IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 754 of 2005

[*Against the Judgment of conviction and Order of sentence dated 09.06.2005, passed by learned Sessions Judge, Dhanbad in Sessions Trial No. 634 of 1995*].

Barelal Pasi, son of Jagarnath Pasi, resident of Shankarpur, P.S. – Haria, Dist.-Allahabad at present resident of Kenduadih, P.S. – Kenduadih, District – Dhanbad.

... ... **Appellant**

Versus

1. The State of Jharkhand
2. Victim 'X' through her guardian ... **Respondents**

.....

For the Appellant : Md. Zaid Ahmad, Advocate
Mr. Aman Ali, Advocate.
For the Respondent : Mr. Tarun Kumar, A.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 08.09.2026 Pronounced on 06.11.2026

1. Heard learned counsel for the appellant as well as learned Spl.P.P. for the State.

2. The present appeal is directed against the judgment of conviction and order of sentence dated 09.06.2005 passed by learned Sessions Judge, Dhanbad in Sessions Trial No. 634 of 1995, whereby and whereunder the appellant has been held guilty for the offence under Section 376 of the I.P.C. and sentenced to undergo R.I. of seven years.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that on

30.11.1988, the informant's daughter, aged about 06 years, was playing in front of her house. Accused Bare Lal Pasi showed flower to the victim girl and took her to his house and told that he would give a garland of flowers. On the promise of accused to give her a garland of flowers, the victim girl sat on the cot of the accused. Thereafter, the accused removed salwar and jumpher of the victim girl and committed rape upon her. It is further submitted that due to the act of accused, there was injury on the private part of the victim girl and she was crying due to pain. Hearing the crying of victim girl, her mother rushed to the house of the accused and saw the occurrence. Thereafter, the mother of the victim girl lifted in her lap and brought to her house and disclosed about the occurrence. Blood and semen were coming out from the private part of the victim girl. There were blood stains and semen stains on the Paijama of the victim girl. The informant alleged that her daughter was subjected to rape by the accused.

On the basis of aforesaid report, Kenduadih P.S. Case No. 147 of 1988 was registered for the offence under Section 376 of the I.P.C. against the accused.

4. After conclusion of investigation, charge sheet was submitted against the accused and after taking

cognizance, the case was committed to the court of Sessions, where Sessions Trial No. 634 of 1995 was registered. The accused denied the charge leveled against him and claimed to be tried.

5. In course of trial, altogether 05 witnesses were examined by the prosecution. Apart from oral testimony of witnesses, following documentary evidences have been adduced:-

Exhibit-1 : Signature of Jamal Mian on seizure list.

Exhibit-1/1 : Signature of Hatim Mian on seizure list.

Exhibit-1/2 : Signature of Ishaque Ansari on Fardbeyan.

6. On the other hand, no oral or documentary evidence has been adduced by the defence.

7. The learned trial court, after evaluating the evidence available on record, recorded findings about guilt of the appellant for the offence under Section 376 of I.P.C. and sentenced him to undergo R.I. of 07 years, which has been assailed in this appeal.

Submission on behalf of the appellant

8. Learned counsel for the appellant has vehemently argued that the learned trial court has miserably failed to properly appreciate the evidence of witnesses

in right perspective and arrived at wrong conclusion. It is further submitted that the doctor, who has examined the victim girl has not been examined. The non-examination of the I.O. has caused prejudice to the accused. The mother of the victim girl was the most important witness in this case, but she was neither shown as a prosecution witness in the charge sheet nor examined by the prosecution, as such, conviction and sentence of the appellant is fit to be set aside and this appeal may be allowed.

Submission on behalf of State

9. On the other hand, learned A.P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that victim has categorically proved the commission of rape by the present appellant which find corroboration from other evidence available on record. There is no valid reason to interfere with the impugned judgment of conviction and order of sentence of the appellant. This appeal is devoid of merits and is fit to be dismissed.

Analysis, discussions and reasons

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

11. The only point for consideration of this appeal is, as to "whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference in this appeal or not?"

12. Before imparting my verdict on the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial.

13. **P.W.-1** and **P.W.-2** are witnesses of seizure list.

14. **P.W.-3** is informant of this case. In his evidence, he has stated that he was warming himself in sunlight at about 2:30 P.M. on 30.11.1988, in the meantime, his wife rushed towards him and told him to come inside the house. He went inside the room and saw that his daughter, aged about 5-6 years was weeping. His wife said that Bare Lal Pasi has called her daughter for weaving garland and alluring her for giving flowers, Bare Lal Pasi took her daughter inside his house and removed her paijama. Thereafter, the victim girl started weeping and crying. Hearing the cry of his daughter, the mother of victim went to the house of accused and found her salwar was stained with semen. This witness has also come to know about the occurrence from his wife. The victim girl complained about the incident committed by the accused. This witness also noticed semen stained in the salwar of

her daughter. She went to the police station and lodged the F.I.R. and put his signature on it, which was marked as Exhibit-1/2. The police also seized the wearing cloths of victim and sent her for medical examination.

In his cross-examination, this witness admits that there are about 10 neighbours in a row residing in the BCCL Quarter near the quarter of this witness, but they have not witness in this case. He also admits that only his wife and brother are witnesses of this case. Jamal Mian is his mama. He is also witness in this case. He also admits that his daughter told nothing before the police.

He has denied the suggestion of defence that there is a common hand pump and due to dispute of fetching water from the hand pump with the accused Bare Lal Pasi, his wife has falsely implicated him. He also admits that he has come to know about the occurrence of this case only from his wife and has no personal knowledge.

15. **P.W.-4** is the uncle of the victim girl. He was cutting fire wood in front of his door at the time of occurrence. Bare Lal Pasi is also his neighbour. He heard sound of weeping of a girl child coming from the house of Bare Lal Pasi, then his sister-in-law went to

the quarter of Bare Lal Pasi and called this witness to the house of Bare Lal Pasi. He went there and saw that his niece was lying naked on the cot then his sister-in-law took her in lap. He also noticed that near the private part and thigh some stains was present to the victim girl. Thereafter, they came out and also told to his elder brother about the incident. He has been declared hostile by the prosecution and cross-examined by prosecution.

In his cross-examination, he has denied any dispute or enmity with the accused.

16. **P.W.-5** is the victim girl. She was examined on 19.05.2003 after 14 years of the alleged occurrence. She has stated nothing about the occurrence and simply stated that at that time, she was a small child and the accused was intending to bring at his home by catching her hand, but she was not desiring. Hence, she was raising alarm.

In her cross-examination also she has stated nothing else.

17. On the other hand, no oral or documentary evidence has been adduced by defence. The case of defence is denial from occurrence and false implication as well as plea of innocence.

18. From the aforesaid discussion of prosecution evidence, it is crystal clear that the main prosecution witness was mother of the victim, who has not been examined in this case and other witnesses have second hand knowledge, came to know from the mother of the victim. Therefore, what actually happened with the minor victim girl, who was small child about 5-6 years, has not been proved by the prosecution. Even the medical report of the victim and the FSL report of seized salwar and jumpher has not been produced to corroborate the prosecution story. It appears to be a case of no evidence at all constituting offence under Section 376 I.P.C. It appears that the learned trial court has miserably failed to properly appreciate the evidence of witnesses in right perspective and arrived at wrong conclusion of guilt of the appellant. The impugned judgment suffers from serious error of law and liable to be set aside.

19. In view of above discussions and reasons, I find merits in this appeal. Accordingly, the impugned judgment of conviction and order of sentence of the appellant passed by the learned trial court is hereby set aside.

20. In the result, this appeal is **allowed**.

21. The appellant is set at liberty forthwith. He is also discharged from the liability of bail bond. Sureties are also discharged.

22. Pending I.A., if any, stand disposed of.

23. 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.)

Jharkhand High Court, Ranchi
Dated, the 6th November, 2026.
Sunil /**N.A.F.R.**
Uploaded on 06/11/2026