

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.591 of 2023

Arising Out of PS. Case No.-205 Year-2020 Thana- JHAJHA District- Jamui

Santosh Marandi, S/o Bhairo Marandi R/o Village- Chhappar Ghutu, Aasta,
P.S. Jhajha, Dist. Jamui

... .. Appellant

Versus

1. The State of Bihar

2. [REDACTED] Resident of Village- Asta, PS- Jhajha, Dist-
Jamui, Presently resident of Village- Chewara, PS- Chewara, Dist-
Sheikhpura

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Jitendra Narain Sinha, Advocate Mr. Ritwaj Raman, Advocate
For the State	:	Mr. Ajay Mishra, Addl PP
For the Resp No. 2	:	None

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 25-03-2026

Heard Mr. Ajay Kumar Thakur, learned counsel for the
appellant and Mr. Ajay Mishra, learned Additional Public
Prosecutor for the State.

2. The informant-Respondent No. 2 has entered
appearance through her Advocate and the name of the learned
Advocate is printed in the cause list but no one has appeared
before this Court.

3. The sole appellant in this case is seeking setting aside
of the judgment of conviction dated 16.05.2023 (hereinafter



referred to as the 'impugned judgment') and the order of sentence dated 20.05.2023 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-I-cum-Special Judge, POCSO Act, Jamui (hereinafter referred to as the 'learned trial court') in POCSO Case No. 18 of 2021 arising out of Jhajha P.S. Case No. 205 of 2020.

4. By the impugned judgment, the learned trial court has held the accused-appellant guilty of commission of the offences punishable under Section 4(2) of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and Section 376 of the Indian Penal Code (in short 'IPC') and by the impugned order, the learned trial court has ordered that the appellant shall undergo a period of 20 years rigorous imprisonment and pay a fine of Rs.20,000/- for the offence punishable under Section 4(2) of the POCSO Act. In default of payment of fine, the convict shall further undergo simple imprisonment of three months. The fine so realised, shall be given to the victim under Section 357 of the Code of Criminal Procedure (in short 'CrPC'). In view of Section 42 of the POCSO Act, the victim-appellant has been sentenced only under Section 4(2) of the POCSO Act. No separate sentence has been awarded for the offence punishable under Section 376 IPC.



Prosecution Case

5. The prosecution case is based on the written information furnished under the signature of the victim/prosecutrix on 01.07.2020 with respect to the alleged occurrence which took place on 29.06.2020 at 11:00 PM. In her written application (not exhibited), the victim alleged that when she was sleeping in her house, this appellant entered into her house and forcibly committed rape upon her. She claimed that she was a minor child. The accused-appellant threatened her that if she would disclose it to anyone then he would kill her and he would also kill her mother-father. In course of trial, the signature of the victim/prosecutrix and the signature of her father, who stood as a witness, on the application have been marked Exhibits 'P-3/PW3' and 'P-1/PW1' respectively.

6. On the basis of the aforesaid written application, Jhajha P.S. Case No. 205 of 2020 dated 01.07.2020 was registered under Section 376 IPC and Section 4 of the POCSO Act. After completion of investigation, police submitted a chargesheet bearing Chargesheet No. 128 of 2021 against the accused on 30.04.2021. Cognizance of the offences was taken on 07.06.2021 and thereafter, the copy of the police papers were supplied to the accused.



7. In the trial court, the charges were explained to the accused in Hindi on 07.06.2021 which he denied and claimed to be tried. Accordingly, charges were framed under Section 4(2) of the POCSO Act and Section 376 IPC.

8. On behalf of the prosecution, altogether five witnesses were examined and some documentary evidences were brought on the record by way of exhibits. The list of the prosecution witnesses and the exhibits produced on behalf of the prosecution are mentioned hereinbelow in tabular form:-

List of Prosecution Witnesses

PW-1	Father of victim
PW-2	Mother of victim
PW-3	Victim
PW-4	Raj Kumar Paswan
PW-5	Dr. Kavita Singh

List of Exhibits on behalf of Prosecution

Exhibit P-1/PW1	Signature of PW-1 on the written application
Exhibit P-2/PW2	Signature of PW-2 on the statement under Section 164 CrPC
Exhibit P-3/PW3	Signature of victim/informant on the written application
Exhibit P-4/PW3	Signature of victim/informant on the statement under Section 164 CrPC
Exhibit P-5/PW5	Medical report prepared by Dr. Kavita Singh

9. Thereafter, the statement of the accused was recorded under Section 313 CrPC. The appellant in his Section 313 CrPC statement denied the suggestion and pleaded innocence. The



defence also examined one witness, namely, Vasudev Marandi (DW-1) who is the grandfather of the victim as well as the accused-appellant.

Findings of the Learned Trial Court

10. It appears that on analysis of the evidences available on the record, the learned trial court concluded that in this case, the testimony of the victim inspires confidence and it is found to be reliable. Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Gurmeet Singh and Others** reported in **(1996) 2 SCC 384**, the learned trial court has held that the deposition of the victim is required to be given full credence and her statement that she had informed her mother (PW-2) and father (PW-1) regarding the occurrence would form part of the same transaction within the meaning of Section 6 of the Indian Evidence Act (since repealed), therefore, PW-1 and PW-2 cannot be treated as hearsay witnesses. In the opinion of the learned trial court, the communication made by the victim to her parents is the part of the same transaction and has been made substantially soon after the commission of the crime. This statement ought to be admitted, hence, the deposition of PW-1 and PW-2 would also inspire confidence of the court.



11. The learned trial court has further referred to the deposition of the Doctor (PW-5) who had medically examined the victim on 02.07.2020 when she was brought before her by the police. The Doctor had found that foul smelling bleeding was present, hymen ruptured, carunculae myritiformes was present. It is stated that in medical terminology, carunculae myritiformes means small elevation of rounded mounds of hymen in circling the vaginal orific, found in sexual activity and postpartum female. The learned trial court has further held that the Doctor had opined that the victim might have been forced for sexual intercourse. It is concluded that the another observation of the Doctor (PW-5) would prove that the victim was subjected to forceful sexual intercourse and the evidence of the Doctor fully corroborates the testimony of the victim and her parents.

Submissions on behalf of the Appellant

12. Mr. Ajay Kumar Thakur, learned counsel for the appellant has assailed the impugned judgment and order on various grounds. At the outset, it is submitted that in the present case, there is no material on the record to show even *prima-facie* the age of the victim. Neither in the written application nor in her statement under Section 164 CrPC or in course of her deposition in course of trial, the victim has disclosed her date of birth/age. It is



further pointed out that PW-1 and PW-2 who are the parents of the victim have also not whispered about the date of birth/age of the victim. The I.O. (PW-4) has specifically stated that he had not conducted any investigation with regard to the age of the victim.

13. Learned counsel submits that if the prosecution has not come out with a statement with regard to the age of the victim, the presumption under Section 29 of the POCSO Act would not come into play. The basic foundation is required to be laid down to attract the presumption, if it has not been done by the prosecution, the burden of proof would not shift to the accused. It is also submitted that in a case under the POCSO Act, the presumption of innocence of an accused is not lost. An accused facing the trial may rebut the presumption and the degree of rebuttal would not be the same as required by the prosecution to prove the guilt of the accused. It is, thus, submitted that in absence of any cogent evidence either in form of any date of birth certificate of the school first attended by the victim or the medical examination report by conducting ossification test of the victim, it would not be appropriate to raise the presumption as envisaged under Section 29 of the POCSO Act.

14. Learned counsel submits that there is a delay of at least three days in lodging of the first information report. The



occurrence is said to have taken place at 11:00 PM on 29.06.2020 but the victim did not inform the occurrence to her parents during the night hours over telephone, she chose to inform her parents about the occurrence only on the next day at 06:00 AM. It is further submitted that on receipt of information, PW-1 and PW-2 returned home, they claimed to have gone to the police station, according to PW-2, police registered a case and recorded their statements. Contrary to the claim of PW-2 that when they went to the police station then police registered the case and recorded their statement, the victim (PW-3) has stated that when she went along with her mother and father to the police station and disclosed the occurrence then the police did not register the case and the case was registered on the next day. It is submitted that the statement of PW-3 that the police did not register the case that day is result of tutoring to her in order to explain the delay of three days in lodging of the first information report. The statement of the prosecutrix to this effect is in complete conflict with the statement of her mother (PW-2). We find that there is a contradiction in the statement of PW-1 and PW-2 also on this point.

15. It is submitted that the victim and her parents did not produce the clothes which the victim was wearing at the time of the alleged occurrence. The clothes were washed off and as such,



the prosecution could not obtain certain scientific materials with regard to the occurrence. The accused was arrested on 04.02.2021. The I.O. had not examined the brother of the victim who was sleeping inside the house. He could have been a material witness but he has been withheld by the prosecution without any explanation.

16. Learned counsel submits that the trial court has completely erred in saying that the information given by the victim to her parents over telephone on the next day of the occurrence at 06:00 AM would be part of the same transaction and it would be in the nature of a *res gestae* within the meaning of Section 6 of the Indian Evidence Act.

17. Further, it is submitted that the opinion of the Doctor (PW-5) would show that the victim did not remember her last menstrual period. She could not say whether the menstrual period started after the incidence of rape or it was due to forceful act. The victim was not sure about it and did not remember the menstrual date before the incidence. It is pointed out that the victim had washed her clothes and taken bath after the incidence. No mark of injury nor any sign of resistance were found on the victim's lips, cheeks, mammae, genitalia or any other body part. Her vaginal examination- foul smelling bleeding was present (++), hymen



ruptured, carunculae myritiformes was present, however, these findings of the Doctor nowhere connect with any forceful sexual act because the Doctor has not recorded any sign of recent sexual act with the victim. It is pointed out that in course of cross-examination, PW-5 has stated that she did not find any swelling on hymen and in case of menses, bleeding occurs. The Doctor admits in paragraph '3' of her deposition that her conclusion is suspicious. It is, thus, submitted that the opinion of the Doctor (PW-5) is not in the nature of a corroborative piece of evidence and no conclusion may be reached on the strength of this medical report (Exhibit 'P-5/PW5').

18. It is lastly submitted that in this case, the grandfather of the victim has deposed as a defence witness. He has stated that Bhairo Marandi and PW-1 both were his sons and they were having quarrels. DW-1 has stated that the appellant Santosh who is son of Bhairo Marandi was good in studies, he was appearing in the B.A. examination and wanted to go further for study in the post-graduation courses which caused jealousy to PW-1 and with an intention to jeopardise the career of Santosh, PW-1 got this false case registered through his daughter. This witness has stated that he had four sons, all were equal to him. He was suggested that he had deposed falsely which he denied and has further stated that



he had complained about this to the *Mukhiya* and the *Sarpanch* of the village orally.

19. It is submitted that from the deposition of DW-1, it would appear that the family of the victim and the accused both were on inimical terms.

Submissions of the State

20. Responding to the submissions of learned counsel for the appellant, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State submits that in this case, the victim/prosecutrix is the first cousin of the appellant and there appears no plausible reason as to why she would falsely implicate the appellant in this case. Learned Additional Public Prosecutor submits that the learned trial court seems to have taken a view that the victim was a minor on the basis of the age recorded in the proforma of the deposition sheet.

It is, however, not contested that even as the victim is said to be student of Class-8, the date of birth certificate from the school where she had studied was not brought on the record. It is also not contested that no ossification test report of the victim has been brought on record to demonstrate her age as assessed in the ossification/dental test, if any.



21. Learned Additional Public Prosecutor submits that the victim in this case has been put in the category of sterling witness and no fault may be found with the same. In his opinion, conviction of the appellant on the basis of sole testimony of the victim would be justified.

Consideration

22. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the records, we find that in the present case, the age of the victim/prosecutrix has not been disclosed by the prosecution. It has not been determined by the learned trial court in accordance with the scheme of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. No endeavour/effort has been undertaken in course of trial to determine the age which was the prime requirement for raising a presumption under Section 29 of the POCSO Act. It appears from the record that neither in the written application which is the basis of the FIR nor in her Section 164 CrPC statement or the deposition in course of trial, the victim has disclosed her date of birth/age at the time of occurrence. The I.O. (PW-4) has not conducted any investigation with respect to the age of the victim. The parents of the victim who deposed as PW-1 and PW-2 have also not whispered about the age and date of



birth of the victim. This being the material on the record, we are of the considered opinion that the prosecution has failed to lay down basic foundational facts to attract the presumption under Section 29 of the POCSO Act. The charge leveled under Section 4 of the POCSO Act is, therefore, liable to fail.

23. Coming to the evidences with regard to the proof of guilt under Section 376 IPC, we find that the victim has stated in course of trial that her parents had gone to Sheikhpura, the occurrence took place on 29.06.2020 in between 11-12 PM (night) when she was sleeping. She claims that she had protested but her hands were twisted and she was assaulted by hand and fist blow, however, this part of her deposition that she was assaulted, does not find support from the medical examination report (Exhibit 'P-5/PW5'). PW-5 has categorically stated that there was no sign of any struggle and protest.

24. We further find that the prosecutrix has come out with a definite case of penetrative sexual act and claimed that she was in pain when she was being subjected to the said penetrative sexual act, she was also bleeding but she did not disclose it to anyone, she made a phone call to her parents in the morning at 06:00 AM. In her examination-in-chief, she has stated that, that night in her house, she was with her brother. It is, therefore,



evident that her brother who was very much present in the house would have come to her rescue if she would have shouted or made a protest against the appellant. It is not the case of the prosecution that the appellant was lashed/armed with any deadly weapon and for that reason, the victim was unable to raise her voice and made a protest. The presence of her brother in the house was known to her still, she did not call him for help and even after the occurrence, she did not call her brother to help her, these are some of the circumstances which are creating doubt about the prosecution story. The fact that she had a phone with her, still she did not call her parents immediately after the occurrence, is the another circumstance which creates doubt on the prosecution story.

25. We further find from the evidences available on the record that her parents returned home on the very next day after getting information. The mother of the victim who has been examined as PW-2 says that when she went to the police station with the victim and her husband, then the police had lodged the case and had recorded their statements, but contrary to the claim of PW-2, PW-1 and PW-3 have come out with a statement that the police did not register the FIR and told them that they would first visit the place of occurrence and then the case would be lodged. Again, this statement being contrary to each other seems doubtful.



26. Yet another circumstance which goes against the prosecution is the fact that the victim is said to have washed off the clothes and had taken bath and went to the police station to lodge the case only on 01.07.2020. A three days' delay in lodging of the FIR even after knowledge of the occurrence would create some dent in the prosecution story and the FIR cannot be said to be free from blemish.

27. We further notice from the evidences available on the record that the grandfather of the victim who is 82 years old was very much present in the house. He has stated in his examination-in-chief that on 29.06.2020, he was sleeping at the house of PW-1. He has stated that the victim and her brother were sleeping in the room separately on the cots and this witness was sleeping at the *veranda*. DW-1 has stated that on the said night, no occurrence had taken place with the victim. He has further stated that on the said night, Santosh (the appellant) had not visited the house as he had gone outside to work. DW-1 has stated that there is a quarrel between Bhairo Marandi and PW-1, the appellant is son of Bhairo who was good in studies and wanted to do his graduation (B.A.) and go for further studies (M.A.) and this was causing jealousy to PW-1, it is for this reason that with an intention to jeopardise the career of Santosh, the present case was



lodged. He had also made complaint in this regard to the *Mukhiya* and the *Sarpanch*. We have noticed that the fact that brother of the victim was sleeping in the house, has been admitted by the victim also, but her brother has not been examined by the prosecution. This withholdment of a material witness would result in drawing an adverse inference against the prosecution in terms of Section 114(g) of the Indian Evidence Act, 1872. No explanation has been furnished by the prosecution as to why such a material witness who could have proved the presence of the appellant inside the house in the night hours and then the immediate circumstance present at the place of occurrence, has not been examined.

28. We have further noticed that the learned trial court has taken a view that the information furnished by the victim to her parents on the next day in the morning at 06:00 AM by telephone would be a relevant fact forming part of the same transaction as envisaged under Section 6 of the Indian Evidence Act. We reproduce Section 6 hereunder for a ready reference:-

“6. Relevancy of facts forming part of same transaction.-Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers



at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the¹⁸[Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) Asues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.”

29. A bare reading of Section 6 would show that it talks of the facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, such fact would be relevant whether they occurred at the same time and place or at different times and places. Illustrations would show that Section 6 would be attracted only when the fact is wholly connected with the facts in issue.

30. In the case of **Sukhar vs. State of U.P.** reported in **(1999) 9 SCC 507**, the Hon’ble Supreme Court had occasion to consider Section 6 of the Indian Evidence Act. In paragraph ‘6’, ‘7’, ‘8’ and ‘9’, their Lordships have discussed the concept of *res gestae*. We reproduce the above-mentioned paragraphs hereunder for a ready reference:-

18. [Substituted by A.O. 1950, for "Queen".]



6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in *Wigmore's Evidence Act* reads thus:

“Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued.”

7. *Sarkar on Evidence* (15th Edn.) summarises the law relating to applicability of Section 6 of the Evidence Act thus:

“1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & c the declarations of all concerned in the common object are admissible.



4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.”

8. This Court in *Gentela Vijayavardhan Rao v. State of A.P.*¹ considering the law embodied in Section 6 of the Evidence Act held thus: (SCC pp. 246-47, para 15)

“15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue ‘as to form part of the same transaction’ that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.”

9. In another recent judgment of this Court in *Rattan Singh v. State of H.P.*² this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: (SCC p. 167, para 16)

“[T]he aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration ‘A’ to Section 6 makes it clear. It reads thus:

‘(a) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the bystanders at the beating, or so *shortly before* or after it as to form part of the transaction, is a relevant fact.’

(emphasis supplied)

1. (1996) 6 SCC 241 : 1996 SCC (Cri) 1290

2. (1997) 4 SCC 161 : 1997 SCC (Cri) 525



Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.”

31. In the present case, the occurrence is said to have taken place in the night between 11-12 PM on 29.06.2020. The victim could have made a telephone call immediately to her parents (PW-1 and PW-2) but she did not inform her parents immediately in the night. In normal circumstance, a victim of crime of this nature would cry and seek help from their parents but the victim did not inform her brother who was sleeping in the house and according to DW-1, her brother was sleeping in the room itself on a separate cot but he has not been brought as witness in this case, in these circumstances, particularly the claim of the victim that she made a call to her parents next day in the morning i.e. on 30.06.2020 at 6:00 AM cannot be said to be a fact so connected with a fact in issue as to form part of the same transaction. The Hon’ble Supreme Court has observed that the hearsay evidence within the provisions of Section 6 must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. In the present case, the prosecution has not even brought any evidence on the record by way of a call detail report of the mobile phones of



the victim and that of her parents to establish that the victim had given any call to her parents in the morning. In our considered opinion, the learned trial court has grossly erred in taking a view that the information given by the victim to her parents over telephone on the next day of the occurrence at 6:00 AM could be part of the same transaction and it would in the nature of *res gestae*. We do not approve this view of the learned trial court.

32. The understanding of the learned trial court that what was told by the victim to her parents next day in the morning at 06:00 AM would be forming part of the same transaction is a complete misreading of Section 6 of the Indian Evidence Act (since repealed, now Section 4 of the Bharatiya Sakshya Adhiniyam, 2023). Section 6 would come into play in the kind of circumstances which are enumerated in illustration and we have taken note of them hereinabove. By no stretch of imagination, Section 6 of the Indian Evidence Act would be attracted in the present case.

33. Having discussed the facts and circumstances which are appearing from the evidences available on the record, we are of the considered opinion that on the face of the evidence of the grandfather of the victim (DW-1), there being a delay of three days in lodging of the first information report, the contradictory stand of the prosecution witnesses with regard to the delay in lodging of the FIR and non-examination of material witness such as the brother



of the victim are some things which would not allow this Court to treat the victim a sterling witness. In the opinion of this Court, the conviction based on the sole testimony of this victim would not be sufficient. As held in the case of **Ramanand Vs. State of UP** reported in **(2023) 16 SCC 510**, the principle of presumption of innocence is not lost and in the present case, we find that the accused-appellant has been able to demonstrate to the extent required that he would be entitled for the benefit of doubt.

34. In result, we set aside the impugned judgment and order. The appellant is acquitted of the charges under Section 4 of the POCSO Act as well as under Section 376 IPC giving him the benefit of doubt.

35. The appellant is said to be in custody. He shall be released forthwith, if not wanted in any other case.

36. This appeal is allowed.

37. Let a copy of this judgment together with the trial court’s records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

lekhi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31.03.2026
Transmission Date	31.03.2026

