

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 1332 of 2006

[Against the judgment of conviction and sentence dated 25.07.2006 & 28.07.2006 respectively, passed by learned Additional Sessions Judge, Ghatsila in Sessions Trial Case No. 280 of 2000.]

Kamalendu Mahto @ Khokaa, S/o . Sri Rasoraj Mahato, resident of village
- Basadiha, P.S.-Chakulia, District-East Singhbhum.

..... **Appellant**

Versus

The State of Jharkhand

... .. **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant

: Mr. Parth Jalan, Amicus Curiae

: Mr. Aryan Anurag, AC to Parth Jalan

For the State

: Mr. Jitendra Pandey, A.P.P.

JUDGMENT

Dated: 31st August, 2026

By Court:-

1. Heard Mr. Parth Jalan, learned Amicus for the appellant and Mr. Jitendra Pandey, learned A.P.P. for the State.
2. Instant criminal appeal is directed against the judgment of conviction and sentence dated 25.07.2006 and 28.07.2006 respectively, passed by learned Additional Sessions Judge, Ghatsila in Sessions Trial Case No. 280 of 2000, whereby and whereunder the appellant has been held guilty for the offence under Section 376/511 of the I.P.C and sentenced to undergo R.I. for four years.

Factual Matrix

3. Factual matrix giving rise to this appeal is that on 27.12.1999, the informant was sleeping at her house. Her mother was sleeping in adjacent room of the said house and there was no male member in the house. At

about 12:00 P.M., she heard the sound of forcibly opening the door and the appellant entered into the room with bad intention and overlapped upon her body and started playing with her body and after raising her saree, attempted to commit rape. She raised alarm and forcibly removed him from her body. Her mother came to the room and by that time, he fled away. On hulla, the neighbours Praffulla Kumar Singh, Parikshit Singh and other persons came to whom she has disclosed the occurrence. As her brother was not present in the house and he came on 30.12.1999 and thereafter, she gave this written report to the police on 31.12.1999.

4. On the basis of above written report, F.I.R. being Chakulia P.S. Case No. 53 of 1999 dated 31.12.1999 was registered for the offence under Sections 376/511 & 452 of the I.P.C. against the accused.

5. After completion of investigation, charge-sheet was submitted against the accused for the aforesaid offence. The case was committed to the Court of Sessions, where S.T. Case No. 280 of 2000 was registered. The accused denied from the charge leveled against him and claimed to be tried.

6. In the course of trial, altogether 10 witnesses were examined by prosecution apart from following documentary evidence:-

I. Ext.-1: Formal F.I.R.

II. Ext.-2: Endorsement of Sri Surendra Prasad Singh o/c Chakulia on the fardbeyan

7. On the other hand, no oral or documentary evidence has been examined by defence.

8. The case of defence is denial from occurrence and false implication due to political rivalry and pleaded innocence.

9. The learned Trial Court after considering the evidence of prosecution arrived at definite conclusion about guilt of the appellant for the offence charged against him and convicted and sentenced him as stated above, which has been assailed in this appeal.

Submissions on behalf of the Appellant: -

10. Learned counsel for the appellant assailing the impugned judgment of conviction and order of sentence has argued primarily on the ground that non-examination of the Investigation Officer has caused prejudice and a failure of justice to the appellant. It is further submitted that the mother of the prosecutrix (PW-6) has admitted in her cross-examination that Rudan Singh was sleeping with the informant in the same bedroom in the night of incident. Despite her being the most critical, direct eye-witness to the alleged midnight struggle and assault, the prosecution deliberately withheld and not examined her. It is also submitted that there is unexplained delay of four days in institution of the F.I.R. while taking plea of Panchayati. It is also contended that the evidence of P.W.-9, when considered in its entirety, does not inspire confidence and, therefore, could not have been made the sole basis for recording the conviction of the appellant. It is also submitted that the evidence of P.W.-1 to 8 has not been appreciated in its true and correct perspective. It is further argued that even if the prosecution case is taken to be true in its entirety, the essential ingredients constituting the offence punishable under Sections 376/511 & 452 of the I.P.C. are not established from the evidence available on record. The learned Trial Court has failed to examine whether the ingredients of the alleged offence stood proved beyond reasonable doubt and has consequently

committed an error in law in recording the conviction of the appellant. It is also submitted that the appellant has remained in custody about eight months during trial / post-conviction. At best the case falls under Section 354 of the I.P.C. As such, sentence may be reduced to the imprisonment already undergone by the appellant.

Submissions on behalf of the State: -

11. On the other hand, learned A.P.P. for the State has defended the impugned judgment of conviction and order of sentence on merits and has submitted that the learned Trial Court has very wisely and aptly appreciated and analyzed the evidence available on record and has rightly convicted the appellant. There is no merit in this appeal which is fit to be dismissed.

Analysis, discussions and reasons:-

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

13. 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 or not?

14. Before imparting my verdict on above point, it is desirable to take brief resume of ocular testimony of witnesses examined during trial.

The main witness of this case is the prosecutrix herself, who is victim of the case and has been examined as **PW-9**. According to her evidence, on the date of occurrence at about 12:00 hour at night, while she was sleeping in the house, she heard the sound of noise coming from the door and saw the accused who has entered in her room. He lifted her clothes and tried to

commit rape on her. She has further stated that on her alarm, Ananto, Prafullo, Bali, Rudan came there. She has further stated that she informed the choukidar in the night. The accused had fled away from the village, thereafter, she lodged case.

In her cross-examination, she has stated that Panchayati was held in the morning. She has further stated that on her alarm, firstly, Prafull and Anando Singh had come. She has denied the suggestion of defence that due to village dispute, she has lodged this case.

P.W.-1, Sripati Singh is the brother of the informant-cum-prosecutrix. He is not an eye-witness of occurrence, but came to know from the prosecutrix and on 27.12.199, her mother and sister were in house and he had gone to Kharagpur. He was informed and when returned, his sister narrated her the alleged occurrence and came to the police station. Police took the statement of his sister and his statement.

In his cross-examination, this witness states that no panchayati was held and choukidar was also not informed. He further states that his uncle Ananth Singh had gone to inform him about the occurrence. This witness also states that he gave his statement as he had heard.

P.W.-2, Prafullo Kumar Singh states that he heard the sound of shouting of the victim and came out from his house. He saw that the accused was fleeing away from the house of the victim.

In his cross-examination, this witness states that on alarm of the victim, he reached first and thereafter Ananto Singh at her house.

P.W.-3, Pari Singh has simply stated that hearing the alarm of victim, she came out from her house and saw the accused fleeing away.

P.W.-4, Budhi Singh has stated that when she came out from the house, she saw that accused came out from the room of victim and fled away. Thereafter, she asked the victim then she replied the story of attempt to rape by the accused.

In her cross-examination, this witness has stated that the witnesses who came on alarm, did not try to catch the accused.

P.W.-5, Ananto Singh is uncle of the victim. He has also deposed that on the date of occurrence, hearing alarm by the victim, when toward there and saw fleeing away of the accused. He tried to catch the accused but could not succeed. The victim narrated him that the accused tried to commit rape on her.

In his cross-examination, this witness states that the police had come for investigation after 8-10 days.

P.W.-6, Khirobala Singh is mother of the victim. She has stated that she was sleeping in the house. On alarm of the victim, she asked her then she stated to have been attempted to rape by the accused. She saw the accused fleeing away. Rudan Singh was also sleeping with the victim.

P.W.-7, Usha Singh has also stated about the occurrence and has seen the accused fleeing away.

P.W.-8, Bali Singh has also alleged the occurrence to be true. She has further stated that when the victim raised alarm, she came out with torch light and in torch light, she saw the accused fleeing away coming out from house of the victim. The victim told her that the accused had entered in the house with intention to commit rape on her. Choukidar was informed and a panchayati was also held.

P.W. 10, Diwakar Pal is advocate's clerk. He has identified the signature and handwriting of the then officer-in-charge of Chakulia P.S., which has been marked as Ext.-1.

15. The learned Trial Court after considering the evidence of prosecutrix and prosecution witnesses held the appellant guilty for the offence under Section 376/511 & 452 of the I.P.C. However, the statement of victim as depicted in F.I.R. is simply that the accused entered in the house with the intention to outrage her modesty, but she has stated nothing being the sole eye witness in specific terms as to what overt act was committed by the appellant towards commission of rape with her so that the offence may fall in the category of attempt. It further appears that just after the occurrence, she has complained and narrated the incident to several witnesses, but no witness has seen the occurrence, just they saw the accused fleeing away and occurrence was narrated by the victim only. The evidence of the prosecutrix, when considered in its entirety, does not disclose any specific overt act on the part of the appellant which can be said to constitute an act towards the commission of rape with her so as to attract the ingredients of an offence punishable under Section 376/511 of the I.P.C. The conduct of the appellant simply shows that he has committed some act of indecent assault with the prosecutrix, which may likely to outrage her modesty.

16. The prosecutrix has stated that the appellant entered in her house when she was sleeping whereas her mother (PW-6) has stated that Rudan Singh was also sleeping with the victim. However, there is no specific evidence regarding any attempt on the part of the appellant to commit

sexual intercourse or any act sufficiently proximate to the commission of rape. The immediate disclosures made by the prosecutrix to her family members also indicate an act of assault and an attempt to outrage her modesty, rather than an attempt to commit rape. The consistent evidence of the prosecutrix regarding the appellant having caught hold of her, coupled with the surrounding circumstances, establishes that the appellant had committed an assault upon the prosecutrix with the intention of outraging or with knowledge that his act was likely to outrage, her modesty. Thus, the ingredient of Section 354 of the I.P.C. is made out against the appellant.

17. Accordingly, the conviction of the appellant under Section 376/511 of the I.P.C. is altered and modify to the offence under Section 354 of the I.P.C. Conviction of the appellant for the offence under Section 452 I.P.C. is also upheld.

18. So far sentence of the appellant awarded by the learned Trial Court is concerned, it appears that it was the first offence of the appellant and he was never convicted for any offence as is apparent from the impugned judgment. Further, more than 26 years have been elapsed from the date of commission of the alleged offence, therefore, considering the nature of offence committed by the appellant, his age, character and antecedent, it appears expedient in the ends of justice to award him sentence of imprisonment already undergone by him i.e. about 8 months during the trial of the case. Therefore, he is sentenced to undergo for the period already undergone by him.

19. In result, this appeal is **dismissed on merits with modification in conviction and sentence** as stated above.

20. Appellant is on bail, as such he is discharged from the liability of bail bond and sureties are also discharged.
21. Pending I.A(s), if any, stands disposed of.
22. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.
23. I take this opportunity to appreciate the assistance rendered by Mr. Path Jalan, learned Amicus Curiae appearing on behalf of the appellant and directed the member Secretary, High Court Legal Services Committee to extend the stipulated fee as per notification of High Court Legal Services Committee to Mr. Path Jalan, learned Amicus Curiae within a period of four weeks from the date of receipt / production of a copy of this order.
24. Office is directed to insure that a copy of this judgment is served upon member Secretary, High Court Legal Services Committee.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated: 31.08.2026
Rahul/ N. A. F. R.
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