

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. (Jail) Appeal (S.J.) No. 367 of 2009

[Against the judgment of conviction dated 27.11.2008 and order of sentence dated 28.11.2008 passed by the learned Additional District and Sessions Judge-II, Chaibasa in S.T. No.44 of 2006]

Kanda @ Roya Suren, S/o-Bonj Suren, resident of Village Noamundi, Dist.
West SinghbhumAppellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Sanjay Kumar Tiwari, Amicus Curiae
For the Resp.-State : Mrs. Priya Shrestha, Spl.P.P.

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

Dated: 23rd April, 2026

1. Heard Mr. Sanjay Kumar Tiwari, learned *Amicus Curiae* appearing for the appellant and learned Spl.P.P.
2. Instant criminal appeal is preferred by the present appellant through jail petition while in custody challenging his conviction dated 27.11.2008 and order of sentence dated 28.11.2008 passed by the learned Additional District & Sessions Judge-II, Chaibasa in S.T. No.44 of 2006, whereby and whereunder the appellant has been held guilty for the offence under section 376 of Indian Penal Code and sentenced to undergo R.I. for 5 years along with a fine of Rs.2,000/- with default stipulation.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 03.11.2005, the informant-cum-victim lady called Kanda @ Roya Suren for offering

prayer at her home and after offering prayer, the victim lady went to sleep with her family members in a single-room house and the appellant was also allowed to sleep in the same room. But after some time, the appellant came inside the mosquito net in which the informant-cum-victim was sleeping with her husband, by complaining about biting of mosquitoes. At about 8:00 pm, all of a sudden, the appellant pulled off the peticoat and sari of the informant and caught hold of her breast by one hand and kept another hand on her neck and forcibly committed rape upon her. Upon *hulla*, the husband of the informant woke up and caught hold of the appellant. On the next day in the morning, the appellant under the pretext of going to the toilet, fled away from there. On the same day, a *panchayati* was conducted and the appellant was called for but he did not obey the *panchayati* and escaped. Thereafter, the FIR was lodged.

4. On the basis of aforesaid information, Noamundi P.S. Case No.55 of 2005 was instituted for the offence under section 376 of IPC. After completion of investigation, the charge-sheet was submitted against the appellant and after taking cognizance, the case was committed to the court of Sessions, where S.T No.44 of 2006 was registered. The appellant has denied the charges leveled against him and claimed to be tried.

5. Prosecution has examined altogether 10 witnesses in this case and several documentary evidences have also been adduced.
6. On the other hand, no oral or documentary evidence has been adduced by the defence. The case of defence is denial from occurrence and false implication.

Submission on behalf of appellant:-

7. Learned counsel for the appellant has submitted that the appellant has been convicted for the offence under section 376 of IPC and sentenced to undergo R.I. for 5 years. It is further submitted that during course of trial, the appellant had remained in custody for 3 years and after conviction he has also remained in custody for about 9 months. Learned counsel submits that the appellant has visionary defect in his eyes as it is also revealed from the impugned judgment. The occurrence is of the year 2005 and the victim lady was also a married lady. Learned counsel further submits that the appellant has completed the substantial parts of the sentence awarded to him and he was on bail since September, 2009, therefore, again sending the appellant for sustaining the rest period of his sentence will serve no useful purpose in the ends of justice. Hence, the appellant may be released on imprisonment already undergone by him instead of sentence awarded by the learned Trial Court.

Submission on behalf of State:-

8. Learned Spl.P.P. has defended the judgement on merits but he has fairly admitted that appellant was in custody for 3 years and 9 months during

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trial and after conviction. He has prayed that in the ends of justice, appropriate order can be passed.

Analysis, Reasons and Decision:-

9. 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.
10. Considering the facts and circumstances of the case, nature of offence alleged to have been committed by the appellant and also in view of the fact that the appellant has already remained in custody for 3 years and 9 months during pendency of trial and post-conviction, which appears to be sufficient punishment for his guilt for the offence committed by the appellant in the factual background of this case.
11. In view of above discussions and reasons, the impugned judgment is upheld on merits but so far as his sentence is concerned, the petitioner is sentenced to imprisonment for the period already undergone by him.
12. Accordingly, this appeal is **dismissed with modification in sentence** as stated above.
13. The appellant is on bail. He is discharged from liability of his bail bond and sureties are also discharged.
14. Pending I.A(s), if any, is also disposed of accordingly.
15. I take this opportunity to appreciate the assistance rendered by Mr. Sanjay Kumar Tiwari, learned *Amicus Curiae* and direct the Member

Secretary, High Court Legal Services Committee to extend the stipulated fee as per notification of High Court Legal Services Committee to Mr. Sanjay Kumar Tiwari, within a period of four weeks from the date of receipt/production of a copy of this order.

16. Office is directed to ensure that a copy of this order is served upon Member Secretary, High Court Legal Services Committee.

17. 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.)

Pappu/-

23/04/2026