

**(2011) 07 PAT CK 0186**

**In the Patna High Court**

**Case No : Criminal Appeal (S.J.) No. 216 Of 1997**

Pawan Kumar Sao

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision : 04-07-2011**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 376, 511

**Citation : (2011) 07 PAT CK 0186**

**Hon'ble Judges : Anjana Prakash, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

## **Judgement**

Anjana Prakash, J.—The Appellant has been convicted u/s 376 of the Indian Penal Code and sentenced to one-half term of the life imprisonment by the Sessions Judge, Begusarai, in Sessions Case No. 320 of 1994 by a judgment dated 4.7.1997.

2. The case of the prosecution was that on 1.3.1994 at about 6.00 P.M. when the Informant Mahendra Sao returned from his work, his wife Rekha Devi told him that his daughter aged about 4 years had been sexually molested by the present Appellant upon which a case under Sections 376/511 of the Indian Penal Code was instituted. After investigation, charge sheet was submitted u/s 376 of the Indian Penal Code and the Appellant was charged accordingly.

3. During trial, the prosecution examined seven witnesses out of whom PW-1, PW-2 and PW-3 who are the three Doctors who were members of the Medical Board and had examined the victim. PW-4 is the father of the victim whereas PW-5 is the mother and PW-6 is the victim herself. PW-7 is a formal witness. The Investigating Officer has not been examined in the present case.

4. According to the PW-6, the victim the Appellant had taken her away, and, thereafter, molested by him. There is no dispute that the girl was aged about four years as per the opinion of the Medical Board. The three Doctors did not find

any external or internal injury on the person of the victim and, therefore, they desisted from giving any definite opinion about rape. Since there is only oral evidence with regard to the allegation that the Appellant have committed rape upon the victim (PW-6), I am not inclined to sustain the conviction of the Appellant u/s 376 of the Indian Penal Code.

5. However, in the facts of the case, since there is definite allegation of attempt by the Appellant to commit rape, he is convicted under Sections 376/511 of the Indian Penal Code and he is sentenced to the period already under gone by him which shall be sufficient to meet the ends of justice.

6. In the result, the Appeal is dismissed with the aforesaid modifications.