

IN THE COURT OF ADDL. SESSIONS JUDGE-II, KATIHAR

Present:- Asutosh Rai, Addl. Sessions Judge, II, Katihar

[Date of judgment- 24th April, 2026]

[S. Trial No. 32/2011]

Police-station Rail P.S. Katihar case No. 04/2010 F.I.R. U/S- 328, 379 of the I.P.C.

Complainant/Informant	State of Bihar through informant namely Gautam Thakuriya, S/o-Akram Chandra Thakuria, R/o-Vill- Udaygiri Path, West Baragaon, P.S.-Jalogubari, Distt.- Kamroop, Assam, at present- Rajya Bhawan Jammu.
Represented By	Sri Md. Ezaj Alam Id. A.P.P.
Accused	1. Amit Kumar Rai @ Tunnu, S/o- Sachitanand Rai, aged about 40 years, R/O-Vill- Tepha Bazar, P.S.-Jiradeyi, Distt.-Siwan
Represented By	For defense : Sri Shambhu Prasad, Id. Advocate

Date of Offence	14-01-2010
Date of F.I.R.	17-01-2010
Date of Charge-sheet No. 88/2010	30-11-2010/22-10-2011
Date of Framing of Charge	22-09-2011
Date of Commencement of evidence	22-10-2011
Date of which judgment is reserved	10-04-2026
Date of Judgment	24-04-2026
Date of Sentencing Order, if any	N/A

Accused Details

Sl. No.	Name of Accused	Date of Arrest/ Surrender	Date of Release on Bail	Offences Charged with	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428 of Cr.P.C.
1	Amit Kumar Rai @	30-11-10	29-12-10	U/S- 328, 379 of the	Acquitt	N/A	N/A

	Tunnu			I.P.C.	ed		
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JUDGMENT

1. The accused person namely Amit Kumar Rai @ Tunnu and stands charged for the offences punishable U/S- 328, 379 of the I.P.C. as leveled against him.

CASE OF PROSECUTION/BRIEF FACTS:

2. As per Fard-e-beyan of informant namely Gautam Thakuriya prosecution case in brief is that informant gave his fard-e-beyan on 16-01-2010 before police officer Rail P.S. Khagaria to this effect that he is posted at Raj Bhawan, Jammu at the post of as a Constable and with view to go to home he had boarded the Amar Nath Express on 12-01-2010 and he reached at Barauni Junction and he came to New Barauni, where he found that no train was available from there. An unknown person met him at New Barauni and said that he also had to go to New Jalpaiguri. He returned to Barauni Junction with the unknown person. At Barauni Junction, at about 8:00 P.M., they both boarded a train, got off at Mansi Junction and then boarded at Patna Katihar Inter City and they reached at Katihar Junction at about 11:00 P.M. Then the unknown person accompanying him told him that a passenger train was standing on Platform No. 02 and asked him to get on it. He took him to Platform No. 2 and had him sit on a seat in the train. They did not know where the train would go. The unknown person left him sitting there, going down on the pretext to defalcate himself and when he returned, he brought two cups of tea. He gave one tea to the informant and drank one himself. As soon as he drank the tea, he fell unconscious. When he regained consciousness, he found himself in Sadar Hospital, Khagaria, where he was being treated. When he searched for his belongings, he found them missing. The person who had drugged the tea was of wheatish complexion, height about 5 feet 7 inches, age about 40-42 years, wearing a cream pant, a green colored sweater, and smoked cigarettes heavily. The stolen items included a black colored bag containing a CRPF ID card, driving license, ATM card, mobile phone 9018190073, post-paid, three pairs of clothes, PAN card, gold ring, Movement Order (CRPF), pen and chart etc. The informant further claimed that the unknown

person accompanying him was the same person who had drugged and robbed him and he claimed that he could identify the accused upon seeing him.

INSTITUTION OF CASE/ INVESTIGATION/ INQUIRY

3. On the basis of fard-ebeyan of informant namely Gautam Thakuriya formal F.I.R. bearing Rail P.S. Katihar P.S. case No. 004/2010 F.I.R. U/S- 328, 379 of the I.P.C. was instituted against the unknown accused person and after investigation I.O of this case submitted charge-sheet No. 88/2010 U/S- 328, 379 of the I.P.C. against the accused namely Amit Kumar Rai @ Tunnu.

4. On receipt of charge-sheet No. 88/2010 Ld. Railway Magistrate, Katihar took cognizance of the offence U/S- 328, 379 of the I.P.C. against the accused namely Amit Kumar Rai @ Tunnu and having seen that the section 328 of the I.P.C. as leveled against the aforesaid sole accused person is exclusively triable by the court of sessions, Ld. C.J.M. Katihar supplied the Xe-rox copy of police papers as per requirement of law to the ld. advocate of aforesaid accused persons and ld. court committed the case record to the court of Sessions for further trial. Later on, Case was numbered as S.T. No. 32/11 and further as per order of the District and Sessions Judge, Katihar case record came to the file of my court for further trial and disposal.

CHARGES AGAINST ACCUSED PERSON

5. Later on, after completion of the appearance of the aforesaid accused person namely Amit Kumar Rai @ Tunnu before the court and after considering the materials available on record and on hearing the ld. A.P.P. for State as well as ld. counsel for the aforesaid sole accused persons, court framed the charges u/s- 328, 379 of the I.P.C. in written against the aforesaid accused person and the contents of the same were read over and explained to the aforesaid accused person in hindi to which he denied and pleaded to be not guilty and claimed to be tried. Hence the trial.

PROSECUTION EVIDENCE

6. In order to substantiate its case prosecution side has examined altogether four (04) witnesses in the support of its case. They are:-

Sr. No.	Pws. Number	Description
01	PW-01- R. K. Upadhyay	I.O. to this case
02	P.W.-02-Dhruv Chandra Rai	Hostile Witness
03	PW-03- Bharat Bhusan Rai	Hostile Witness
04	P.W.-04 Suresh Prasad	I.O. to this case

7. Prosecution side has also adduce following documentary evidences on the record in the support of its case:-

Sr. Number	Exhibit Number	Description
01	Ext.-1	Seizure List.
02	Ext.-2	Charge-sheet
03	Ext.-3 and Ext.-3/1	C.D.R. and S.D.R.
04	Ext.-4	Signature of the P.W.-02 namely Dhruv Chandra Rai over Seizure List
05	Ext.-5	Formal F.I.R.
06	Ext.-6	Endorsement on Fard-e-beyan

STATEMENT OF ACCUSED PERSON

8. After conclusion of the prosecution evidence, the statement of the accused person namely Amit Kumar Rai @ Tunnu and was recorded under section 313 of the Cr.P.C. and all incriminating evidences were put to him but he denied veracity of prosecution evidences with the contentions that he is innocent and have falsely been implicated in this case. While accused person neither examined any witnesses nor adduced any documentary evidence on record in his defense.

9. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused persons, beyond the shadow of all reasonable doubts ?

FINDINGS

10. From perusal of the record it is evident that in order to substantiate its case prosecution has examined altogether 04 witnesses as well as prosecution has also adduced some documentary evidences on the record. Out of them PW-01- Ramakant Upadhyay (I.O. to this case) stated in his chief examination that he took the charge of investigation of Railway Police Station, Katihar, Case No. 04/10, on 22-06-2010. After assuming charge, he had retrieved the call details of the SIM number 9018190073 of the mobile phone stolen in the incident. He had obtained the IMEI number 3532710013249270 of the stolen mobile phone. He had retrieved the details of the SIM used in the said IMEI number. The call details revealed that on 12-02-2010, a conversation had taken place from SIM number 9507239151 to SIM number 9708247613. P. W.- 01 has further stated that the SIM used in the stolen mobile phone, whose holder's name was Sachchidanand Rai, S/o- Suresh Rai, R/o- Teipah, Police Station Jiradei, had been found from the possession of Amit Kumar Rai @ Tunnu, S/o- Sachchidanand Rai, R/o- Teipaha, Jiradei, Siwan. He had arrested the accused, Amit Kumar and had submitted a charge sheet against him. P. W.- 01 has further stated that the charge sheet had been submitted under Sections 328, 379 of the IPC. He had seized the SIM of Amit Kumar Rai on 28-11-2010. He had prepared the Seizure List cum Memo in the presence of two witnesses. P.W.- 01 has further proved the Seizure List cum Memo, which was accordingly marked as Ext.-1. P. W.- 01 has further proved the charge sheet and two call details of the stolen SIM, which were accordingly marked as Ext.-2, Ext.-3, and Ext.-3/1 respectively.

During his cross-examination P. W.-01 has further deposed that no criminal history of the accused had been found. P. W.- 01 further stated that the SIM was not in the name of the accused. The SIM was in the name of the accused's father. He had not recorded the statement of the accused's father. The accused's father had been in Saudi Arabia. P. W.- 01 further stated that during the entire course of the investigation, no evidence of administering poison or looting money had been found against the accused.

11. P. W.- 02 Dhruv Chandra Rai has stated in his chief examination that he did not know whether any SIM had been seized or not. P. W.- 02 had identified his signature on the seizure list, which was marked as Ext.-4. It is noteworthy that the aforementioned P. W.- 02 had been declared hostile at the request of the prosecution, and thereafter, P. W.- 02 had been cross-examined by the prosecution. However, during the cross-examination conducted by the prosecution, P. W.- 02 stated that he had not given any statement to the police.

During the cross-examination by the defense, P. W.- 02 stated that the police officer had got his signature on a plain piece of paper. That paper had not been read out to him by the police officer. He had not read it either. No item had been recovered or produced in front of him.

12. P. W.- 03, Bharat Bhushan, stated in his chief examination that the incident was from a year ago. He had been going to catch a train when the police called him and told him to sign. He had signed a written paper. No item had been seized in his presence. He identified his signature, which was marked as Ext.-5. He identified Amit Kumar Rai alias Tunnu Rai, who was present in the court that day.

During his cross-examination P. W.-03 has stated that he had not read the paper on which the police had got his signature. The police had never read it out to him. No item had been recovered from anyone's possession in his presence.

13. P. W.- 04 Suresh Prasad, stated in his chief examination that he had been posted as Station House Officer at Katihar Railway Police Station on 16-10-2010. On that day, a Fard-e-beyan had come to his police station from Khagaria Railway Police Station. Based on that, Case No. 04/2010 had been registered. The Fard-e-beyan had been recorded by SI Shivnarayan Ram of Khagaria mentioning Gautam Thakuria and had been forwarded to this police station. He had registered the formal FIR based on the Fard-e-beyan and had taken up the investigation. P. W.- 04 proved the formal FIR, which was marked as Ext.-5. P. W.- 04

also proved the endorsement on the Fard-e-beyan, which was marked as Ext.-6. P. W.- 04 further stated that during the investigation, he had recorded the restatement of the informant. He had recorded the statements of witnesses Akram Chandra Thakuria and Daya Yadav. He had handed over the investigation because he had been transferred.

During the cross-examination P. W.- 04 has stated that during the time he had investigated this case, no clue had been found in it. He had no information about the accused in this case.

14. While at the time of final argument Id. A.P.P. for the state has submitted before this court that from perusal of the case record it is evident that prosecution has succeeded its case against the accused namely, So accused be held guilty for the charges as leveled against him

15. While Id. counsel for the defense has argued before this court that submitted that informant to this case has not been examined before this court. While P. W.-02 and P. W.-03 who are stated to be witnesses of seizure list have not supported the case of prosecution at all rather they have clearly deposed before this court that anything was not recovered before them and their signature either taken on plain paper or said paper was not read and explained over to them. Further, P. W.-01 who is I.O. to this case has not made clear that when and where the alleged SIM was recovered from the possession of accused namely Amit Kumar Rai @ Tunnu. Further, there is no evidence that said SIM was being used by the accused. While, admittedly the said SIM was in the name of father of accused. Further, certificate as required u/s- 65 B of the Evidence Act has not been produced before this court. While, P. W.-4 has clearly stated that during his investigation any clue was not found. While, there is no evidence on record relating to administering poison to the informant to this case. So, it is evident that prosecution has not succeeded to prove the charge u/s- 328 and 379 of the I.P.C. as leveled against the accused persons. So, accused namely Amit Kumar Rai @ Tunnu may be acquitted from the charges u/s 328 and 379 of the I.P.C. as leveled against him.

16. Now from record it is evident that prosecution has relied on oral and documentary evidence. From perusal of the case record it is evident in order to substantiate its case prosecution has examined altogether 04 witnesses and has also adduced some documentary evidences on record. While perusal of the entire case record it is quite clear that PW-01-Ramakant Upadhyay (I.O. to this case) has deposed before this court inter alia that after assuming charge, he had retrieved the call details of the SIM number 9018190073 of the mobile phone stolen in the incident. He had obtained the IMEI number 3532710013249270 of the stolen mobile phone. He had retrieved the details of the SIM used in the said IMEI number. The call details revealed that on 12-02-2010, a conversation had taken place from SIM number 9507239151 to SIM number 9708247613. P. W.- 01 has further stated that the SIM used in the stolen mobile phone, whose holder's name was Sachchidanand Rai, S/o- Suresh Rai, R/o- Teipah, Police Station Jiradei, had been found from the possession of Amit Kumar Rai @ Tunnu, S/o- Sachchidanand Rai, R/o- Teipaha, Jiradei, Siwan. He had arrested the accused, Amit Kumar and had submitted a charge sheet against him. But, from said oral testimony it is quite clear that P. W.- 01 has not made clear as from where place accused was arrested or from which place alleged seizure list was prepared. Further, seized article was never produced before this court. Further, P. W.-02 and P. W.-03 who are stated to be witnesses of seizure list have not supported the case of prosecution at all rather they have clearly deposed before this court that anything was not recovered before them and their signature either taken on plain paper or said paper was not read and explained over to them. Further, there is no evidence that said SIM was being used by the accused. While, admittedly the said SIM was in the name of father of accused. Further, certificate as required u/s- 65 B of the Evidence Act has not been produced before this court. While, P. W.-4 has clearly stated that during his investigation any clue was not found. Further, informant to this case has not been examined before this court and there is no evidence regarding administering the poisonous substance to the informant as alleged by the prosecution. So from the

discussion as made above it becomes absolutely clear that the prosecution has failed to prove its case u/s- 328, 379 of the I.P.C. beyond all the reasonable doubts.

17. So, having consideration the above facts and circumstances of this case as well as sagacious contentions raised by Id. Counsel for the defence, I find and hold that prosecution has miserably failed to prove the charges u/s- 328, 379 of the I.P.C. beyond all the shadows of reasonable doubts as leveled against aforesaid accused person namely Amit Kumar Rai @ Tunnu. Hence, by granting the benefit of doubts the aforesaid accused person is hereby acquitted from the charges us 328, 379 of the I.P.C. as leveled against him. Since accused namely Amit Kumar Rai @ Tunnu is on bail, so he and his bailors hare hereby discharged from the liabilities of theirs respective bail bonds.

18. Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 365 of Cr.P.C.

19. Office is further directed to consign the case record to the D.R.R, Katihar after necessary compliance, if any.

Judgment was dictated and corrected by me and same was pronounced by me in open court.

(Asutosh Rai)
Addl. Sessions Judge II
Katihar
24-04-2026

(Asutosh Rai)
Addl. Sessions Judge II
Katihar
24-04-2026

Appendix-A

IN THE COURT OF ADDL. SESSIONS JUDGE-II KATIHAR

Sessions Trial Case No.-32/2011

LIST OF PROSECUTION WITNESSES

Sr. No.	Pws. Number	Description
01	PW-01- R. K. Upadhyay	Police Witness
02	P.W.-02-Dhruv Chandra Rai	Hostile Witness
03	PW-03- Bharat Bhusan Rai	Other Witness
04	P.W.-04 Suresh Prasad	Police Witness

LIST OF PROSECUTION EXHIBITS:

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06	Ext.-6	Endorsement on Fard-e-beyan

LIST OF DEFENCE WITNESS

RANK	NAME	NATURE OF EVIDENCE
1	N/A	N/A

LIST OF DEFENCE EXHIBITS

Sr. Number	Exhibit Number	Description
1	N/A	N/A

(Asutosh Rai)

Addl. Sessions Judge-II, Katihar

24-04-2026

<i>Date of Order</i>	
<i>Date of Reserving Order</i>	
<i>Date of Uploading</i>	
<i>Uploaded By</i>	<i>Harshit Raj, Stenographer</i>