IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 822 of 2018

(Arising out of judgment of conviction and order of sentence dated 07.06.2018 passed by learned learned Addl. Sessions Judge-I-cum-Special Judge (POCSO), Simdega in Special (POCSO) Case No.10/2017.)

---

1. Mukesh Bilung, aged about 20 years, Son of Dilip Bilung, Resident of Village-Tongritoli;
2. Xavier Lugun, aged about 20 years, S/o. Kailash Lugun, R/o. Village-Tongritoli;
3. Sanjay Topno, aged about 23 years, S/o. Lukas Topno, R/o. Vill.-Sihajor.

All are of P.O. & P.S.-Jaldega, District-Simdega ... ... **Appellant(s)**

Versus

The State of Jharkhand …… **Respondent(s)**

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

For the Appellants : Mr. Abhinav Kumar, Advocate
: Mr. Harshvardhan Sinha, Advocate
: Ms. Sambhavi Malviya, Advocate
For the State : Mrs. Nehala Sharmin, Spl.P.P.

JUDGMENT

Dated: 1st October, 2026
***By Court* :-**

We have heard learned counsel for the appellants as well as learned Special P.P. appearing for the State.

2. The appellants in this appeal have challenged the judgment by which they have been convicted for committing the offences under Section 376(D) of the I.P.C. and Sections 4, 8 & 12 of the POCSO Act, 2012 vide judgment dated 7th June, 2018 passed by the learned Addl. Sessions Judge-I-cum-Special Judge (POCSO), Simdega in Special (POCSO) Case No.10/2017 and have been sentenced to undergo R.I. for twenty years alongwith the fine of Rs. 50,000/- each with default stipulation for the offence under Section 376(D) of the

I.P.C. vide order dated 7th June, 2018.

3. The learned counsel appearing for the appellants submits that the entire case is based on the sole testimony of the victim, who is PW-3. As per the appellants, she is absolutely unreliable witness as the prosecution case does not match with the medical evidence. He further submits that the doctor could not find any sign of resistance, which clearly suggests that this is not a case of gang-rape. He also submits that there was dispute between the appellants and the father of this victim, which is a cause of falsely implicating these appellants. He lastly submits that the defence evidence was ignored on erroneous foundation. The witnesses examined on behalf of the accused clearly state that on the date of occurrence and at the time of occurrence, this victim girl was with the defence witnesses, which falsifies the allegation of rape committed by these appellants. He also relies upon the judgment rendered by the Hon'ble Apex Court in the case of **"Santosh Prasad @ Santosh Kumar vs. The State of Bihar"** as reported in [**(2020) 3 SCC 443]** on the point of reliability of the sole witness to the occurrence, which is the victim.

4. Learned Special P.P. appearing on behalf of the State opposes the prayer of the appellants and submits that medical evidence fully corroborates the statement of the victim, hence, finds that there is nothing on record to suggest that the victim has created a story and falsely implicated these appellants in this case. It is her contention that the solitary evidence of the prosecutrix is sufficient in this case as it inspires confidence and trustworthy. She further submits that enmity caught both ways and because of this enmity, the occurrence had taken place. She lastly submits that defence evidences are not worth to be considered as if the defence evidence is accepted, then no rape has

been committed upon the victim but the doctor has found sufficient evidence of commission of rape as opined so positively.

5. The prosecution case is based on fardbeyan of the victim. The victim, herein, is aged about 16 years. There was function in the house of Suresh Samad, where she was present. At about 10:00 P.M. at night, when she went near tube well to wash her hand and legs, then these appellant caught hold of her and one of the accused Sanjay Topno forcibly took her to the field and committed rape upon her. The other accused also came there and caught her leg and hand and Sanjay Topno committed rape upon her. Thereafter, fearing that villagers would come there, they took the victim to Dholipahari and all of them committed rape. She was also threatened not to disclose the aforesaid fact. She informed the entire matter to her mother and after consultation, her mother informed the incident to the police.

6. The F.I.R. being Jaldega (Basjore) P.S. Case No. 22 of 2017 was registered for the offences under Section 376(2)(G) of the I.P.C. and Section 4 of the POCSO Act, 2012. The investigation continued and charge-sheet was submitted.

7. After taking cognizance, charges were framed under Section 376(D) of the I.P.C. and Sections 4, 8 & 12 of the POCSO Act, 2012. As the accused persons pleaded not guilty, they were put on trial.

8. There were ten witnesses examined on behalf of the prosecution apart from following documentary evidence and material exhibit:-

Ext.-1: Signature of Association Kandulna in fardbeyan.

Ext.-2: Signature of Association Kandulna in police medial requisition.

Ext.-3: Signature in statement under Section 164 Cr.P.C. of Association Kandulna.

Ext.-4 : Aadhar Card of victim/prosecutrix.

Ext.-5 :Signature of victim/ prosecutrix in fardbeyan.

Ext.-6: Signature of victim/prosecutrix in statement under section 164 Cr.P.C.

Ext.- 7: Signature of Bijay Baraik on the seizure list.

Ext.-7/1: Signature of victim/prosecutrix on the seizure list.

Ext.-7/2: Signature of Association Kandulna on the seizure list.

Ext.-8: Signature of Halan Kandulna on seizure list.

Ext.-9: Medical report.

Ext.- 9/1: Medical Board Report.

Ext.-10: Zimmanama.

Ext.-11 & 11/1: Fardbeyan and its registration.

Ext.-12: F.I.R.

Ext.-13: Police Medical requisition.

Ext.-14: Seizure list.

Ext.-15 to 15/2: Confessional statements of accused persons.

Ext.-16 to 16/1: forwarding and challan related to material exhibits.

Ext.-17 to 17/1: Statement under Section 164 of the Cr.P.C. of victim/ prosecutrix and Association Kandulna.

Material Ext.-I: Hair pin.

9. **PW-7, PW-8 & PW-9** are the doctors.

PW-7 Dr. Bela Francis Ekka though has stated that there was no sign of struggle anywhere in the body of the victim but had found three small abraded area in the right wrist joint. She also found following on examination of victim:-

<u>On examination of private part-</u> Small red abraded region fourchette, hymen ruptured with fresh cut margins at three of clock

and 10 o'clock position. It started bleeding while trying to examine her.

As per speculam examination:- vagina found congested, per vaginal examination was painful, uterus was integrated slidely bulky. Two slides prepared from swab taken from posterior phonex and sent to lab for presence of spermatozoa.

She stated that a Medical Board was formed to assess the age of the victim and the age was found to be 16-17 years. She deposed that there is positive medical evidence of sexual intercourse.

The defence did not challenge the same, as they have declined to cross-examine the doctor.

PW-8 Dr. Silwant Ekka has stated that the age of the victim is 16-17 years and the said doctor also agreed with the opinion of Medical Board, which has been stated by PW-7.

This doctor was also declined to cross-examine by the defence.

Similar is the situation in respect of **PW-9 Dr. Shyam Sundar Paswan**, who is also a doctor.

Thus, from the evidence of these three doctors, it is quite clear that rape has been committed in the instant case upon the victim. There is no material to disbelieve the testimony of these doctors.

The victim is **PW-3.** She is aged about 16 years. She, in her evidence in detail, has stated that how the incident had occurred. Her statement corroborates with the statement, which is there in the fardbeyan, without any deviation. She has categorically stated that she was attending a festival and at about 10:00 P.M., she went near the tube well for washing her hand, where the accused Sanjay Topno came and caught hold of her. She tried to flee away but she could not, as the accused Xavier Lugun and Mukesh Bilung came from front and

also caught hold of her. They had taken her to a filed and committed rape by gagging her. Thereafter, again, she was taken to the sugarcane field near a well and committed rape upon her and then left her. She also narrated that she was threatened of dire consequences if she diverse this incident. She admitted that her statement was recorded under Section 164 of the Cr.P.C., which was marked as Ext.- 6. She also identified her signature in the fardbeyan, which is marked as Ext.-5.

In cross-examination, on the question put by the defence, she says that she knows the meaning of rape, which means molestation but in paragraph-3 in the said examination, she said that the accused persons after removing her apparels and undergarments had committed rape upon her. In cross-examination, the defence has extracted that these appellants were having some enmity with the elder uncle and brother of the victim.

After evaluating the evidence of the victim, we do not find any material to disbelieve her testimony. Merely, the fact that there is no sign of struggle is not the ground to disbelieve the statement of the victim. We have to take into consideration the age of the victim, which is 16 years being overpowered by three accused persons. The medical evidence corroborates immediate sexual assault.

The appellant relies upon the judgment of **"Santosh Prasad @ Santosh Kumar vs. The State of Bihar"** as reported in [**(2020) 3 SCC 443]** on the ground that if the victim is not reliable, her statement should not be considered.

In the same judgment at para-5.4.3, the Hon'ble Supreme Court by referring the case of "*Krishna Kumar Malik v. State of Haryana" [(2011) 7 SCC 130],* has held and 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.

In this case as held, we have not found any material to disbelieve the statement of victim or come to a conclusion that she is not trustworthy.

The mother of the victim has been examined as **PW-1.** The victim, after being raped, has narrated the entire story to her mother. The statement of mother absolutely corroborates the statement of the victim. She stated exactly what the victim had narrated to her and which is there in the F.I.R. and her evidence also. This also clearly supports the prosecution case.

She in her cross-examination has stated that no meeting was held in the village but she went and asked for explanation about the incident from the parents of the accused, where she was rebuked by them. This cannot be said to be unnatural conduct of a mother. She also admits that the meeting in the village held after the F.I.R. has been lodged, so it cannot be said to be the result of some conspiracy or as a result of meeting of some villagers. In her cross-examination, nothing substantiates has been extracted.

All the other witnesses are definitely not the eye witness but in this case, since the testimony of victim inspires confidence, which also corroborates with the medical report. There is no material to hold contradict what has been held in the judgment by the learned Trial Court.

10. So far as the defence witnesses are concerned, all the defence witnesses have stated that the victim was with them when the incident

had taken place. In fact, these witnesses are not to be believed and relied upon, as if the victim remained with them for the entire period, there would not have been any incident of sexual intercourse by these appellants and there would not have been medical evidence, which is before us. The medical evidence clearly suggests that the rape has been committed upon the victim. Thus, the statement of DW-1, DW-2, DW-3 & DW-4 is absolutely not worth to be considered.

11. Considering what has been held above, we come to the conclusion that the prosecution has been able to prove the guilt of all the appellants beyond all reasonable doubt. The learned Trial Court has correctly appreciated all the facts and the evidence and arrived at right conclusion about the guilt of appellants for committing rape upon the victim. Thus, we do not find any merits in this appeal and the same is **dismissed**.

12. Appellants are in custody. Let a copy of this judgment be furnished forthwith to the appellants through learned Special P.P.

13. Let the copy of this judgment be sent to concerned Trial Court for information and needful.

14. Pending I.A.(s), if any, stands disposed of, accordingly.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

High Court of Jharkhand at Ranchi
Dated: 01.10.2026
Rahul/NAFR
Uploaded on:06/10/2026