IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 976 of 2015

[*Against the Judgment of conviction dated 02.07.2015 and Order of sentence dated 07.07.2025 passed by learned Additional Sessions Judge-cum-Special Judge (POCSO), Simdega in Special (POCSO) Case No. 01/2014*]

Ajay Kerketta, son of William Kerketta, resident of Village – Kairatand, P.O. & P.S. – Kolebira, District – Simdega.

... ... **Appellant**

Versus

The State of Jharkhand ... ... **Respondent**

.....

For the Appellant : Mr. Pramod Kumar, Advocate
For the Respondent: Mr. Vineet Kr. Vashistha, Spl.P.P.

.....

P R E S E N T
SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

JUDGMENT

Dated: 29th September, 2026

By Court:- Heard Mr. Pramod Kumar, learned counsel for the appellant and Mr. Vineet Kumar Vashistha, learned Spl.P.P. for the State.

2. The instant appeal is directed against the judgment of conviction dated 02.07.2015 and order of sentence dated 07.07.2015 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Simdega in Special (POCSO) Case 01/2014, whereby and whereunder the appellant has been convicted for the offences punishable under Sections 376(2) (f), 323,

506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo R.I. for 10 years along with a fine of Rs. 5000/- for the offence under Section 376 (2) (f), R.I. for 1 year for the offence under Section 323 of the Indian Penal Code, R.I. for 2 years under Section 506 of the Indian Penal Code and R.I. for 10 years along with a fine of Rs. 5000/- for the offence under Section 4 of the POCSO Act with default stipulation. All the sentences were directed to run consecutively.

3. Learned counsel for the appellant, without touching the merits of the judgment of conviction, has confined himself towards sentence awarded against the appellant whereby the appellant was sentenced for R.I. of 10 years along with fine for both the offence under Section 4 of the POCSO Act and Section 376(2)(f) of the I.P.C. and bot the sentences were directed to run consecutively.

4. It is submitted that as per provision of Section 42 of the POCSO Act specifically provides alternate punishment to be awarded when the offender is found guilty for the offence enumerated in that Section along with offence punishable under the POCSO Act.

Therefore, the order for running the sentence consecutively awarded for the offence under Section 376 of the I.P.C. and Section 4 of the POCSO Act is not justified under law and violative of provisions of Section 42 of the POCSO Act, which starts with non-obstante clause.

5. It is further submitted that the appellant has already undergone 13 years imprisonment and if the sentence is altered to run concurrently instead of consecutively, the appellant would be entitled for his release after serving the sentence. Therefore, direction given by the learned trial court to run the sentence consecutively is fit to be altered and modified accordingly.

6. Per contra, learned Spl.P.P. for the State has fairly admitted the aforesaid provisions of law and admitted that the sentence must run concurrently and not consecutively in this particular case.

7. In view of the above short point to be considered, we are not entering into the merits of the judgment, rather confined to the quantum of sentence, whether it be consecutive or concurrent?

8. For better appreciation of above argument, the relevant provisions are quoted hereinunder, which was prevalent at the time of commission of the offence i.e. 16.01.2014.

Section 4 of POCSO Act, 2012 [Prior to amendment Act of 25 of 2019, sec. 3 (w.e.f. 16.08.2019, Vide S.O. 2957 (E), dated 16th August, 2019)] is as under:-

> ***Punishment for penetrative sexual assault.—****Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.*

Section 376 (2) (f) of the I.P.C. reads as under:-

> ***376. Punishment for rape.-***
>
> *(1) .....*
>
> *(2) Whoever, -*
>
> *.....*
>
> *(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
>
> *.....*
>
> *shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

Section 42 of the POCSO Act reads as under :-

> ***42. Alternate Punishment****.- Where an act or omission constitutes an offence punishable*

under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

9. In view of above specific provision of Section 42 of POCSO Act, in the present case, the learned trial court have to pass alternate punishment either under Section 4 of the POCSO Act or under Section 376 (2)(f) of the I.P.C., in which the greater sentence is prescribed.

10. From conjoint reading of Section 4 of the POCSO Act and Section 376 of the I.P.C., it appears that at the relevant time of occurrence, sentence prescribed for the offence under Section 4 of the POCSO Act was imprisonment for not less than 7 years extending to imprisonment for life, whereas, in Section 376 (2)(f) of the I.P.C., the sentence prescribed was rigorous imprisonment for a term which shall not be less than 10 years, which may extend to imprisonment for life.

11. Therefore, as per provisions of Section 42 of the POCSO Act, the greater sentence is prescribed under

Section 376 (2)(f) of I.P.C., which ought to be awarded by the learned trial court. There is no question of awarding the sentence for both offence i.e. under Section 4 of the POCSO Act and Section 376(2)(f) of the I.P.C. with direction to run consecutively.

12. In view of above discussions and reasons, we maintain the conviction of the appellant for the offence under Sections 376 (2)(f), 323, 506 of the Indian Penal Code and Section 4 of the POCSO Act, but sentence is altered / modified to the extent that the sentence passed for the offence under Section 4 of the POCSO Act is set aside. So far sentence awarded under Sections 376 (2)(f), 323, 506 of the Indian Penal Code is maintained.

13. It appears that the appellant has already undergone imprisonment of 13 years during pendency of this appeal and is still in custody. Therefore, he has served the maximum sentence awarded to him and entitled to be released from custody.

14. The appellant, above named, is directed to be released from custody forthwith, if not required in connection with any other case.

15. In the result, this appeal is **dismissed with the modification in sentence**, as stated above.

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

17. Let a copy of this judgment along with trial court record be sent back to the court concerned immediately for information and needful.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated, the 29th September, 2026.
Sunil /**N.A.F.R.**
Uploaded on 07/10/2026