IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 343 of 2008

[*Against the Judgment of conviction dated 31.01.2008 and Order of sentence dated 05.02.2008, passed by learned Sessions Judge, Simdega, in Sessions Trial No. 97 of 2000*]

Laxman Mahto, son of Gandura Mahto, Residents of Village – Jhikhirma, Police Station – Palkot, District – Gumla, at present Residing at C/o Sampat Kumar Singh, Village + Police Station – Simdega, District - Simdega.

... ... **Appellant**

Versus

1. The State of Jharkhand
2. Victim Lady 'X' through Guardian

... ... **Respondents**

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For the Appellant : Mr. A.K. Chaturvedi, Advocate
For the State : Mr. Bishambhar Shastri, A.P.P.
For the Resp. No. 2 : Mr. Om Prakash, Advocate.
Mr. Ritesh Kumar, Advocate.

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P R E S E N T
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

C.A.V. on 29.07.2026 Pronounced on 10.09.2026

1. Heard learned counsel for the parties.

2. The instant criminal appeal is directed against the judgment of conviction and order of sentence dated 31.01.2008 / 05.02.2008 passed by learned Sessions Judge, Simdega in Sessions Trial No. 97 of 2000, whereby and whereunder, the appellant has been held guilty for the offence under Sections 420 and 376 of the I.P.C. and sentenced to undergo simple imprisonment for 5 years under Section 420 of the I.P.C. and S.I. of 7 years for the offence under Section

376 of the I.P.C. along with fine of Rs. 5,000/-. Both the sentences were directed to run concurrently with default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that the informant's daughter, aged about 16 years was undergoing tuition from the present appellant, who under various allurement and persuasion established illicit physical relationship with the informant's daughter. It is alleged that a meeting was convened on 25.06.1999 at the house of Sri Ramawtar Prasad, Advocate, where the present appellant confessed his guilt and agreed to marry with the daughter of the informant and to keep her with dignity. Accordingly, the victim girl was handed over to the appellant and went to his house for living together. It is further alleged that on 29.06.1999, the present appellant vacated the rented house of the informant and took another house and went along with bag and baggage, telling to victim girl that he is going to his own native home and will return after two days and solemnize marriage with her and requested her to stay at her parental home till his arrival. It is further alleged that the present appellant also took away golden and silver ornaments of the victim girl and stopped meeting with her. Therefore, on 08.07.1999, informant met with the

accused at Block Office and asked about the marriage, then the accused (present appellant) flately refused to solemnize marriage with the informant's daughter. The informant was constrained to lodge a written report at Simdega Police Station, which was submitted on 10.07.1999. Accordingly, Simdega P.S. Case No. 57 of 1999 was registered for the offence under Sections 376, 420 & 379 of the I.P.C.

4. After completion of investigation, charge sheet was submitted against the present appellant for the aforesaid offences. After taking cognizance, the case was committed to the court of Sessions, where charges were framed and read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

5. In course of trial, altogether 07 witnesses were examined. Apart from oral testimony, several documentary evidences have been adduced.

6. However, no oral or documentary evidence has been adduced by the defence. However, as per trend of cross-examination and suggestions, further defence of the appellant was that due to some money transactions between the informant and the accused as regards rent of the house, he has been falsely implicated in this case.

7. The learned trial court, after evaluating the evidence led by the prosecution recorded findings that the accused appellant was tutor of Science subject and the victim girl was also student of Class-10 and taking tuition from the appellant. In course of tuition, the accused tendered allurement to the victim girl that he has vehicle, cultivable lands and induced her to solemnize marriage with her and on 25.06.1999, he forcibly committed rape with the victim girl in his rented house and also threatened to kill her, if she would raise alarm. Thereafter, a Panchayati was also convened, wherein the accused confessed his guilt and also promised to marry with the victim girl, but fled away with bag and baggage and never returned. The accused also met with the informant after 14 days of occurrence, then accused flatly denied to solemnize marriage with his daughter and this case was lodged. It was further observed that the age of the girl was in between 16-17 years at the time of occurrence and she was a minor girl, that is also corroborated from xerox copy of matriculation registration paper showing her date of birth as 01.09.1983.

8. The learned trial court further found that the prosecution has been able to prove the charges under Sections 420 & 376 of the I.P.C. against the accused,

but there is no cogent and reliable evidence constituting offence under Section 379 of the I.P.C. Accordingly, convicted and sentenced the accused, as stated above, acquitting from the charge under Section 379 of I.P.C.

Submissions on behalf of the appellant:-

9. Learned counsel for the appellant assailing the impugned judgment has strenuously argued that a single act of physical relation alleged to be forcibly established by the appellant happened on 25.06.1999. The victim girl was medically examined on 15.07.1999 by P.W.-5 Dr. Jesika Dean and P.W.-6 Dr. K. D. Choudhary, but no external or internal injuries were found on person or private part, hymen was found old raptured, on pathological examination of vaginal smear, no spermatozoa was found. Therefore, a single act of intercourse alleged to be forcibly established by the appellant becomes a false story. Upon radiological examination, the victim was found in between 16-17 years. Therefore, she was not below 16 years rendering her consent to be invalid within the meaning of definition of rape under section 375 of the I.P.C. prior to its amendment in the year 2009. At best, it was a case of consensual sex between the appellant and the victim girl. Mere breach of promise

of marriage is not sufficient to turn the consensual sex into one of the rape.

10. In support of his argument, learned counsel for the appellant has relied upon the judgment of Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another*** reported in ***(2019) 9 SCC 608***, wherein it has been held that :

> *16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In* ***Deepak Gulati [(2013) 7 SCC 675]*** *this Court observed:*
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> > *"21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of*

> *circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.*

11. It is further submitted that except the victim girl (P.W.-1), there is no corroborative evidence to prove the alleged occurrence. The sister of the victim (P.W.-2) tried to project herself as an eye-witness of the occurrence, but her falsehood has been revealed in the cross-examination. The victim girl (P.W.-1) has also given contrary evidence rendering her to be not an absolutely reliable witness. Therefore, the learned trial court has miserably failed to properly appreciate the evidence available on record in the attending facts and circumstances of the case and arrived at wrong conclusion while convicting the appellant for the offences charged against him. Therefore, the impugned judgment of conviction and sentence of the appellant is absolutely illegal and not justified in the light of evidence available on record, which is fit to be set aside and this appeal should be allowed.

Submissions on behalf of learned A.P.P. for the State:-

12. On the other hand, learned APP appearing for the State assisted by learned counsel for the respondent no. 2 has controverted the aforesaid contentions raised on behalf of the appellant and submitted that

the victim has categorically proved the factum of occurrence and she is absolutely reliable, which found corroboration from the medical evidence. The victim girl was minor at the time of occurrence. The appellant had allured the victim girl for marriage and established physical relationship. There is no illegality or infirmity in the impugned judgment, calling for any interference by way this appeal. This appeal is devoid of merits and fit to be dismissed.

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

Points for Consideration:-

14. The only point for consideration in this appeal is that as to whether impugned judgment and order of conviction and sentence of the appellant suffers from any error of law?

Analysis, Reasons and Decision:-

15. Before adverting to adjudicate the above points, it is necessary to take brief resume of oral as well as documentary evidence adduced by prosecution.

16. The star witness of this case is the **victim herself**, who has been examined as **P.W.-1**. According to her evidence, her date of birth is 01.09.1983. In relation,

the accused is her brother. She has further stated that at the relevant time of occurrence, accused was residing in her house on rent and was in Government service on the post of Jan Sewak. She was student of Class-10. She was taking tuition from the accused in Science subject. She has further stated that in the course of tuition, accused allured her that he has vehicle and also in government job and proposed to solemnize marriage with her. She has further deposed that on 25.06.1999, while she was in her own house and the accused was residing in rented room, she was also present in the said room, then accused forcibly committed rape on her inspite of protest by gaging her mouth and also threatened her of life, if she would raise alarm. She has further deposed that from the window of her house, sister of this witness saw the occurrence, then accused leave her and she returned to her room weepingly and disclosed about the above incident to her mother, father and brother. Her golden ear tops and silver payal were also taken by the accused.

In her cross-examination, she admits that accused is her mousera brother. He was already married and having children. She also admits that accused was living in her house on rent since 1990 along with his wife and other family members. There

is common courtyard in the house, where the accused was residing. She also admits that she was residing in her house along with her father, mother, three brothers and younger sister. The accused was residing in a single room at rent. She also admits that her father is a litigant and involved in several litigations with different persons. At the time of occurrence, there was 8-9 tenants in her house, whose courtyard were behind her house. She passed matric examination in the year 2000 in two attempts. In the year 1999, matric examination was held in the month of April and result was pronounced in the month of June. She also admits that prior to appearing in the examination, she used to go in the room of accused for tuition. She also admits that whenever she used to go for tuition in the room of accused, his wife remained present there. Sometime Laxman Mahto used to come to her own room for tuiting her. She further clarifies that since January, 1999 to April, 1999, accused taught her tuition. She used to study tuition in between 5:00 P.M. to 6:00 P.M. daily. She was allured by the accused only on 25.06.1999 and not prior to that for solemnization of marriage. After 25.06.1999, she resides with accused as husband and wife for three days in his rented room within the knowledge of wife of accused, but no sexual

intercourse took place between them. She was not induced for marriage after 25.06.1999. She further admits that after 14 days of occurrence, due to Panchayati, this case was lodged when accused declined from solemnizing marriage with her. She also admits that result of Panchayati was reduced into writing, but she has not filed before the Court. She further admits that on 25.06.1999, she stayed in the room of accused about one hour. Door and windows of room was opened. She resisted the forcible commission of rape. Prior to 25.06.1999, she was completely virgin and was never entered into sexual relationship with any person. She further admits that on the date of occurrence, all family members including her parents were present. Other tenants were also present. Her cloths were also stained with semen, but she has not handed over her wearing cloths to the police.

She has denied the suggestion of defence that on 25.06.1999, no rape was committed by accused with her and in connivance with her parents for solemnizing marriage with him, she has given false evidence by lodging this false case.

17. **P.W.-2** is the younger sister of victim girl. According to her evidence on 25.06.1999, at about 6:00 P.M.,

she saw from window of her house to the rented room of Laxman Mahto that Laxman Mahto was committing rape with her elder sister. She disclosed the above incident to her mother. She further states that Laxman Mahto was residing with his wife on rent in her house. She went to call her sister and brought her to home. Her father and brothers, who were working in the adjacent bari, also arrived. After three days of above incident, Laxman Mahto left the rented house.

In her cross-examination, she admits that at the time of occurrence, wife of Laxman Mahto was sitting in room of this witness. She further admits that she went to the room of accused for calling her sister to go to the house of her friend, then she peeked from the window and saw that his sister and accused were indulged in sexual intercourse. She returned to her room, thereafter at a gap of 5 minutes, her elder sister returned from the room of Laxman Mahto.

She has denied the suggestion of defence that she has given absolutely false evidence and has seen no occurrence at all.

18. **P.W.-3** mother of the victim girl. According to her evidence, she knows about the occurrence from her daughter. She has supported the fact about holding of Panchayati at the house of Ramavatar Prasad,

Advocate, confession of guilt in writing by the accused and keeping of her daughter for days by the accused.

In her cross-examination, she did not say that the daughter came weepingly and told about the commission of rape by the accused Laxman Mahto.

19. **P.W.-4** father of the victim-cum-informant of the case. According to his evidence, in the evening of 25.06.1999, when he came home from the field, he was informed by his wife that the accused committed rape with his daughter. Thereafter, this witness enquired from his daughter, who has confirmed the same. Thereafter, a meeting was held in the house of Ramawatar Prasad, Advocate, where the accused prepared a bond admitting his guilt and ready to marry with the daughter of this witness. The delay in lodging F.I.R. is also explained that firstly the accused agreed to marry with the daughter but when he refused then the case was lodged and the delay took place due to fear of humiliation in public. The date of birth of the girl is stated to be 01.09.1983.

He has denied the suggestion of defence that this witness has lend Rs. 70,000/- from the accused and when he demanded this amount, he was ousted from the house and lodged false case against him.

20. **P.W.-5 Dr. Jesika Dean.** This witness had examined the victim on 15.07.1999 and no spermatozoa was found. There was no injury on the body of the victim neither external nor internal. She was habitual to sexual intercourse. For determination of age of victim, a medical board consisting of three doctors was constituted. The other doctors in the Board were Dr. S.N. Jha and Dr. K.D. Chaudhary.

21. **P.W.-6 Dr. K.D. Choudhary**. This witness is the member of Medical Board, who examined the victim girl to ascertain her age and according to the opinion of medical Board, the age of victim was found in between 16-17 years.

22. **P.W.-7** is the Investigating Officer of this case. According to his evidence, on 10.07.1999, he was handed over the charge of investigation of this case by the then Officer-in-Charge, Sri. Subodh Jaiswal. The written report was annexed with the registration receipt of the victim girl showing her date of birth as 01.09.1983. He recorded the re-statement of the informant and also statement of the victim girl and other witnesses and he also visited the place of occurrence, which is the house of informant situated in Village Dipti Toli, comprising of two rooms. In the western room, there was a bed, in which the incident

of rape was alleged to have been committed with the victim girl. He sent the victim girl for medical examination to Sub Divisional Hospital, Simdega, arrested the accused and after finding sufficient material against the appellant submitted charge sheet against him.

In his cross-examination, this witness admits that from the place of occurrence, police station is situated at a distance of 1 Km. towards west. He has not verified the matric registration of the victim from her school. He also admits that there were four houses of the informant, which was let out on rent, but he has not recorded the statement of any other tenants. Wearing clothes of the victim, at the time of occurrence, were not produced before him. Hence could not be seized. P.W.-2 has not stated before him about commission of rape with the victim girl, rather, it was said that both were indulged in sexual relationship. The mother of the victim has also not stated before him that the victim girl came weepingly from the room of accused and told about commission of rape with her. He has proved the formal F.I.R. as Exihibit-6. This witness has further stated that informant (P.W.-5) has not disclosed before him that accused Laxman Mahto has confessed his guilt before him and undertook to solemnize marriage with the

victim girl. Thereafter declined and threatened that he will not perform marriage with the victim girl and not returned her jewellery.

This witness has denied the suggestion that his investigation is defective and he has submitted charge sheet without any cogent evidence against the accused.

23. It appears that the Hon'ble Apex Court in catena of judgments has held that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient, provided that, the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality, but in the present case, the victim does not appear to be wholly reliable, as her testimony suffers from material contradictions and inconsistencies, which cast serious doubt on the prosecution case. The very allurement for marriage is also not believable because she knows that the accused is already married person having children. The victim has herself admitted that before occurrence, there was no allurement offered / made by the appellant. It also appears from the medical examination report of the victim that there was no external or internal injury on the body of the victim and she was habitual to sexual

intercourse. In her evidence, the victim has stated about only one day sex. The witnesses have stated that the appellant has confessed his guilt before the Panchayat, but no document of Panchayat was produced or exhibited before the trial court. The entire scenario depicts that the prosecution has not proved its case beyond all reasonable doubt.

24. In view of aforesaid discussions and reasons, the impugned judgment of conviction and order of sentence dated 31.01.2008 / 05.02.2008 passed by learned Sessions Judge, Simdega in S.T. No. 97/2000 is hereby set aside. The appellant is acquitted from the charges levelled against him.

25. Accordingly, this appeal is **allowed**.

26. The appellant is on bail. He is discharged from the liability of bail bond and sureties shall also be discharged.

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

28. 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 10th September, 2026.

Sunil /**N.A.F.R.**

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