CRIMINAL APPEAL (DB) NO. 64 OF 2025

AGAINST THE JUDGMENT OF CONVICTION DATED 08.10.2024 AND ORDER OF SENTENCE DATED 09.10.2024 PASSED BY THE ADDITIONAL SESSIONS JUDGE III, SINGHBHUM WEST, CHAIBASA IN SESSIONS TRIAL NO185 OF 2014.

Debo Sundi son of Soma Sundi, resident of Village Roro, PO and PS Muffasil, District West Singhbhum (Chaibasa).

… … Appellant

-versus-

The State of Jharkhand **… … Respondent**

For the Appellant **:** Mr. Rajesh Kumar Mahtha, Advocate

For the Respondent **:** Mr. Azeemuddin, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

J U D G M E N T

Dated, 26th October, 2026

By Court Appellant has preferred this appeal against the judgment of conviction dated 08.10.2024 and order of sentence dated 09.10.2024 passed by the Additional Sessions Judge III, Singhbhum West, Chaibasa in Sessions Trial No.185 of 2014, arising out of Muffasil Police Station Case No.104 of 2011, whereby and whereunder, the appellant has been convicted for offence punishable under Section 376(2)(f) of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life with fine of Rs.25,000/- and in default of deposit of fine, to undergo rigorous imprisonment for a period of one year in addition to the substantive punishment.

2. Prosecution case is based on the written report of the informant, father of the victim, who is P.W.3. In the First Information Report, he stated that this appellant had committed rape upon his daughter, aged about 3 years on the night of 13.11.2011 at about 08.30 p.m. after taking her from his house at a distance of about 250 feet. When he called his daughter by raising his voice, then his daughter came and disclosed that this appellant, who is uncle, had committed rape upon her. On the next day, i.e., 14.09.2011, the informant went in search of this appellant, but did not find him at his house as he was

missing. He then tried to convene a Panchayati in the village, but the same did not succeed. Thereafter report was made to the police, whereupon Mufassil Police Station Case No.104 of 2011 dated 19.09.2011 was registered under Section 376 of the Indian Penal Code.

3. Investigating Officer, after investigation, submitted charge sheet, finding prima facie material against the appellant. The Court took cognizance and charge was framed. Initially charge was framed under Section 376 of the Indian Penal Code, but later on vide order dated 04.10.2024, at the stage of evidence, charge was amended under Section 376(2)(f) of the Indian Penal Code. After closure of evidence and after recording statement of the appellant under Section 313 of the Indian Penal Code, Trial Court found sufficient evidence against the appellant and convicted him.

4. Learned counsel appearing on behalf of the appellant submits that there is major contradiction in the statement of the informant (father of the victim) and his wife (mother of the victim). The manner of occurrence narrated by each of them is different, which shakes the prosecution case. He contends that though the Doctor found sexual assault, but the victim girl, who was 3 years old girl at the time of occurrence, when examined as prosecution witness, has stated that as she was very small child, she could not understand what happened with her. She stated that she had narrated to her father and her father thereafter had lodged the First Information Report, which creates doubt about the prosecution case and the involvement of the appellant.

5. Learned A.P.P. appearing for the respondent-State submits that the appellant has rightly been convicted and sentenced by the Trial Court on the basis of the materials and evidence available on record. He submits that the prosecution case has been supported by the evidence of the parents of the victim girl and the victim girl herself and the same also stands corroborated by the medical evidence.

6. After hearing the parties, we have gone through the records of the case. We find that in this case as many as 9 witnesses have been examined on behalf of the prosecution. The prosecution had also exhibited the following documents in support of its case: -

Exhibit 1	Signature on the written report of the informant
Exhibit 1/1	Signature of informant on written report
Exhibit 2	Medical examination report of the victim girl with the signature of all the members of medical board proved by P.W.4 including his signature

Exhibit P-1/2/PW 9 Writing and signature of the Officer in Charge Muffasil P.S. Joseph Fransis Tirkey with his endorsement for the institution of the case on the written report of the informant.

Exhibit P-3/PW 9 Formal F.I.R.

Exhibit P-4/PW 9 Report of proclamation against the accused

7. P.W.4 Dr. Praveen Minj and P.W.5 Dr. Anita Samant, both are the doctors, who were in the medical board. As per their assessment, at the time of occurrence, the age of the girl was 3 to 4 years. Both have stated that the report was prepared in their presence.Though no mark of violence was found on the general part of the body, the following were found: -

Marks of violence:-

a. On general part:- No marks of violence

b. On private parts: - labia majora and labia minora are swollen and congested

P/V examination :- Bleeding – on touch, tenderness present

Valva:- Swollen and congested (labia majora and labia minora are congested)

Vaginal swab taken and sent to the histopathological examination – No spermatozoa found dead or alive.

X-ray examination:- Show following (given by Radiologist)

I. wrist joint – AP view- Secondary ossification centre appeared but not fused

II. All the metacarpel bone present

III. Secondary ossification centre of metacarpel not appeared.

Age- 03 to 04 years old

Opinion:- According to the Physical, Pathological and Radiological examination the report, the board reached to the following opinion

1. Unsuccessful forceful penetration vagina has been done leading to swelling and inflamation of vulva

2. She is 03 to 04 years old

In cross examination, P.W.4 stated that she had not examined the private parts of the girl and she had only prepared X-ray report and the X-ray report is not in Court.

P.W.5, who was also a Member of the Medical Board, clearly stated at paragraph 10 in her cross examination that if the girl falls on a heavy floor or if she gets injured, there can be injury on the private part. She also

admitted that there was no mark of violence on the body of the victim.

8. From the aforesaid report and the deposition of the Medical Officers, it is clear that there was some sort of injury on the private part of the victim.

9. Now, what is to be considered is whether there are sufficient material against the appellant or not and whether there is any contradiction in the statement of the witnesses or not.

10. As per the prosecution story, this appellant had committed rape upon informant's daughter, aged about 3 years on the night of 13.09.2011 at about 08.30 p.m. after taking her from his house at a distance of about 250 feet. When informant called his daughter by raising his voice, his daughter came and disclosed that this appellant, who is uncle, had committed rape upon her. On the next day, i.e., 14.09.2011, the informant went in search of this appellant, but did not find him at his house as he was missing. He then tried to convene a Panchayati in the village, but the same did not succeed. Thereafter report was made to the police.

11. P.W.3 is the informant and the father of the victim girl. He stated that at the time of occurrence, victim was 3 years old. He stated that the girl told him that she was raped by this appellant. At about 08.00 to 08.30 p.m., he stated that he was in the house when this appellant had taken the girl from his house at a distance of 250 feet. He stated that the girl told her that he has committed rape. He stated that thereafter he went for Panchayati and Panchayati was convened, but this appellant did not appear. He then reported to the police. He stated that the girl was taken to the hospital, where she was treated.

It may be noted that though this witness was discharged on 30.01.2017, but he was recalled and was cross-examined at a later stage on 01.09.2022 in terms of order dated 05.04.2022.

In cross examination, at paragraph 8, he stated that the girl was 3 (three) years old and could not speak. He stated that the girl went missing on that day at 06.00 p.m. and much time was consumed to find her out and it was almost 08.00 p.m. in the evening. He stated that there was some festive and he was in the house of the appellant. After some time, girl also came to the house of the appellant and the appellant took her away. This witness stated that appellant had taken the victim to drop her in her house. When he returned, he could not find the girl. He went to the house of the appellant, where the appellant and his father disclosed that as he was sitting with this witness, he

does not know about the whereabouts of the girl. He admits that he lodged the First Information Report after 3 (three) days. He admitted that he got the First Information Report written by his cousin (brother) Veer Singh Sundi, but he could not understand what was written there. He stated that at 8 O' clock he started shouting in front of the house of the appellant, when the girl came. He denied that there was dispute between the families, that is why appellant has been falsely implicated.

12. P.W.6, who is the mother of the victim, stated that the victim along with her father had gone to the house of this appellant to drink hadia. The appellant took the girl near the ditch and when the girl did not return, the informant went in search, he saw the appellant had left the girl and fled. The victim came and told that this appellant had committed rape upon her. In cross examination, she admits that she had not got her statement recorded before the police during investigation. The village Munda had told her to depose in Court and she had come alongwith the village Munda. She stated that she could come to know about the occurrence on the next day.

13. From analysis of evidence of these two witnesses, it is clear that there are major discrepancies in their statement. As per the informant, informant went to the house of this appellant and thereafter the girl came and was taken away by the appellant, but the mother of the victim girl states that this girl accompanied her father to the house of this appellant.

14. It is an admitted case that the girl was 3 (three) years old on the date of occurrence. P.W.3 stated that after the occurrence, girl had narrated to him about the occurrence that this appellant had committed rape upon her. P.W.6 also stated that the girl had narrated the fact to her father. Surprisingly, P.W.3, the informant in cross examination, at paragraph 14 clearly admits that the girl could not speak at that point of time. This creates a doubt in the mind of this Court as to what was narraed to the informant when the victim girl could not even have spoke at the age of 3 (three). Thus, the examination-in-chief of P.W.3 on the point that the victim had narrated the story before him is contradictory in view of his own statement at paragraph 14. Further, another aspect, which needs to be considered is that the victim has not narrated about the incident to the mother as the victim was infant. It is surprising that the victim had narated about the incident to her father rather than to her mother, as the mother never stated in her evidence that the girl had narrated the story to her.

15. When we look at the statement of the victim girl, who was 16

years at the time of examination, we find that she stated that she was only 3 (three) years old when occurrence had taken place. In her examination-in-chief she states that it is this appellant, who had committed rape upon her, but in cross examination, she admits that the occurrence is of 10 years ago, which is the reason she could not understand what happened to her. She stated that she narrated the story to her father and thereafter her father had lodged this case. She admits that her mother was alive, but she had not narrated the incident to her mother. This creates a doubt in the mind of this Court as to why the girl child will not narrate the story to her mother, when she was already there. The statement of the girl does not inspire enough confidence to convict the appellant on her statement alone.

16. The incident, as per the prosecution case, had taken place on 13.09.2011. The First Information Report was lodged after six days, i.e., 19.09.2011. The prosecution tried to explain the delay by stating that Panchayati was convened, but since the appellant did not appear in the Panchayati, time was consumed in lodging the First Information Report. P.W.8, who is Veer Singh Sundi, though stated that there was a talk of Panchayati being convened, but there is nothing in his statement to suggest that Panchayati was ever convened.

17. As noted, the date of occurrence is 13.09.2011 and the First Information Report is dated 19.09.2011, but surprisingly, as per the doctors, P.W.4 and P.W.5, the medical examination of the victim was done on 21.09.2011, i.e., 8 days after the alleged occurrence, and 2 days after the First Information Report was lodged. The delay in examination of the girl from the date of occurrence is abnormal, which is fatal. We have come to this conclusion as because same type of injuries can be caused if the girl falls on a hard surface, as narrated by the doctors.

18. In the case of ***Nirmal Premkumar versus State of T.N.,*** reported in ***(2024) 20 SCC 293,*** the Hon'ble Supreme Court, at paragraph 20 has observed as under: -

> ***20. Law is well settled that generally speaking, oral testimony may be classified into three categories viz.:***
>
> ***(i) wholly reliable;***
>
> ***(ii) wholly unreliable;***
>
> ***(iii) neither wholly reliable nor wholly unreliable.***
>
> ***The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of***

> ***cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.***

Further, in the said judgment in the case of ***Nirmal Premkumar (supra),*** the Hon'ble Supreme Court took note of earlier judgments in the cases of ***Ganesan versus State [(2020) 10 SCC 573]; Rai Sandeep versus State (NCT of Delhi) [(2012) 8 SCC 21],*** and ***Krishan Kumar Malik versus State of Haryana [(2011) 7 SCC 130]***. The Hon'ble Supreme Court in the case of ***Krishan Kumar Malik (supra)***, has observed that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

Thus, referring to the aforesaid judgments, the Hon'ble Supreme Court at paragraph 24 of ***Nirmal Premkumar (supra)*** has observed as under:-

> ***24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.***

19. Considering what has been discussed above and in the light of the aforesaid judgment of the Hon'ble Supreme Court, we are of the opinion that there are genuine doubts about the prosecution version in the present case, as there are contradictions in the statement of the mother and father of the victim. Statement of the victim also does not inspire confidence, if the same is read along with the statement of the father and mother, which has already been observed above.

20. We also noticed from the record that there is a delay in lodging the First Information Report as also there is abnormal delay in examining the victim, which are also fatal.

21. In view of what has been held and discussed above, we find that this is a fit case for acquittal of the appellants. This criminal appeal, accordingly, stands allowed. The judgment of conviction dated 08.10.2024 and order of sentence dated 09.10.2024 passed by the Additional Sessions Judge

III, Singhbhum West, Chaibasa in Sessions Trial No.185 of 2014, are set aside. The appellant, abovenamed, is directed to be released forthwith from custody, if not wanted in connection with any other case.

22. Pending interlocutory applications, if any, stand disposed of.

23. Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated, the 26th October, 2026
Kumar/Cp-03

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