

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.775 of 2013**

Arising Out of PS. Case No.-14 Year-2008 Thana- AMARPUR District- Banka

Himanshu Kr. Pathak @ Mithiya Pathak S/O Sri Trimbak Pathak R/O Village-
Amarpur, Police Station- Amarpur, District- Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ajay Mukherjee, Advocate Mr. Ganesh Sharma, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT**

Date : 09.07.2026

Heard Mr. Ajay Mukherjee along with Mr. Ganesh Sharma, learned counsel 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 31.10.2013 and 01.11.2013 passed by the learned Adhoc. Addl. Sessions Judge-I, Banka in S. T. No. 450/2009 arising out of Amarpur P.S. Case No.14/2008,, whereby and whereunder the appellant has been convicted for the offence punishable under Section 376/511 and 342 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for a period of three years under Section 376/511 of IPC along with a fine of



Rs.5,000/- and in default of payment of fine, to undergo further simple Imprisonment for one month. The appellant was further sentenced to undergo Imprisonment for a period of six months under Section 342 of the Indian Penal Code. Both the sentences were directed to run concurrently.

BRIEF FACTS OF THE CASE

3. The prosecution case, in brief, is that the informant has alleged that on 19.01.2008 at about 4:30 p.m., she accompanied her father to Amarpur for photography. The accused/appellant, who was the owner of Chhaya Studio, took the informant inside the studio and clicked her photograph. Thereafter, he asked her father to view his daughter's photograph on the computer and closed the door of the studio from inside. It is alleged that the accused then started touching the informant's body and attempted to remove/open her *salwar* with the intention to commit rape. On the informant raising an alarm, her father came to the door and attempted to open it. Thereupon, the accused opened the door and fled from the studio. Many people gather there after hearing the *Hulla*.

4. On the basis of the statement of the informant, the F.I.R being Amarpur P.S. Case No.14 of 2008 dated 20.01.2008 was registered for the offences under sections 342,



376/511 of the Indian Penal Code. After institution of the FIR, the police proceeded with the investigation and after completion of investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellants and the case was committed to the Court of Sessions for trial, whereby he was convicted against which the present appeal has been filed.

ARGUMENT ON BEHALF OF THE APPELLANT

5. Learned Counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction dated 31.10.2013 and order of sentence dated 01.11.2013 passed by the learned Adhoc Additional Sessions Judge- I, Banka in S.T. No. 450/2009 is illegal, perverse and unsustainable in law. Learned counsel further contended that the alleged occurrence took place on 19.01.2008 whereas the FIR was lodged on 20.01.2008 and the prosecution failed to offer any satisfactory explanation for such delay.

ARGUMENT ON BEHALF OF THE STATE

6. Learned APP appearing for the State while opposing the appeal submitted that the trial court after considering all the evidences on record and exhibits held that the offences alleged against the appellant appears to be serious in nature.

7. Heard the parties.



8. 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.

9. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment of conviction dated 31.10.2013 and order of sentence dated 01.11.2023 for the offences under Section 376/511 and 342 of the IPC.

10. During the trial, the prosecution has examined altogether five witnesses, namely:

- (i) (P.W.-1)- Mantu Sah (father of informant)
- (ii) (P.W.-2)- Aruna Devi (mother of informant)
- (iii) (P.W.-3)- X (informant)
- (iv) (P.W.-4)- Kailash Prasad (investigating officer)
- (v) (P.W.-5)- Md. Salam (hostile)

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

- (i) Signature of Mantu Sah (father of informant) on the written report (Exhibit-1),
- (ii) Signature of informant/victim (Exhibit-1/1)

12. 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.

ANALYSIS

13. The provisions of Sections 375 and 376 of the IPC is reproduced hereinafter as follows : -

"375. Rape.— A man is said to commit "rape" if he—(a)penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b)inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c)manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d)applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,under the circumstances falling under any of the following seven descriptions:—

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she



is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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 sub-section, —

(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."

14. 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

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

P.W.-1: Mantu Sah (father of victim)- He stated that the accused instructed him to sit at the outer counter/courtyard to view the digital photograph on a computer. Within moments, he heard his daughter screaming from inside the locked studio. He rushed to the door and forcefully pushed it. The accused opened the door, violently shoved P.W.-1 aside, and fled from the scene as a local crowd began to gather. He verified his signature on the initial written report (Exhibit-1).

In his cross-examination, he admitted that the formal written complaint was scribed by an unknown third party at the police station based exactly on his daughter's dictation. He confirmed the presence of a single exit door to the studio and a counter measuring 4–5 hands. He failed to explain why he would falsely stake his unmarried daughter's reputation.



P.W.-2: Aruna Devi (Mother of the Victim) - She deposed that on the day of the incident at around 7:30 P.M., she was at her house when her daughter and husband returned and narrated the entire incidences to her—specifically how the accused locked her daughter in the studio, stripped her, and attempted to violate her modesty.

She admitted during cross-examination that she was not an eye-witness to the actual scene of the crime and could not recollect the exact calendar date of the occurrence.

P.W.-3: X (The Informant and Victim) - She deposed that on 19.01.2008 at 4:30 P.M., she accompanied her father to *Chhaya Studio* in Amarpur for photography. The accused, Mithia Pathak, guided her inside the studio room, took a snapshot, and sent her father outside to check the preview on a computer screen. Immediately thereafter, the accused bolted the studio door from the inside, stripped himself, untied her *Salwar*, and subjected her to forceful sexual molestation with an explicit intent to commit rape. The learned Trial Judge specifically placed a demeanor remark on record, noting that the witness broke down and was weeping while recalling the trauma during her examination.

In her Cross-Examination She provided precise



topographical details of the crime scene (the darkroom measured 5–5½ hands in length and 3–3½ hands in width; the outer courtyard measured 5–6 hands by 4–4½ hands, facing a local temple). She firmly denied the defense's suggestion that she had fabricated the details regarding the accused undressing himself.

P.W.-4: Kailash Prasad (Investigating Officer – Formal)- P.W.-4 is a formal police witness. He testified that he took over the investigation for a brief interim period and recorded a supervision note in the case diary. However, he admitted that he did not personally record the Section 161 Cr.P.C. statements of the primary witnesses, nor did he submit the final charge sheet.

P.W.-5: Md. Salam (Independent Local Witness / Hostile) - This witness turned hostile to the prosecution's case. He claimed to have no knowledge of the occurrence on 19.01.2008. The Additional Public Prosecutor cross-examined him at length regarding his prior statements recorded under Section 161 Cr.P.C., but he denied all suggestions and signatures.

16. Upon a careful re-appreciation of the evidence on record, it emerges that the prosecution has examined only five



witnesses, of whom P.W.-5 has not supported the prosecution case and was declared hostile. P.W.-4, who was examined as a formal witness, merely stated that he had recorded the supervision note in the case diary and neither recorded the statements of any witness nor submitted the charge-sheet. Significantly, the Investigating Officer who completed the investigation and submitted the charge-sheet was not examined during trial. Further, no Medical Officer was examined by the prosecution to substantiate the allegation of attempted rape, and consequently, no medical evidence is available on record in support of the prosecution case. Thus, the prosecution case substantially rests upon the testimonies of P.W.-3, the victim, and P.W.-1, her father, while P.W.-2, the mother of the victim, is admittedly a hearsay witness. The victim (P.W.-3) has consistently deposed that on 19.01.2008, when she had gone to the studio of the accused for getting her photograph, the accused asked her father to remain outside on the pretext of viewing the photograph on the computer, closed the door of the studio from inside, attempted to remove her *salwar*, undressed himself, and forcibly molested her with the intention of committing rape. She further stated that upon her raising alarm, her father pushed open the door, whereupon the accused fled



from the studio. P.W.-1 father of the victim has corroborated the version of the victim to the extent that he heard her cries, pushed the studio door, saw the accused fleeing from the spot, and was informed by his daughter immediately thereafter that the accused had attempted to commit rape upon her. Except for the testimony of the victim, which finds partial corroboration from her father regarding the surrounding circumstances, there is no independent eyewitness or medical evidence supporting the prosecution version.

17. In such circumstances, can the testimony of the victim PW-3 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.”

18. 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)

19. 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.

20. 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.

21. In the instant case, it is evident that all the prosecution witnesses No.1, 2 (father and mother of victim) are interested witnesses, having direct or indirect stakes in the outcome of the matter. Their testimonies, therefore, cannot be accepted at face value without careful scrutiny. The courts have consistently held that interested witnesses are prone to exaggeration, omission, or distortion of facts to favor their own position. Consequently, their evidence cannot be deemed wholly reliable or sufficient on its own to establish the charges. It is imperative that such testimonies be corroborated by independent, credible, and unimpeachable evidence before any adverse inference or conviction is drawn. In this regard, reference can be drawn from the judgment passed by the Apex Court in para nos. 32 and 33 in the case of *Nand Lal v. State of*



Chhattisgarh, (2023) 10 SCC 470, which are reproduced hereinafter:

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614] , has observed thus : (AIR p. 619, paras 11-12)

“11. ... 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. 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.*

12. 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.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the



court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

22. What emerges from the settled principles of law is that the evidence of interested witnesses must be examined with caution but cannot be discarded merely on the ground of relationship or interest. Where such witnesses are found to be neither wholly trustworthy nor entirely unreliable, the Court must carefully scrutinize their testimony to determine its credibility and probative value. If the testimony of an interested witness is clear, cogent, consistent, and inspires confidence, it can form the basis for conviction, even in the absence of independent corroboration. However, where the evidence is riddled with contradictions, improvements, or material gaps, its reliability may be doubtful, and conviction based solely on such testimony would be unsafe. The guiding principle remains that the Court must weigh the testimony of interested witnesses pragmatically and cautiously, ensuring that the conviction is founded on credible and trustworthy evidence.

23. The record reveals that the Medical Officer was not examined during the course of trial. Undoubtedly, the Medical Officer is required to prove the medical evidence relating to the nature and cause of injuries. Its examination also



affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination. However, it is well settled that the mere non-examination of the Medical Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused; and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in **(2013) 3 SCC 791**, which is reproduced hereinafter:

“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the



victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."

24. A reference has been made by the learned *counsel* 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 Apex Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

25. So far as the contention of the appellant that there is delay of more than 24 hours in registering of the FIR, I would like to mention that the victim in her cross-examination has stated that she along with her father and *Fua* went to the nearest police station for registering the case but in spite of having waited for long time, the concerned SHO refused to register the FIR and thereafter they returned at about 08:15 p.m. and on the next date, the FIR was registered, so there is no question of any delay on part of the prosecution.



CONCLUSION

26. In the facts and circumstances of the case, I find that in the absence of any evidence of penetration, even to the slightest extent, or any overt act unequivocally constituting an attempt to commit rape, the ingredients of Section 375 IPC, and consequently Section 376 read with Section 511 IPC, are not attracted in absence of any medical corroboration.

27. I find that the appellant used criminal force against the victim by confining her inside the studio, closing the door, attempting to remove her *salwar*, and physically molesting her by pressing her chest. These acts clearly establish the use of criminal force upon a woman with the intention, or at least the knowledge, that such acts were likely to outrage her modesty, thereby satisfying the essential ingredients of Section 354 IPC.

28. In light of the settled principles of law governing the distinction between an offence of attempt to commit rape and an offence of outraging the modesty of a woman, it appears that, even if the prosecution case is accepted in its entirety, the acts attributed to the appellant, as alleged in the FIR and deposed to by the victim, do not unequivocally establish the commission of an offence punishable under



Section 376(1) read with Section 511 of the IPC. At best, the allegations disclose an act intended to outrage the modesty of the victim, thereby attracting the ingredients of Section 354 IPC. Consequently, the conviction of the appellant under Section 376 read with Section 511 IPC does not appear to be sustainable in law. The allegations proved on record, therefore, squarely fall within the ambit of Section 354 IPC. It further transpires from the record that the appellant remained in judicial custody for nearly three and a half months.

29. 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 for the offences under sections 376/511 of IPC.

30. The impugned judgment of conviction dated 31.10.2013 and order of sentence dated 01.11.2013 passed by the learned Adhoc. Addl. Sessions Judge-I, Banka in S. T. No. 450/2009 arising out of Amarapur P.S. Case No.14/2008, 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.

31. Accordingly, the present appeal is allowed.

32. 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)

Sanjay/-

AFR/NAFR	
CAV DATE	29.06.2026
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