IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 458 of 2005

[Against the judgment and order of conviction and sentence dated 30.03.2005 passed by learned Additional Judicial Commissioner, Fast Track Court-9, Ranchi in ST No.30 of 2004 arising out of Kanke P.S. Case No.41 of 2003 corresponding to G.R. No.1259 of 2003]

Rajendra Sahu @ rajendra Prasad Sahu, Son of Sri Dashrath Prasad, resident of village-Arsande, P.S.-Kanke, Dist. Ranchi

… … Appellant

Versus

1. The State of Jharkhand
2. Victim …. Respondents

For the Appellant : Mr. Anil Kumar Sinha, Advocate
For the Resp.-State : Mr. Abhay Kr. Tiwari, A.P.P.

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

CAV On 10th June, 2026 **Pronounced On 24/ 06 /2026**

1. Heard Mr. Anil Kumar Sinha, learned counsel for the appellant and learned A.P.P.

2. Instant criminal appeal is directed against the judgment and order of conviction and sentence dated 30.03.2005 passed by learned Additional Judicial Commissioner, Fast Track Court-9, Ranchi in ST No.30 of 2004 arising out of Kanke P.S. Case No.41 of 2003 corresponding to G.R. No.1259 of 2003, whereby and whereunder the appellant has been held guilty for the offences under sections 376 and 312 of IPC and has been sentenced to undergo R.I. for 7 years along with a fine of Rs.5,000/- for the offence under section 376 of IPC with default

stipulation and R.I. for 3 years for the offence under section 312 of IPC. both the sentences were directed to run concurrently.

Factual Matrix:-

3. Factual matrix giving rise to this appeal as per fardbayan of the prosecutrix recoded on 13.05.2003 at 11:00 hours is that the prosecutrix is a daily wages labour and she was working with the accused, Rajendra Sao, who is the neighbour of the prosecutrix and was working as a mason. In the course of time working together, love-affair was developed between them and both were agreed to solemnize marriage with each other. It is further alleged that the informant's mother is a vegetable seller and whenever, she went to go market to sale vegetables, then in absence of her father, the accused used to visit at her home and establish sexual relationship with her, due to which, she became pregnant and was carrying two months pregnancy. She informed the accused about her pregnancy but he managed to terminate the pregnancy by administrating some medicines. Thereafter, the accused stopped talking with the prosecutrix and also declined to solemnize marriage with her rather he performed marriage with another girl on 12.05.2003. Then, the prosecutrix lodged this case. .

4. On the basis of fardbayan of the informant, Kanke P.S. Case No.41 of 2003 was registered for the offence under sections 366, 376 and 312 of IPC. After completion of investigation, charge-sheet was submitted

against the appellant for the offence under sections 376 and 312 of IPC. The case was committed to the court of sessions, where S.T. No.30 of 2004 was registered. The accused has denied the charges leveled against him and claimed to be tried. After conclusion of trial, the impugned judgment and order was passed, which has been assailed in this appeal.

5. In the course of trial, altogether 6 witnesses were examined by the prosecution, namely:-

P.W.1-Sheo Kumari Devi (mother of the prosecutrix)

P.W.2-Birendra Sao (Jeeja of the prosecutrix)

P.W.3-Manoj Sahu (brother of the prosecutrix)

P.W.4-Dr. Manju Prasad

P.W.5-Prosecutrix

P.W.6-Pradip Kumar Jha (I.O. of this case)

6. Apart from oral testimony of the witnesses, following documentary evidences have been adduced by the prosecution.

Ext.1.-Medical Report

Ext.2.-Signature of prosecutrix on fardbayan

Ext.3-Fardbayan

Ext.4-Formal FIR

7. On the other hand, the defence has examined two defence witnesses, namely, **Hari Sao (D.W.1)** and **Bandhu Sahu (D.W.2)** and apart from which, one documentary evidence, **Wedding Card (Ext.A)** has been

adduced by the defence. The case of defence is denial from the occurrence and false implication because the parents of the prosecutrix were desiring to solemnize marriage her daughter with the accused belonging to same caste but his marriage was settled at another place due to this grudge, this false case was lodged.

8. Learned trial court after evaluating the evidence available on record held the appellant guilty for the aforesaid offences and sentenced him as stated above.

Submission on behalf of appellant:-

9. Learned counsel for the appellant has submitted that admittedly the prosecutrix was a major girl and there was love-affair between the appellant and the prosecutrix. There was no kind of inducement or false promise rather sexual intercourse took place voluntarily and with full consent of the prosecutrix since long. There is no evidence at all showing miscarriage or abortion of the victim at the hands of the present appellant and no evidence of her pregnancy. Therefore, the offence under sections 376 and 312 of IPC has not been proved against the appellant. Learned trial court has committed serious error of law by assessing the age of the prosecutrix to be below 16 years on the date of occurrence only on the basis of medical examination report, which varies two years from either side. The prosecutrix herself has disclosed her age 20 years on the date of lodging FIR. No specific date, day and

time has been asserted by the prosecutrix about commission of sexual intercourse with her. On the date of lodging report, she has claimed that her two months pregnancy was terminated. Therefore, it cannot be said that on the date of occurrence, she was below 16 years or a minor girl. Hence, the impugned judgment and order of conviction and sentence of the appellant is absolutely illegal and based beyond the evidence available on record, which is fit to be set aside and this appeal be allowed.

Submission on behalf of State:-

10. Learned A.P.P. has opposed the aforesaid contentions raised on behalf of the appellant and has submitted that learned trial court has very wisely and aptly considered the oral as well as documentary evidence available on record and arrived at right conclusion. Therefore, there is no illegality or infirmity in the impugned judgment and order of conviction and sentence of the appellant calling for any interference in this appeal, which is devoid of merits and fit to be dismissed.

Analysis, Reasons and Decision:-

11. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

12. The only point for determination in this appeal is that "**as to whether the impugned judgment and order of conviction and sentence of the**

appellant passed by learned trial court suffers from any error of law calling for any interference in this appeal?"

13. Before adjudicating the above point, it is necessary to take brief resume of oral as well as documentary evidence adduced by the prosecution to substantiate the charges leveled against the appellant.

The most important witness is the prosecutrix, who has been examined as **P.W.5.** According to her evidence, in the year 2001, in the morning, in absence of her parents, the accused/appellant came to her home and asked her as to why she has not gone for work, and then she replied that her parents are not present and she will not go to work today. In the meantime, the appellant caught hold of her and lay down her on earth and forcibly established sexual relationship with her. When the prosecutrix wanted to raise alarm, the accused threatened her to keep mum, otherwise, she and her parents would be killed. Thereafter, she kept quiet and the accused also assured her that he will solemnize marriage with her. This state of affairs continued and out of fear, she did not disclose the above incident to her father and mother. In the month of September, she felt pregnancy, then she requested the appellant for solemnizing marriage, but he administered some medicines of abortion and also stopped talking with her. This witness came to know that the appellant has performed marriage with another girl, then she lodged this

case and has proved her signature on fardbayan marked as Ext.3. She states her age on the date of occurrence is 15 ½ years.

In her cross-examination, she specifically admits that the incident is of 13.05.2003 but again she hesitates and says that she cannot tell the date and month of the occurrence. The first occurrence took place with her at about one year prior to lodging this case. This witness also admits that even after six months of the first occurrence, she did not disclose the above incident to her parents or any other person. After one year of the first occurrence, she became pregnant and she disclosed about this incident only prior to one day of filing FIR to her parents. This witness also admits that at present she is working under Dr. Upendra Sinha and she is being imparted training of Nurse. Prior to lodging the case, a *panchyati* was also held but of no fruitful result. Then, she lodged the case.

P.W.1- Shio Kumari Devi is the mother of the victim girl. Admittedly, she is a hearsay witness from the prosecutrix and stated that her daughter was raped by the accused on assurance of marriage and her pregnancy was terminated by administrating some medicines and thereafter he solemnized marriage with another girl. Then, this case was lodged.

P.W.2-Birendra Sao is brother-in-law of the informant and is hearsay witness. This witness came to know from the prosecutrix that

the accused/appellant has committed rape with her while she was alone in her house. When the prosecutrix became pregnant and insisted for marriage, then, got her abortion serving some medicines. Thereafter, the accused stopped talking with the prosecutrix and solemnized marriage with another girl.

P.W.3-Manoj Sahu also came to know from the prosecutrix that she was ravished by the accused and when she became pregnant, she was administered medicine. The accused assured to perform marriage with her but later on he declined and stopped talking with her and also solemnized marriage with another girl.

P.W.4-Dr. Manju Prasad has examined the prosecutrix on 13.05.2003 and found following:-

Identification Mark-Black mole on the back left side. Teeth upper 14, Lower 14. Height 58 inches, weight 52 kg. Public hair and auxiliary hair developed.

No injury on her private part or anywhere on her body. No foreign hair on her private parts. No stain on her clothes or on her private parts. No matting of public hair. Old ruptured hymen present admit two fingers.

Per virginal examination uterus anti-verted normal size. No lochial discharge or no bleeding present. Veginal smell taken and send for microscopic examination.

X-ray of wrist elbow and pelvic advised.

X-ray report received on 17.05.2003, vide Plant No.77 dated 14.05.2003. X –ray of wrist and hand shows pice form ossified. Hands of metacarpal and falanges fused. Lower and radius and alne fused. X-ray of pelvic shows orest of ilum not fused. Ishical tuberosity not fused.

Opinion Regarding age:- According to x-ray report, individual is in between 16 to 17 years of age. Pathology report received on 19.05.2003 show no dead or alive spermatozoa found.

No evidence of sexual inter-course at the time of examination. The medical report is marked Ext.1.

P.W.6-S.I. Pradeep Kumar Jha is the Investigating Officer of this case. According to his evidence, the prosecutrix has given application to Superior Police Officer. He verified the contents of the application of prosecutrix and went to her house and recorded her *fardbayan*, which is marked Ext.3. Accordingly, formal FIR was registered, which is marked Ext.4. He recorded the re-statement of victim girl and other witnesses and also visited the place of occurrence and got medical examination of the victim girl and finding sufficient evidence against the appellant submitted charge-sheet against him.

In cross-examination, he admits that the victim girl neither in her fardbayan nor during interrogation under section 161 of Cr.P.C has stated about date, day and time of commission of rape with her. During

investigation, none of the witnesses told him about the *panchyati* held in the village in connection with present accused person. The victim girl has not disclosed her age in her re-statement or in the *fardbayan* to be 15½ years. The victim girl has not told before him that her menstrual stops in the month of September.

14. From the evidence led by the prosecution as discussed above, it is crystal clear that learned trial court has simply acted upon the examination-in-chief of the prosecutrix without considering the vital materials elicited in her cross-examination affecting the core evidence regarding commission of rape with her. Admittedly, she was under love-affair with the appellant and in course of time, they developed physical relationship. As per medical examination and the admission of the victim girl, on the date of lodging FIR, she was aged about 20 years. Even if it may be assumed that the occurrence took place one year prior to lodging of this case even then she was 19 years old. The appellant was also around 22-23 years old at the time of alleged occurrence. There is no concrete evidence about abortion of the prosecutrix and no history of abortion has been opined by the doctor (P.W.4) in the medical examination report of the prosecutrix. It further appears that except the victim girl, all other witnesses are hearsay witnesses and family members of the prosecutrix, who were not aware of any termination of pregnancy of the prosecutrix either by administrating medicine or by

abortion conducted by any nurse and doctor. It further transpires that learned trial court has assessed the age of the victim to be 16 years on the first date of commission of rape with her in the 2001 only on his assumption and presumption, which also appear to be beyond the weight of evidence available on record. Therefore, there are sufficient materials showing that it was consensual sexual intercourse between the appellant and the prosecutrix and both were major having full consciousness about the nature and consequences of the act indulged. Therefore, the ingredients of offence under section 376 and 312 of IPC are not proved beyond doubt in this case against the appellant.

15. In view of the above discussion, I find that learned trial court has committed serious error of law while appreciating the evidence available on record in right perspective and recorded finding of guilt of the appellant, which suffers from serious error of law.

16. Accordingly, the judgment and order of conviction and sentence dated 30.03.2005 passed by learned Additional Judicial Commissioner, Fast Track Court-9, Ranchi in ST No.30 of 2004 arising out of Kanke P.S. Case No.41 of 2003 corresponding to G.R. No.1259 of 2003 is, hereby, set aside and the appellant is acquitted from the charges leveled against him. This appeal is **allowed**.

17. The appellant is on bail. He is discharged from liability of his bail bond and surety is also discharged.

18. Pending I.A(s), if any, is also disposed of accordingly.

19. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date: 24 /06 /2026

Pappu/-

N.A.F.R.

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