatened them to relinquish the disputed land.

2.2. According to the informant, the accused persons, while assaulting her with lathis, wooden club, and iron rods, dragged her from her house to a flower garden situated in south of the house and threatened that if they did not give up the land, they would be killed. Upon hearing her alarm, villagers Shivrath Ram, Dhora Ram, and several other persons of the village arrived at the place of occurrence and witnessed the incident and could testify to the same if required.

3. The informant recorded her fardbeyan on 18.01.1992 at about 09:00 A.M. at Chautarwa Police Station and detailed the above-mentioned incident. Upon that basis, a formal FIR bearing Chautarwa P.S. Case No. 08 of 1992 was registered



for the offences punishable under Sections 147, 148, 341, 448, 323 of the IPC and Section 3(i)(x) of the SC/ST Act, which set the criminal law in motion.

4. After completion of the investigation, the appellants were charge-sheeted for the offences punishable under Sections 147, 148, 149, 323, 341, 448, 307 & 376 of the IPC and Section 3(i)(v)(x) & (xii) of the SC/ST Act.

5. After cognizance of the alleged offences, the learned ACJM, Bagaha, committed the case of the appellants to the court of Sessions Judge, West Champaran, Bettiah, for trial. All the appellants stood charged for the offences under Sections 148, 323, 307 & 376 of the IPC and Section 3(i)(x)(xi) & (v) of the SC/ST Act. The said charges were read over and explained in Hindi to the appellants by the trial court, to which they pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined altogether eight witnesses who are as under :-

Rank	Name	Nature of Evidence
PW-1	Shivnath Ram	Hostile
PW-2	Dhoda Ram	Hostile
PW-3	YYY	Husband of the victim
PW-4	XXX (Victim)	Informant
PW-5	Pankaj Kumar	Formal witness
PW-6	Abu Rehan	Formal witness
PW-7	Dr. Ashok Kumar Tiwary	Medical witness



PW-8	Shambhu Sharan Gupta	SHO of police station
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7. In addition to the above mentioned ocular evidence, the prosecution proved and exhibited the following documents in documentary evidence :-

Sr. No	Exhibit No.	Description	Proved by/Attested by
1.	Ext-1	Statement of informant (victim) under section 164 of Cr.P.C. dated 20.10.1992	PW-4
2.	Ext-2	Injuries of the victim detailed on page No. 189 of the injury register of Hospital	PW-5 & PW-7
3.	Ext-2/a	Doctor's opinion	PW-5 & PW-7
4.	Ext-2/b	Doctor's supplementary opinion	PW-5 & PW-7
5.	Ext-3	Signature of the SHO	PW-8
6.	Ext-3/a	Signature of SHO on an endorsement	Pw-8

8. After the completion of the prosecution evidence, the statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure (in short, 'Cr.P.C.') by the trial court. The appellants denied the material circumstances appearing against them from the prosecution evidence and pleaded innocence.

9. The defence has not produced any oral evidence, however, the following documentary evidence has been produced :-

Sr. No.	Exhibit No.	Description	Proved by/Attested by
1.	Ext-A	Signature of the husband of the informant on the Fardbeyan	PW-3 & PW-4
2.	Ext-B	Sale Certificate	Certified copy



3.	Ext-C	C.C of an order of Circle Office Bagaha	Certified copy
4.	Ext-C/1	Inspection report of Halka Karamchari	Certified copy
5.	Ext-D	C.C. of FIR of Chautrawa P.S. Case No. 135/1996	Certified copy
6.	Ext-D/1	C.C. of charge sheet of FIR Chautrawa P.S. Case No. 135/1996	Certified copy
7.	Ext-E	Certified copy of the judgment	Certified copy
8.	Ext-F	C.C. of FIR of Chautrawa P.S. Case No. 76/1989	Certified copy
9.	Ext-F/1	C.C. of charge sheet in FIR of Chautrawa P.S. Case No. 76/1989	Certified copy
10.	Ext-F/2	C.C. of an order in Sessions Case No. 187/91	Certified copy
11.	Ext-G	C.C. of FIR of Bagaha P.S. Case No. 06/56	Certified copy

10. While convicting the appellants for the offence under Section 376 of the IPC, the learned trial court mainly placed reliance upon the testimony of the victim (PW-4).

Submissions on behalf of the appellants:-

11. The main contention raised by the learned senior counsel appearing for the appellants in Cr. APP (SJ) No. 2977/2023 is that for the allegation of gang rape, the victim (informant) is not a sterling witness and the allegations levelled by her during the course of trial as well as in the statement recorded by her under section 164 of the Cr.P.C. are not believable and the same is of such a nature that it is very hard to believe from its face value and in the instant matter if the evidence of the victim is taken into account then she only appears to be an eyewitness of the allegation of gang rape. In support of this submission, learned senior counsel has placed



reliance upon the judgment of the Hon'ble Apex Court delivered in the case of **Rai Sandeep @ Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21** and the relevant paragraph Nos. 22 and 33, upon which reliance has been placed, are being reproduced for ready reference :

“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.

33. Applying the said principles to the facts of the case on hand, we find that the solitary version of the chief examination of PW 4, the prosecutrix cannot be taken as gospel truth for its face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellants.”



12. Learned counsel appearing for the appellants in Cr. APP (SJ) No. 3048/2023 has argued that the fardbeyan recorded by the victim herself is a credible statement as the same was recorded by her on the same day just some hours after the incident in which the allegation of gang rape did not find place and a simple allegation of *marpit* was made and there was no whisper with regard to the allegation of gang rape in the said fardbeyan. Learned counsel has further argued that several months after recording the fardbeyan, the victim recorded her statement under section 164 of Cr.P.C. developing the prosecution story and improved her version and made the allegation of gang rape with malice intention on account of revengeful attitude due to running of a land dispute in between both the parties at that time. In support of these contentions, learned counsel has drawn the attention of this court to the fardbeyan of the victim, her statement recorded under section 164 of the Cr.P.C. as well as the evidence of PW-7 and also has drawn the attention of this court to the evidence of victim's husband to establish the victim's consciousness to record her fardbeyan on the day and time as mentioned in the fardbeyan. Learned counsel has further argued that in the fardbeyan the victim revealed the names of two co-villagers as eye-witnesses



of the important part to the occurrence. Though, they were examined by the prosecution as PW-1 and PW-2 but both went hostile and did not support the prosecution's allegation and there is sufficient documentary evidence to prove the enmity on account of land dispute running in between both the parties at the time of the alleged incident and in this regard, Ext.-A, Ext.-B, and Ext.-C, produced on behalf of defence side, are relevant. Learned counsel has further argued that the learned trial court has wrongly placed reliance upon the restatement of the victim without getting it proved and further, the same cannot be used to corroborate the prosecution's case but the trial court committed an error while placing reliance upon the said restatement and terming it as a corroborative evidence to the prosecution case with regard to the main allegation of gang rape.

Submissions on behalf of the State :-

13. On the other hand, learned APP appearing for the State has submitted that the allegation of gang rape was fully supported by the victim herself before the trial court while recording her evidence and the same gets support from the victim's statement recorded by her before the Judicial Magistrate under section 164 of the Cr.P.C. Though, the allegation of gang rape did not find place in the fardbeyan of the



victim but at that time she did not disclose the said allegation in order to save her public reputation which was revealed by her during the course of trial and the same is sufficient to explain her silence in the fardbeyan for not disclosing the offence of gang rape committed with her by the appellants. Learned APP has further submitted that for substantiating the offence under section 376(2)(g) of the IPC, the victim's own evidence in itself is sufficient and further, the same gets support from her injuries detailed by PW-5 who proved the medical register containing the details of the injuries of the victim and according to him, on the private part of the victim, there was laceration which supports the allegation of rape.

Consideration and Analysis :-

14. I have heard both the sides, perused the judgment impugned and the evidences adduced by both the sides, including the statements of the appellants recorded by them under section 313 of the Code of Criminal Procedure (in short, 'Cr.P.C.').

15. In the light of above contentions, I have first perused the fardbeyan of the victim and thereafter gone through other relevant evidences. The alleged incident is said to have taken place on 18.01.1992 at 2:00 A.M at late night. The victim



recorded her fardbeyan on the same day in the morning at about 9:00 A.M. She alleged in her fardbeyan that the appellants armed with lathi, iron rod and a wooden club (kunda) came at her house and assaulted her and her mother-in-law causing several injuries to her on her right cheek, stomach, back and rib and also revealed a land dispute being running in between both the sides which was the main reason on the part of the appellants to commit the alleged occurrence. In the entire fardbeyan, the victim did not whisper any word about the commission of gang rape with her by the appellants. As far as the reliability of her fardbeyan is concerned, there are some circumstances which persuaded this Court to believe the same. On the fardbeyan, the victim made her thumb impression but her husband signed upon it. PW-3, the husband of the victim, deposed before the trial court in the paragraph No. 12 of his cross-examination that the fardbeyan contains his signature and he identified the same and according to him, his wife (victim) correctly recorded her fardbeyan and he signed upon it after being satisfied. This statement of the informant's husband is in itself sufficient to prove the reliability of the fardbeyan of the victim, which was the first version of the prosecution. As far as the victim's plea as to the allegation of gang rape not being



disclosed by her in order to protect her public reputation is concerned, the place does not appear to be reliable as her husband did not say anything in support of this contention. The victim deposed before the trial court that after the occurrence, she became unconscious and later on her statement was recorded by the police after she gained consciousness. The said statement does not appear to be reliable as the victim was examined on the same day i.e. on 18.01.1992 at about 10:25 A.M., just after 1 hour 25 minutes after recording the fardbeyan and on the next day, she was again medically examined as per the evidence of PW-7, who proved the details of the medical examination of the victim which were marked as Ext.- 2/a and 2/b containing the information of the victim's health condition as well as injuries found on her body. In both the exhibits, the concerned medical expert did not mention any fact supporting the victim's plea as to she having become unconscious on the alleged day and time of occurrence when she was brought at the hospital for the medical examination. Several months after the institution of the FIR, the victim developed her allegation in her statement recorded by her before the Judicial Magistrate which appears to be an afterthought. Though, as per the prosecution, in restatement she made the allegation of gang rape upon which



the trial court also placed reliance but the said approach of the trial court does not appear to be correct and legal as the restatement which comes in the purview of Section 161 of the Cr.P.C. was not proved and secondly, such statement can only be used to contradict the court evidence statement of a particular witness who recorded such restatement during investigation with the help of the provisions of Section 145 of the Indian Evidence Act by the accused and also by the prosecution with the permission of the trial court. But the said provision was not followed in the present matter. As per the prosecution story narrated in the fardbeyan, two co-villagers of the victim, namely, Shivnath Ram and Dodha Ram came at the place of occurrence when the offences were being committed and they witnessed the occurrence and both the said persons were produced by the prosecution but they did not support the case of the prosecution and went hostile. The victim's husband who witnessed the initial part of the occurrence, if the testimony of the victim is taken to be true, stated in the cross-examination that at the time of occurrence there was no light. He further stated in paragraph no. 16 that when the accused/appellants entered into his house after breaking the *taat*, he alone fled away and returned back after half an hour and at that time there was



no one at the door of his house and the accused/appellants had gone and his wife was lying in unconscious condition but he deposed in his examination-in-chief that he returned after one hour and he saw that his wife was being dragged by the accused persons towards an orchard of one namely, Chandan Shah where the accused/appellants raped his wife one by one. The statement in itself contradicts the statement of this witness made by him in the cross-examination. Further, the victim, who was examined as PW-4, deposed in her examination-in-chief that after the commission of gang rape she managed to come at her house and fell down in the courtyard and thereafter, her husband came and took her to the hospital for treatment. While the victim stated before the Judicial Magistrate in her statement recorded under Section 164 of Cr.P.C. that after the commission of gang rape and causing injuries to her private part by the front barrel portion of the gun, she became unconscious and she could not know about the subsequent incidents and developments and she gained consciousness in the morning at 8:00 A.M. and thereafter, she herself stood and came at courtyard of her house. In this way the victim did not remain consistent to her stand with regard to the last part of her allegation of gang rape. In the instant matter as per the prosecution story, the accused/



appellants being in large number came at the house of the informant equipped with gun, lathi and iron rod etc. and damaged some outer part of the victim's house made of *Tatt* and further, as per the allegation there were some bleeding injuries to the victim on account of the alleged assault, so, in order to prove the alleged places of occurrences the evidence of the Investigating Officer, who inspected the alleged places of occurrences, was very important but he could not have been produced by the prosecution though one Shambhu Sharan Gupta, SHO of police station, being familiar with the handwriting and signature of the Investigating Officer, was examined by the prosecution as P.W.-8 but according to him the Investigating Officer was traceless at that time. The said plea taken by this witness is not helpful to the prosecution to escape its liability to produce a Government official and on account of non-production of the Investigating Officer, the defences taken by the appellants were seriously prejudiced and in the background of the facts and circumstances appearing from the prosecution's evidences, the said lacuna on the part of the prosecution cannot be ignored. Further, in the present matter, no site plan was prepared and the alleged weapons were not recovered and other incriminating materials such as clothes of



the victim were not seized and produced before the trial court and for this, the evidence of the Investigating Officer was very important who was the best person to explain the reasons for these lacunas and in this regard, the observation made by the Hon'ble Apex Court in the case of **Ravishwar Manjhi and Ors. vs. State of Jharkhand** reported in (2008) 16 SCC 561, in the paragraph No. 27 of the said judgment is relevant, which is being reproduced as under:-

“27. The investigating officer in a case of this nature should have been examined. His examination by the prosecution was necessary to show that there had been a fair investigation. Unfortunately, even no site plan was prepared. There is nothing on record to show as to the exact place where the occurrence had taken place. It is stated that the house of the parties is divided by a road. If that be so, it was all the more necessary to pinpoint the exact place of occurrence to ascertain who was the aggressor.”

16. It is an admitted position that at the time of commission of the alleged occurrence there was a land dispute in between the victim's family and the appellants and civil litigation had also been running for a long time in between them. The appellants' counsels have taken the defence that on account of the said land dispute, a simple occurrence of *marpit*



took place in between both the parties and all the injuries found on the person of the victim (informant) were opined to be simple in nature though, one injury on the private part of the victim was found but the same was not in such a nature to suggest the commission of gang rape and encircling the front portion of the barrel of a gun inside the vagina of the victim and the allegations were exaggerated by the victim with revengeful attitude on account of the land dispute. The said defence appears to be believable in the background of the surrounding circumstances appearing from the prosecution evidences as discussed above.

Conclusion :-

17. Accordingly, this court is of the considered opinion that the prosecution failed to establish the allegation of gang rape pertaining to the offence under section 376 of the IPC beyond reasonable doubt for which the appellants have been convicted. Though, the prosecution succeeded to establish the case of a simple *marpit* and atrocities bringing the alleged acts of the appellants in the purview of section 3(i)(xi) of the SC/ST Act, so, the conviction of the appellants for the offences under sections 148 and 323 of the IPC and sections 3(i)(xi) of the SC/ST Act was proper for which they were sentenced to undergo one year rigorous imprisonment for the offence under section 148 of the



IPC, six months for the offence under section 323 of the IPC and one year for the offence under section 3(i)(xi) of the SC/ST Act and all the appellants have served the said sentences. Hence, the impugned judgment of conviction and order of sentence are hereby set aside to the extent of the offence punishable under section 376 of the IPC for which the appellants were convicted and sentenced but their conviction and sentence for other offences are upheld.

18. In the result, the instant appeals stand partly allowed.

19. The appellants are in judicial custody and they have already served the sentences imposed upon them for the offences under sections 148 and 323 of the IPC and section 3(i)(xi) of the SC/ST Act, so, they are directed to be released at once if their custody is not required in any other case.

20. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for needful and necessary compliance.

(Shailendra Singh, J)

Annu/BKS/Krishna-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.06.2026
Transmission Date	22.06.2026

