**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**Criminal Appeal (S.J.) No. 1159 of 2005**

[*Against the Judgment of conviction dated 29.08.2005 and Order of sentence dated 31.08.2005, passed by learned Additional Sessions Judge (F.T.C.)-2, Seraikela-Kharsawan in Sessions Trial No. 68 of 2004*].

Gourango Mahato, S/o Rath Raj Mahto, Resident of Village – Kadamdiha, P.S. – Saraikela, District – Saraikela, Kharsawan.

... ... **Appellant**

Versus

1. The State of Jharkhand
2. Victim ... ... **Respondents**

.....

For the Appellant : Mr. Shantanu Singh, Advocate.
Mr. Imran Beig, Advocate.
Mr. Manjeet Kr. Chaudhary, Adv.
For the State : Mr. Sanjay Kr. Srivastava, APP.
For the Resp. No. 2 : Mr. Pratiush Lala, Advocate.
Mr. Deepak Sahu, Advocate.

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**P R E S E N T**

**HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

**JUDGMENT**

**C.A.V. on 04.08.2026 Pronounced on 08.10.2026**

***1.*** Heard learned counsel for the parties.

***2.*** The present appeal is directed against the judgment of conviction dated 29.08.2005 and order of sentence dated 31.08.2005 passed by learned Additional Sessions Judge, (F.T.C.)-2, Seraikela-Kharsawan in Sessions Trial No. 68 of 2004 (arising out of Seraikela P.S. Case No. 32/2004, G.R. No. 295/2004), whereby and whereunder the appellant has been held guilty for the offence under Sections 376 and 448 of the I.P.C. and sentenced to undergo R.I. for seven years along

with fine of Rs. 3,000/- with default stipulation for the offence under Section 376 of the I.P.C. and R.I. for six months for the offence under Section 448 of the I.P.C. Both the sentences were directed to run concurrently.

**FACTUAL MATRIX**

***3.*** The factual matrix giving rise to this appeal is that on 25.04.2004, the prosecutrix (a married lady, aged about 22 years) was sleeping alone in her house in the night. It is alleged that at about 10:00 P.M., her co-villager – Gourango Mahato (present appellant) entered into her room, thrashed her down and committed rape upon her against her will. Upon raising alarm by the prosecutrix, her father-in-law and other persons arrived and caught hold of the accused and confined in the room by closing door. It is further alleged that husband of the prosecutrix went to police station for giving information about the occurrence and police arrived at her house and recorded her fardbeyan. On the basis of fardbeyan of prosecutrix, F.I.R. was registered for the offences under Sections 376 and 448 of the I.P.C. against the above named sole accused.

***4.*** In course of investigation, the Investigating Officer S.I. Rajendra Tripathi, Officer-in-Charge, assumed the charge of investigation, sent the victim for medical

examination, recorded the statement of witnesses, arrested the accused and finding sufficient evidence for the offence under Sections 376 and 448 of the I.P.C. submitted charge sheet against the accused. After taking cognizance, the case was committed to the court of Sessions, where Sessions Case No. 68 of 2004 was registered. The accused denied the charges leveled against him and claimed to be tried.

***5.*** In course of trial, altogether 07 witnesses were examined by the prosecution. Apart from oral evidence of witnesses, following documentary evidences were adduced:-

*Exhibit-1 : Signature of Sonu Mahato on fardbeyan.*

*Exhibit-2 : Fardbeyan.*

*Exhibit-3 : Formal F.I.R.*

*Exhibit-4 : Injury Report.*

*Exhibit-4/1: D.P.H. Laboratory Report.*

***6.*** On the other hand, no oral or documentary evidence has been adduced by the defence. The plea of defence is denial from occurrence and false implication due to annoyance of the prosecutrix for the reason that the accused along with husband of the prosecutrix used to attend kirtan party in night organized in the village, when the accused called upon husband of the prosecutrix, she deliberately started shouting *chor-chor* and her family member instituted this false case.

The accused is absolutely innocent.

***7.*** The trial court, after evaluating the evidence available on record, has arrived at conclusion about the guilt of the appellant and held him guilty and sentenced for the offences charged against him, as stated above.

***8.*** Learned counsel for the appellant assailing the impugned judgment of conviction of the appellant has strenuously argued that the prosecutrix herself has not been able to prove the commission of rape with her, rather she has stated that seeing the appellant, she raised alarm *chor-chor* and he was caught hold of by the family members of the prosecutrix and confined in a room. Thereafter, police was called upon and this false case was lodged. The commission of rape with the prosecutrix does not find corroboration from her medical examination report. All the witnesses are interested witnesses and close relative of the prosecutrix, who have inimical terms with the appellant. The genesis, manner and place of occurrence are absolutely doubtful. The very entrance of appellant was not possible due to presence of husband and father-in-law and other family members inside the house. The occurrence was alleged to be happened at 10:00 P.M. in night when prosecutrix along with her husband was present in her house, the commission of rape cannot be believed at all. All the

witnesses of facts have given contradictory evidence demolishing the whole prosecution story.

***9.*** It is further submitted that the appellant went to call upon the husband of the victim for attending *Kirtan* and entered their house premises in the night. Hence, conviction for the offence under Section 448 of the I.P.C. at best may be assumed proper, but so far as commission of rape is concerned, absolutely false story has been projected by the prosecution. The appellant has remained in custody for about 1½ years during pendency of trial and even if he may be assumed guilty for the offence under Section 448 of the I.P.C., for which six months R.I. was awarded to him, the appellant has already sustained sufficient punishment for his guilt. Moreover, the appellant is still undergoing protracted trial since more than 20 years, as such, this appeal may kindly be allowed and the conviction and sentence of the appellant may be set aside.

***10.*** Per contra, learned APP appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the prosecution has proved its case beyond all reasonable doubt. Learned trial court has very meticulously examined the evidence adduced by the prosecution as well as defence. There is no motive for the victim for

telling lie and falsely implicate the appellant. There was no previous enmity. The appellant was caught raid handed from the house of the victim. There is no illegality or infirmity in the impugned judgment of conviction and order of sentence of the appellant and there is no merit in this appeal, which is fit to be dismissed.

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

***12.*** 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 in this appeal or not?"

***13.*** Before adjudicating the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial.

***14.*** The star witness of this case is **P.W.-5,** the victim-cum-prosecutrix. According to her evidence in the night of 25.04.2004 at 10-10.30 P.M., she was in her room, her husband had gone to participate *kirtan* held in the village. She laid down her sleeping child on cot and about to close the door for sleeping, in the meantime, Gourango Mahato forcibly pushed the door and entered into her room. She has further stated that the accused gaged her mouth, thrashed her on

earth lifted her saree, blouse and petticoat and committed rape on her against her will and without her consent. After commission of rape, she was released by accused then she started raising alarm *chor-chor,* hearing her sound, her father-in-law Tulu Mahto, nandosi Lal Mahto, sister Chando Mahatain and mother-in-law Jema Mahatain rushed towards her room and caught hold of Gaugango Mahato, tied him and confined in the room closing lock from outside. Her husband returned from *Kirtan* in the morning at about 6:00 A.M. on 26.04.2004, then she disclosed about the incident. Her husband and brother-in-law, who had also gone to attend *kirtan* and also narrated the above incident to her mother-in-law, father-in-law sister and nandosi etc. Her husband went to police station and returned along with police officer then she narrated the incident to police and her fardbeyan was recorded and she put her right hand thumb impression. The accused was also formally arrested by police from her house. Her re-statement was recorded at police station and she was sent to Seraikela Hospital for medical examination and after medical examination, she returned to her home. She has identified the accused present behind the dock.

In her cross-examination, this witness admits

that in her matrimonial house, there are three rooms and one courtyard. There is no boundary in the house surrounding the house. She further reiterates that when the accused was outside the house, it was quite dark, but as soon as the accused pushed the door while she was going to close the door for sleeping and entered in her room, she identified him. She was scared to see the accused, but did not raise alarm. The accused caught hold of her and laid down on earth and within 1 or 2 minutes removed her saree, but she was wearing blouse and petticoat. The accused gaged her mouth from one hand and caught her leg from another hand and committed rape with her only once about 2-3 minutes. The police had not seized her wearing clothes like saree, petticoat and blouse. She is acquainted with the accused just after her marriage, but denies any friendship between her husband and the accused.

This witness also fairly admits that in her statement before police, she has not stated that at the time of occurrence, she was sleeping in her room. She has also not stated before police that the accused entered into her room pushing the door and gaged her mouth and thrashed on earth. She also admits that she raised alarm saying *chor-chor* and did not take the name of the accused while raising alarm. She also

admits that she did not resist the commission of rape by the accused while her both hands were lying on earth.

She has denied the suggestion of defence that the accused was friend of her husband and both were taking meal and drink together, which was not liked by her, hence, she has lodged this false case, no such occurrence took place.

***15.*** **P.W.-1 is the nandosi of the victim**. According to this witness, at about 10:00 P.M. on 25.04.2004, he was present at her matrimonial home and going to sleep in the meantime, he heard hulla of *chor-chor* raised by wife of his brother-in-law (prosecutrix). This witness along with his father-in-law went towards the room of the prosecutrix, then she disclosed that Gourango Mahato has committed rape with her. They caught hold of the accused and lodged in a room and closed the door from outside. His mother-in-law and wife of younger brother-in-law Chando also arrived at the place of occurrence. Thereafter, police was called upon and accused was handed over to police.

In his cross-examination, this witness reiterates that at first, he proceeded towards the room of prosecutrix, thereafter, her mother-in-law and father-in-law also arrived. None of the neighbours arrived immediately nor they were called upon after the

occurrence. The accused was wearing banyan and half pant at the time of occurrence. He admits in clear terms that accused was close friend of his brother-in-law (husband of prosecutrix). No information was given at police station in the night nor Village mukhiya was informed.

He has not stated in his statement before police that his both brother-in-law including the husband of the prosecutrix had gone to attend *kirtan* in the village. He further admits that nothing was seized by the police from the room, in which occurrence took place. The son of prosecutrix was aged about 3-4 years old, who was sleeping with the prosecutrix.

***16.*** **P.W.-2 is the husband of the prosecutrix**. According to his evidence, in the night of 25.04.2004, he had gone to attend *kirtan* in another village, when he returned in the morning, his wife disclosed about commission of rape by Gaurango Mahato, who was kept tied in a room of his house and locked from outside. This witness went to police station and returned along with police and fardbeyan of his wife was recorded by police and this case was lodged.

In his cross-examination, he admits that he went to police station along with Arjun Mahto and Sukhram Mahto. He also denies any friendship with the accused prior to occurrence. His wife also went to

police station in the same clothes, which she was wearing at the time of occurrence.

He has denied the suggestion of defence that he along with accused used to take liquor, due to which, his wife was annoyed and falsely implicated the accused in this case.

***17.*** **P.W.-3** is the younger sister and gotni of the prosecutrix. She also heard the alarm of her sister (prosecutrix) in the night and along with her nandosi, father-in-law and mother-in-law and other family members proceeded towards the room of prosecutrix, then she disclosed about commission of rape by Gaurango Mahato, who was also apprehended and lodged in a room closing the door. In the next day morning, police arrived at the place of occurrence and statement of prosecutrix was recorded. She has identified the accused behind dock.

In her cross-examination, she admits that prosecutrix was married about 5 years ago and her marriage was solemnized about 4 years from the occurrence in the same house. In her cross-examination, she states that about ½ an hour the prosecutrix raised alarm *chor-chor*. She went to sleep at 9:30 P.M., after taking dinner. She further admits that the house of accused is also situated close to their house. She has expressed no knowledge about

any friendship between husband of prosecutrix and accused. She identified the accused because he is close door neighbour and still unmarried.

She has denied the suggestion of defence that the husband of prosecutrix used to take drink with the accused, which was not liked by her. Hence, she has falsely implicated the accused and no such occurrence ever took place.

***18.*** **P.W.-4** is the mother-in-law of the prosecutrix. This witness has deposed that she heard the alarm of her daughter-in-law (prosecutrix) in the night and thereafter, she along with her husband and other family members proceeded towards the room of prosecutrix, then she disclosed about commission of rape by Gaurango Mahato, who was also apprehended and lodged in a room closing the door.

In her cross-examination also, she reiterates that the prosecutrix raised hulla of *chor-chor*, then she also raised alarm of *chor-chor*. She further admits that police arrived at her house and also seized the bed and wearing clothes of the victim. She also disclosed before the police that she come to know from her daughter-in-law (prosecutrix) that a thief has committed rape with her. She admits that there was very good relationship between husband of prosecutrix and accused, but she has denied that her

son was taking drink with the accused. She has also denied that the prosecutrix was forbidding her husband for taking drink with the accused, but he did not mend herself then she lodged this false case against the accused.

***19.*** **P.W.-6 Rajendra Tripathi** is the I.O. of this case. He has proved the fardbeyan of the prosecutrix, which was also signed by her husband, marked Exhibit-2, Formal F.I.R. as Exhibit-3. In course of investigation, he visited the place of occurrence situated at Village – Kadamdiha. It is a kuccha house containing one room. There was a cot in the room. It was disclosed that the prosecutrix was sleeping on the cot, then accused arrived and committed rape with her. Towards north side of house, there was courtyard and another room and towards west, another room, wherein other family members were sleeping. He further states that when he went to place of occurrence after receiving information, the accused was confined in the same room, wherein prosecutrix was sleeping. He was arrested from same room. The prosecutrix and accused were brought to police station together. Thereafter, he sent the prosecutrix for medical examination. After recording statement of witnesses and obtaining the medical examination report of the victim and on direction of superior

officer, he submitted charge sheet against accused for the offence under Sections 376 and 448 of the I.P.C.

In his cross-examination, this witness admits that adjacent to the house of prosecutrix and the accused there is house of Arjun Mahto, Sukar Mahto, Lakhi Ram Mahto and Jitendra Ram, but he had not interrogated with them. He has also not seized the wearing clothes of the prosecutrix. The prosecutrix disclosed that in the morning itself she has washed the clothes at the time of taking bath. Hence, he did not seize the wearing clothes. He has also not seized the wearing clothes of the accused because he was wearing the same clothes at the time of arrest. He further admits that husband of prosecutrix met him when he was going to the place of occurrence. This witness also states that the prosecutrix has not stated before him that she slept her son on cot and going to close the door in the meantime, the accused pushed her door and entered into the room. She has also not disclosed that the accused gaged her mouth and thrashed on earth, thereafter removed her saree and petticoat and committed rape with her. He also admits that in the medical examination report of victim, there is no definite opinion about commission of rape upon her. He has denied the suggestion of defence that his investigation was defective and he has submitted that

charge sheet without sufficient evidence.

***20.*** **P.W.-7 Dr. Veena Singh** is the Doctor, who has examined the prosecutrix on 26.04.2004 at about 11:00 A.M. and found followings:

**General Examination:**

Breast well developed. Auxiliary and public hair well developed. No external injury seen. L.M.P. 05.04.2004.

**Pelvic Examination**:

No foreign hair or body seen. No vaginal injury seen. Vagina is patulous.

**Pathological Examination**:

No spermatozoa either alive or dead seen.

**X-Ray**:-

Wrist joint Epiphysis of lower end of radius and alena fused.

According to this witness, the age of victim was above 19 years and it is difficult to say whether rape has committed or not. This witness has proved the medical report, which is marked as Exhibit-4. This witness has referred the vaginal swab for pathological examination to Sadar Hospital, Chibasa. This witness has also proved the medical report of B.K. Sahni marked as Exhibit-4/1. This witness has also stated that after taking bath, a sign of rape can be found on the private part if the rape is committed.

***21.*** From discussion of evidence of above witnesses, there is no reason to disbelieve the evidence of prosecutrix in its entirety, although there are some discrepancies and contradictions as regards manner of occurrence, but that is not sufficient to shake the core of prosecution case. Although she has raised alarm of *chor-chor*, but the present appellant was apprehended on the spot and lodged confined in the same room as has also been proved in the evidence of Investigating Officer (P.W.-6), who has arrested the accused from the very room where incident of rape was committed. Mere non-corroboration from medical examination report of prosecutrix is not sufficient to discard the evidence of prosecutrix, who has categorically stated that rape was committed with her about 2-3 minutes after removing her clothes. There are some irregularities in the investigation of the case as regards the wearing clothes of the prosecutrix, which were not seized and sent for chemical examination, but the Investigating Officer explained the same that at the time of taking bath in the morning, the prosecutrix had washed her clothes, hence, he has not seized the same. This fact also taken as material irregularity touching the core of prosecution case and affecting the merits of the case. The evidence available on record clearly goes to show that the appellant has

committed house trespass in the night by entering into the room of the prosecutrix and also committed rape on her. The defence taken by the accused appellant that he used to take drink with the husband of prosecutrix, which she does not like, hence, she falsely implicated the accused is also not believable and categorically denied by victim as well as her husband in their evidence. Therefore, the plea taken by defence has no leg to stand. There is no valid reason to discard the testimony of prosecutrix as regards commission of rape with her, particularly in view of the fact that the accused was arrested from her house and it is not plea of defence that it was consensual or there was any prior intimacy between the prosecutrix and the appellant. Therefore, conviction of the appellant for the offence under Sections 376 and 448 of the I.P.C. suffers from no illegality or infirmity. It appears that the learned trial court has considered overall aspects of the case in right perspective and arrived at right conclusion and has rightly convicted the appellant for the offence under Sections 376 and 448 of the I.P.C., which is hereby upheld and confirmed.

***22.*** So far quantum of sentence is concerned, admittedly the occurrence is of the year 2004 and more than two decades have elapsed and the appellant has remained

in custody for about 1½ years, out of seven years of rigorous imprisonment. Now, it will not be just and proper to send him to custody for suffering rest of the imprisonment. In my considered view, imprisonment already undergone by the appellant would meet the ends of justice in this case and is sufficient punishment in the facts and circumstances of this case.

***23.*** In view of aforesaid discussions and reasons, the impugned judgment of conviction of the appellant is upheld, but the sentence passed by the learned trial court is reduced to imprisonment already undergone by him.

***24.*** Accordingly, this appeal is **dismissed on merits with modification in sentence** as stated above.

***25.*** The appellant is on bail as such, he is discharged from liability of bail bond and sureties shall also be discharged.

***26.*** Pending I.A., if any, stand disposed of.

***27.*** 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 8th October, 2026.
Sunil /**N.A.F.R.**
**Uploaded on 09/10/2026**