

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 1274 of 2004

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[Against the Judgment of conviction dated 28.06.2004 and Order of sentence dated 29.06.2004, passed by learned Additional Sessions Judge, F.T.C. No.IV, Deoghar in Sessions Case No.65 of 2004]

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Kamal Mandal, Son of Late Jaleshwar Mandal, resident of village-Jasobandh, P.S.-Karo, Madhupur, District-Deoghar.

... **Appellant**

Versus

1. The State of Jharkhand
2. X

... **Respondents**

.....

For the Appellant : Mr. Ranjan Kr. Singh, Adv.
Mr. Manish Singh, Adv.
For the State : Mr. Suraj Deo Munda, A.P.P.

.....

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

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JUDGMENT

C.A.V. on 13.05.2026

Pronounced on 10.06.2026

1. I have already heard the arguments advanced by Mr. Ranjan Kr. Singh, learned counsel for the appellant as well as Mr. Suraj Deo Munda, learned A.P.P. appearing for the State.

2. Instant criminal appeal is directed against the judgment of conviction dated 28.06.2004 and order of sentence dated 29.06.2004 passed by learned Additional Sessions Judge,

F.T.C. No.IV, Deoghar in Sessions Case No.65 of 2004, whereby and whereunder the appellant has been held guilty for the offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment (R.I.) for seven years along with fine of Rs.3,000/- with default stipulation.

3. Factual matrix giving rise to this appeal is that the appellant is a Forest Guard working in the Jasobandh forest near Barmasiya Canal within the jurisdiction of Karo Police Station, District Deoghar. Complaint Case No.115 of 2003 was filed by the victim lady stating *inter alia* that she frequently used to go Barmasiya Canal for taking bath and accused persons were having evil eyes on her. It is alleged that on 07.05.2003 at about 11:00 a.m., while complainant was taking bath at Barmasiya Canal, meanwhile, present appellant along with another Forest Guard allured her to pay money to go nearby forest, but she declined, then both the accused persons gagging her mouth brought her towards the forest area adjacent to the Canal and committed rape on her one by one. The complainant weepingly returned to her home without taking bath and narrated the above incident to her mother-in-

law. She also went to Police Station along with her husband but her case was not registered then she lodged this complaint on 09.05.2003.

4. After conducting inquiry, the learned Magistrate found prima facie case and summoned the accused persons. The present appellant appeared. Thereafter, in due course the case was committed to the Court of Sessions where Sessions Case No.65 of 2004 was registered.

5. The present appellant denied from charge levelled against him and claimed to be tried.

6. In the course of trial, altogether five witnesses were examined. The documentary evidence is simply complaint petition signed by the complainant as Ext.1.

7. The case of defence is denial from occurrence and false implication and plea of innocence.

8. The learned Trial Court after appreciating the evidence available on record held the appellant guilty for the offence under Section 376 of the I.P.C. and sentenced as stated above.

9. Learned counsel for the appellant has vehemently argued that the learned Trial Court has failed to appreciate that the appellant was working as Cattle Watchers in

Jasobandh plantation under the establishment of Forest Department. The complainant used to frequently loose the cattle and also cutting the forest shrubs/woods for which she was scolded by the appellant and forbade from doing so. Hence, she has lodged this false case. It is further submitted that appellant and the complainant are the co-villager. The husband of the complainant is veteran litigant and blackmailer. Hence, in connivance with his wife, he has got instituted this false complaint case. It is further submitted that the complainant has claimed that due to sexual intercourse her undergarments became wet which were never examined by any Chemical Examiner for detection of semen. It is further submitted that after prevailing good sense in the mind of complainant and her husband, a joint compromise petition was filed before the concerned Trial Court, which has also not been considered by the learned Trial Court, even while awarding the sentence. The sole eye witness of the occurrence is the complainant, whose testimony suffers from material contradictions and discrepancies and she is not wholly reliable witness. Therefore, conviction on the basis of sole testimony of complainant is hazardous in this case.

Therefore, the conviction and sentence of the appellant is liable to be set aside by allowing this appeal.

In the alternative, it is submitted that at present appellant is more than 80 years old, sick and infirm person. The appellant has remained in custody for one and a half years during trial and post-conviction. The appellant is unable to walk and even discharge his daily pursuit of life. He was implicated in this case under inimical terms and thereafter, compromise was also filed by the complainant. The appellant has sustained the agony of trial for more than two decades having no criminal background and even after conviction in this case, he has not been indulged in any criminal activities. Therefore, the sentence of appellant may be reduced to the imprisonment already undergone.

10. On the other hand, learned A.P.P. appearing for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that the learned Trial Court has very wisely and aptly analyzed and appreciated the evidence available on record and arrived at right conclusion. There is no reason that the victim would give false evidence against the appellant. Nothing has been elicited in the cross-

examination of the complainant to rebut her testimony. Mere non-examination by any doctor and non-production of the wearing clothes at the time of incident is not sufficient to falsify the prosecution story. There is no necessity of any corroboration from any independent source, if the victim appears to be wholly reliable. Hence, this appeal has no merits and fit to be dismissed.

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

12. The only point for determination is that as to **"whether the impugned judgment and order of conviction and sentence of the appellant suffers from any serious error of law calling for any interference in this appeal ?"**

13. Before adverting to decide the above point, it is pertinent to take brief resume of oral testimony of witnesses examined in this case.

14. It appears that the sole eye witness-cum-important witness of this case is the **complainant herself**, who has been **examined as P.W.4**. According to her evidence, on Wednesday about 10 months ago at about 11:00 a.m., she had

gone to take bath at Barmasiya Canal. She was washing clothes, in the meantime, present appellant started showing her money and asking to come with him aside the forest but she declined. One Forest Constable was also present whose name she does not know but later on her husband disclosed that the name of sepoy is Ramkrit Roy. She has further stated that both the accused persons caught hold of her due to which her bangles were broken and she sustained some injuries. Thereafter, both the accused persons brought her towards Barmasiya Canal forest, gagging her mouth by putting clothes, committed rape upon her one by one. The occurrence continued for three minutes in each incident of rape. Her petticoat and sari also became wet and dirty. When the accused went away, she returned to her home and complained the above incident to her mother-in-law and gotani and her husband was not present in the house. Later on, her husband returned and she also disclosed the above incident to him. She along with her husband went to police station and her statement was recorded. The police after hearing about the incident got them seated for a long time but done nothing. Thereafter, she along with her husband

returned her home in the night. She has further stated that in the next day morning, she again along with her husband went to Deoghar Court, met with an Advocate and narrated about the incident and her case was written and typed which was read over to her and finding the contents, to be true, she put her right hand thumb impression on her complaint petition which was instituted in the Court.

In her cross-examination, she states that she returned to her home without taking bath on the date of occurrence and when she went to police station, she had also shown the stains on her clothes which were found due to commission of rape with her. She has also stated in her cross-examination that when she went to the Court for institution of case, her advocate did not suggest her to give any application to Superintendent of Police, but she of her own accord got an application typed and gave to her lawyer which was sent through registered post to S.P., Deoghar that application was also dictated by her lawyer. **She also admits that the application to S.P. was given about 10 to 15 days prior to institution of the complaint case.** She had given the written application herself to the Superintendent of Police in his

hands. She also admits that in the application given to S.P., it was mentioned that whenever she goes to Barmasiya Canal then Forest Guard Kamal Mandal and Forest Constable used to harass and tease her, offering her money and alluring her to indulge in illicit sexual intercourse. She also admits that about three months prior to incident of this case, the accused was desiring to take illicit favour from her giving money and he has tried twice such activity. She also admits that she was married about 20 years ago and since then she used to go Barmasiya Canal for taking bath. She did not go for medical examination by any doctor. Her advocate also not suggested to get medical examination. She has denied the suggestion of defence that in her application before S.P., she has not mentioned about the commission of rape with her and has only stated that she was teased and scolded by the accused persons and she has lodged false case.

P.W.1 Bhusia Devi is the mother-in-law of the complainant who has supported the version of complainant as narrated to her. Admittedly, she is not an eye witness of the occurrence rather she admits that her daughter-in-law

used to go Barmasiya Canal for taking bath and washing clothes.

P.W.2 Gunadhar Goswami is the husband of complainant. According to his evidence also, he came to know about the occurrence from his wife then he came to police station on next day morning but his case was not registered by police. Thereafter, he came to Court and this case was lodged by his wife.

In his cross-examination also, he has stated that at Kairon Police Station, he along with his wife stayed for a considerable time and narrated the entire incident but they were scolded and driven away. He also admits that in the Court premises, there is S.P. office but he did not went to the office of S.P. but an application was sent to S.P., D.C. Deoghar and D.F.O and Forest Conservator through registered letter about 15 days prior to institution of this complaint case. When no response was received then this case was instituted in the Court.

P.W.3 Birma Devi is gotani of the complainant. She has also come to know about the occurrence from the complainant and has no personal knowledge and was not

present at the place of occurrence. She has never seen the accused persons. She also admits in her cross-examination that all the family members used to go Barmasiya Canal for taking bath but she has never seen the accused persons.

P.W.5 Braj Bhushan Singh is a formal witness who has typed the complaint petition of the complainant page 1, 2 and 3 and has signed over it as a typist which is marked as Ext.1.

15. It is settled law that conviction for offence of rape can be based upon uncorroborated testimony of the victim alone without further corroboration from any independent source, but the rider is that the victim must be wholly reliable witness.

16. In the instant case, except the victim/complainant, there is no eye witness of occurrence and she had not gone under medical examination or submitted her clothes just after the occurrence, which she says that her clothes were stained with semen, therefore, no corroborative evidence could be collected in this case.

17. The most drastic thing which the complainant admits in her **cross-examination is that prior to 10 to 15 days of occurrence, she had given registered application to D.C.,**

S.P., Deoghar, D.F.O. and Conservator of forest alleging about the occurrence. The letter to S.P. was presented by her in the hands of S.P. Deoghar.

18. It appears that along with the complaint petition, an application addressed to Superintendent of Police, Deoghar dated 26.04.2003 was sent through registered post. The contents of letter goes to show that on 19.04.2003 at about 11:00 a.m., the complainant had gone to take bath at Barmasiya Canal near Jasobandh forest where Forest Guard Kamal Mandal and one Forest Constable pulled her forcibly and alluring of money wanted to sexual favour with her but she declined then she was threatened that her whole family member will be implicated in false case and she was also indecently assaulted. On raising alarm, her mother-in-law and gotani arrived and saved her. Again on 23.04.2003, such type of occurrence took place when above accused persons abused and threatened her to kill while she was taking bath but any how she escaped from the hands of accused persons.

19. Above facts have been admitted by the complainant in her cross-examination also which clearly suggests that commission of rape by the present appellant has not been

stated by her in her application to Superintendent of Police. Although, there are two consecutive incidents, one of 19.04.2003 and another of 23.04.2003. It is also apparent that on the basis of above registered application sent to the S.P., D.F.O. and D.C., Deoghar, the complaint case was lodged. There is clear cut deviation from the earliest statements of the victim and she has gone to the extent to implicate the appellant for commission of offence of rape while she was complaining only of indecent assault and undeserved sexual favour giving temptation of money. Therefore, a serious shadow of cloud on truthfulness of the victim has spread over in her evidence. In the above circumstances, the complainant cannot be branded as wholly reliable witness. It is also apparent from the record that neither the clothes of the victim allegedly stained with semen nor her personal medical examination for ascertaining the commission of gang rape with her has been brought on record. It appears that she has deliberately exaggerated the case of indecent assault into gang rape so that immediate action may be taken against the accused to teach him a lesson.

20. In the above facts and circumstances, the evidence of

victim does not appear to be wholly reliable for convicting the appellant solely on the basis of her evidence.

21. In the aforementioned facts and circumstances, the conviction of appellant for the offence under Section 376 of the I.P.C. is hereby set aside and this appeal is **allowed**.

22. The appellant is on bail, he is discharged from liability of bail bonds and sureties are also discharged.

23. Pending I.A., if any, stands disposed of.

24. Let a copy of this judgment along with Trial Court record be sent back to the concerned Trial Court for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated: 10/06/2026

Sachin / **NAFR**

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