

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 856 of 2003

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1. Anand Kumar Mahto, Son of Ram Subuman,
 2. Mangi Lal Mahto, Son of Govind Mahto,
- Both residents of Village Raikera, P.S. Manoharpur, Dist.
Singhbhum West/Jharkhand Appellants

Versus

The State of Jharkhand Respondent

Cr. Appeal (S.J.) No. 726 of 2003

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1. Yudhisther Mahato, Son of Late Kalicharan Mahato,
 2. Nishikant Mahato, Son of Late Bedeshi Mahato,
- Both residents of Village Raikera, P.S. Manoharpur, Dist.
Singhbhum West/Jharkhand Appellants

Versus

The State of Jharkhand Respondent

For the Appellants	: Mr. B.M. Tripathy, Sr. Advocate (In Cr. A. (DB) No. 856 of 2003) Mr. R.P. Gupta, Advocate (In Cr. A. (DB) No. 726 of 2003)
For the Resp. State	: Mr. Abhay Kumar Tiwari, APP

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

CAV On 13/01/2026

Pronounced On 26 /02/2026

Per- Pradeep Kumar Srivastava, J.

1. Both the instant criminal appeals are preferred for setting aside the judgment and order of conviction and sentence dated 30.04.2003 passed by the learned Addl. Sessions Judge-II, West

Singhbhum at Chaibasa in S.T. No. 75 of 2002 whereby and whereunder the appellants have been held guilty and sentenced to undergo R.I. for 10 years along with a fine of Rs. 1000/- each with default stipulation for the offence under Section 376 (2)(g) of the Indian Penal Code.

2. We have already heard the arguments of Mr. B.M. Tripathy, learned Sr. counsel and Mr. R.P. Gupta, learned counsel for the appellants and learned APP for the State.

Factual Matrix:-

3. The factual matrix giving rise to these appeals is that the informant-cum-victim aged about 14 years was a student of class-VI. On 03.12.2001, at about 4:00 PM, the victim girl proceeded to her village Jharbera from Gopipur to bring grocery articles etc. on her cycle. It is alleged that when she reached near Trila Chowk, she met with one Javni Toppo (P.W.-2), aged about 18 years and gave lift to her on her cycle. It is further alleged that near Raikera, both the girl alighted from the cycle and started moving on foot due to hillock road. In the meantime, Mangilal Mahto, Postman-Raikera along with Udhisther Mahto @ Compounder Mahto, Anand Mahto and Nishikant Mahto, all residents of Raikera started chasing both the girls, who were running to some distance but got tired and fell down along with her cycle. It is alleged that informant's girlfriend anyhow escaped from accused persons and fled

away but the informant-cum-victim girl was caught and lifted by Mangilal, Udhisther, Anand and Nishikant, who gaged her mouth and brought towards Lokra Huri Hillock in a bushy area, laid her down on earth, untying her under garments, all the four persons committed rape on her, one by one, as a result of which, she became unconscious.

It is further alleged that when the victim girl regained consciousness, she saw that accused persons had fled away. Upon raising alarm by her, one Raju Samad (P.W.-4) of Village Raikera arrived and helped her serving water from a pond and brought the victim at her maternal grandmother's home at village Jharbera, nearly about 12 o'clock at night. The informant narrated the above incident to her maternal grandmother (P.W.-5) and in the next morning, she went to her home and disclosed about occurrence to her parents. It is further alleged that on that day, marriage engagement of Javni Toppo (P.W.-2) was fixed, hence matter could not be reported to police and the F.I.R. was lodged on 06.12.2001.

On the basis of above information, F.I.R. was registered as Manoharpur P.S. Case No. 56/2001 dated 06.12.2001 for the offences under sections 376(g) of IPC

After conclusion of investigation, charge-sheet was submitted for the offence under Section 376 (g) of the IPC.

The case was committed to the Court of Sessions where S.T. No. 75 of 2002 was registered. The appellants denied from the charges and claimed to be tried.

4. In the course of trial, altogether 11 witnesses were examined by the prosecution.

P.W.-1	Informant-cum-victim
P.W.-2	Javni Toppo
P.W.-3	Dr. Deep Sikha Verma
P.W.-4	Raju Samad
P.W.-5	Saundi Toppo
P.W.-6	Anjala Kachhap
P.W.-7	John Paul Kachhap
P.W.-8	Banu Toppo
P.W.-9	Nandoya Kachhap
P.W.-10	Hemant Kr. Lakara
P.W.-11	S.I. Srikant Singh (I.O.)

5. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution: -

Ext.-1 to Ext. 1/1	Signature of Victim-cum- Informant on F.I.R.
Ext. ½	Signature of Nandowa Kachhap on F.I.R.
Ext.-2	Medical Certificate (Report)
Ext.-3	Signature of Witness Hemant Kr. Lakara on Seizure List
Ext.-3/1	Signature of witness on Seizure List
Ext.-4	F.I.R.

Ext.-5

Seizure List

6. On the other hand, the case of defence is denial form occurrence and false implication. However, no oral or documentary evidence has been adduced by the defence.
7. The learned trial Court after evaluating the evidence available on record arrived at conclusion of guilt of the appellants and convicted them as stated above which has been assailed in this Appeal.

Submissions on behalf of appellants: -

8. Assailing the impugned judgment, learned counsel for the appellants has raised following points: -
 - (i) There is delay of two days in lodging the F.I.R. without offering any cogent and reliable explanation. In the facts and circumstances of the case, unexplained delay of two days renders the entire prosecution story as fabricated and concocted one.
 - (ii) There are material contradictions and infirmities in the evidence of prime witnesses namely P.W.-1, Victim, P.W.-2 Javni Toppo and P.W.-4, Raju Samad, who have been declared hostile by the prosecution as regards the commission of rape with the victim.
 - (iii) It is admitted by the victim girl that she was not acquainted by name and face with the accused persons, her story about identification of accused persons is absolutely

unreliable. No TIP was conducted in this case to identify the accused persons.

(iv) The victim was medically examined after three days of the occurrence and no mark of injury was found on her body either internal or external. She has been opined in the habit of sexual intercourse but in her cross-examination, she has stated that it was the first time when her virginity was broken.

(v) The manner in which the occurrence is alleged to be happened cannot be believed at all. The victim has stated that after first commission of rape with her, she became unconscious, then other accused persons also committed rape with her. She regained consciousness, then raised alarm, then P.W.-4 Raju Samad had arrived, that is also not a mere chance, rather, she was acquainted with Raju Samad and under physical relationship with him, prior to alleged occurrence.

(vi) The victim along with Raju Samad went to house of her grandmother, although in the same village, her own parental house was situated but she went to her own home, in the next day morning.

(vii) P.W.-2 Javni Toppo happens to be own maternal aunt (Mausi) of the victim, whose marriage engagement was scheduled on the very next day of occurrence i.e. 04.12.2001. There is clear cut evidence of her father (P.W.-9) that on the date of occurrence, Javni Toppo did not go out from her house

because in the next day, her engagement was scheduled and her in-laws family had to visit on his own house, therefore, the whole story as projected by victim that she met with Javni Toppo in the way who was also chased by accused persons absolutely becomes falsified as per the evidence of her own maternal grandfather (P.W.-9). The Seizure List prepared by I.O. also appears to be manipulated within two days gap, prior to lodging the F.I.R. The victim has deposed during trial that only her undergarment was put off by the accused persons before commission of rape and after commission of the offence, she put on said underwear while returning to her own home but there is a seizure list of red color underwear allegedly of the victim which was never produced during trial and some pieces of Bengals is also alleged to be seized. Although, the victim was a class VI student and not a married woman who shall wear the Bengals. Moreover, all these seized materials were never put on TIP to establish that the same was belonging to the victim.

(viii) The victim has deposed that when she was being chased by accused persons, she left her cycle and wearing slippers but those articles were not seized from the place of occurrence and no whisper was made in the entire evidence whether the cycle was recovered or not. The entire evidence led by the prosecution appears to be shrouded with doubt and motivated with falsehood, whatsoever reason may be behind it,

but the same indicates that the victim was seen under compromising position with her friend Raju Samad (P.W.-4) which could be probably the reason for false implication of the accused persons.

(ix) The medical examination report of the victim also does not corroborate the commission of gang rape with her.

(x) It is settled position of law that in case of rape, no independent witness can be searched out to corroborate the prosecution story rather the testimony of victim, if appears to be absolutely reliable, can form basis of conviction. It is also trite that if the evidence of victim and other circumstances appears to be tainted with falsehood and not reliable at all and the testimony of the victim is of shaky nature and finds no corroboration from any independent source, the benefit of doubt must go to the accused persons.

In the premises of above contentions, learned counsel for the appellants submits that impugned judgment and order is based upon improper appreciation of evidence and giving undue weightage to the evidence of victim which is not absolutely reliable, as such, the same suffers from serious error of law and liable to be set aside. Appellants deserve acquittal from the charge levelled against them. These appeals have merits and fit to be allowed.

Submissions on behalf of the State

9. On the other hand, learned A.P.P. appearing for the State has submitted that the learned trial Court has very wisely and aptly appreciated and analyzed the evidence available on record and rightly convicted the appellants. The impugned judgment of conviction and sentence of the appellants does not suffer from any illegality or infirmity, calling for any interference. There is no legal substance in the grounds raised on behalf of the appellants. It is a serious and heinous offence of gang rape committed with a virgin victim girl. Therefore, the appellants do not deserve any leniency in the matter of sentence rather they have been adequately punished by the learned trial Court awarding the imprisonment for 10 years. These appeals are devoid of merits and fit to be dismissed.

10. We have gone through the record along with the impugned judgment in the light of rival contentions of the parties.

11. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellants suffers from any error of law, which requires any interference in these appeals?”

Analysis, reasons and decision:

12. Before imparting our verdict upon the above point, we have to take brief resume of the evidence of witnesses examined in this case.

P.W.-1 is the informant-cum-victim girl. She has disclosed her age to be 14 years on the date of occurrence. Reiterating the version contained in the F.I.R., she has deposed that she is a student of Class (VI) in Sant Monika Middle School, Manoharpur and used to reside in a rented house at Gopipur, Turi Tola. On 03.12.2001 (Monday), in the evening at about 4 pm, she proceeded from Gopipur Turi Tola by her cycle to go to her home situated in Village Jharbera for bringing groceries. When she reached at Trila Chowk, then, her co-villager girl Javni Toppo aged about 18 years met her and she also boarded on her cycle and proceeded further. When she reached near Raikera where road was situated on Hillock, then both got down from cycle and started walking towards their home with cycle and reached near Getti Gegha of village Raikera towards the Bandhu Nasa. In the meantime, appellants Mangilal Mahto, Postman, Raikera, Udhisther Mahto, Anand Mahto and Bhutku @ Nishikant Mahto stopped them and started chasing. Then, she along with Javni Toppo started fleeing away but got tired and fell down with her cycle. Javni Toppo managed to flee away but she was caught hold of by the accused persons, who gagged her mouth and brought towards Lokra Huri Hillock, laid her down on earth and after putting off her undergarments, all the accused persons committed rape on her one by one. She became unconscious. when, she regained

consciousness, the accused persons had already fled away. She raised alarm for help. Meanwhile, Raju Samad (P.W.-4) who is also co-villager of accused persons came to rescue her and also brought water from a pond and served her. Sometime, she concealed herself along with Raju Samad in bushes due to fear of accused persons. Thereafter, she along with Raju Samad came to village Jharbera at the house of her maternal grandmother (P.W.5) and Raju Samad (P.W.-4) went to his home. She has further deposed that her maternal grandmother told her that Javni Toppo along with her elder brother Banu Toppo and younger brother of this witness John Paul Kachhap have gone out of house in search of her. She also narrated the incident to her maternal grandmother. In the next morning, i.e., 04.12.2001, she went to her own house in village Jharbera and narrated the incident to her parents. On that day, engagement was scheduled of Javni Toppo and several relatives had to come at her house, hence information was not given to police and she lodged the report on 06.12.2001. She has further deposed that she was acquainted with the accused persons prior to occurrence. She has proved her whole *fardbeyan* and signature over it as Exhibit 1 and 1/1, respectively and also identified the accused persons present behind the dock.

This witness has been cross-examined by the defence at length wherein she admits that she was acquainted with Raju Samad (P.W.-4) from one year back who used to come at her native village Jharbera. She further admits that her school time is 10:00 am to 04:00 PM but on Saturday school time is from 06:00 am to 11:00 am. On the date of occurrence i.e. 03.12.2001, the school was closed at 4 PM, thereafter she went to her rented quarter at Gopipur and after changing cloth proceeded for her own village at about 5:00 pm. **She further admits that except accused persons, she does not know any other person of village Raikera with name. She has further disclosed the source of acquaintance of the accused persons saying that they used to come at her village for picking firewood and Mahua.** She was not in talking term with the accused persons. She further states that no one has disclosed the name of accused persons to her. But villagers were calling the accused persons by name, hence, she came to know their name but again failed to disclose the name of person who was calling the accused persons by name.

She further admits that while she along with Javni Toppo (P.W.-2) were fleeing away, then accused Anand Mahto and Mangilal Mahto caught hold of her and accused Nishikant Mahto and Udhisthir Mahto caught hold of Javni Toppo. All the accused persons along with victim girl were proceeded

towards same direction but Javni Toppo anyhow liberated herself and fled away.

She further admits that when the accused persons were taking her towards Likri Guri Pahari, her slipper was left out and she was dragged about 60-70 yards on rocky way but she got no injury on her leg. She also admits that prior to occurrence, she was virgin and never got any physical relationship with any male person. She regained consciousness about half an hour of occurrence. She wore her underwear after the incident. She has also disclosed that when she reached at the house of her maternal grandmother in the night, she disclosed the incident to her but it was informed by her Nani that Javni Toppo, Banu Toppo (maternal uncle of this witness) or P.W-7 had gone in search of her. She has denied the suggestion of defence that she had illicit relationship with Raju Samad (P.W.-4) which was seen by the accused persons. Hence, she has lodged false case in connivance with Raju Samad against the accused persons and giving false evidence.

P.W.-2, Javni Toppo is another important witness. According to her evidence, on the date of occurrence, she was returning from Manohaupur after doing her work. In the way, she met with the informant and proceeded to village Jharbera, when they reached near Bandhu Nasa village, then four boys of Raikera village met them and started following them. Then,

she fled away and disclosed the above story to her brother Banu Toppo (P.W.-8) and Pawan Toppo (Brother of Informant) and along with them proceeded in search of the informant but she could not meet in the night. She further states that in the mid night, Raju Samad left the informant at village Jharbera in the house of her maternal grandmother. Then, informant disclosed about the commission of rape by four accused persons. She has identified all the accused persons behind the dock but failed to disclose their name.

In her cross-examination, she admits that she does labour work and on the date of occurrence also, she was doing labour work at Manoharpur and got leave about 6 PM, then proceeded for her own village Jharbera walking on foot. She also admits that from the place where she fled away due to fear of accused persons, the cycle of the victim girl was dropped there but when she again went in search of the victim, she did not find her cycle. When she was fleeing away, she also disclosed about the incident to nearby villagers and went in search of informant but she could not be found. She also admits that after the occurrence, she met with the informant in the next day morning, when she was fetching water from well. **She further admits that accused persons were acquainted with her prior to occurrence and occasionally she was talking**

with them. She further states that informant is her cousin sister.

She has denied the suggestion of defence that she has given false evidence and had no knowledge about the occurrence.

P.W.-3, Dr. Deep Sikha Verma has medically examined the victim girl on 07.12.2001 at about 11 AM and found following:

- (i) Height- 5'1/2", weight -45 kg.
- (ii) Secondary sex character well developed
Auxiliary and public hair – present
Mark of identification-mole of left cheek.
- (iii) Dental Formula

2122	2122
2122	2122
- (iv) Uterus- Anteverted, normal size mobile fornix clear.
Hymen ruptured. Vaginal Orific admits two fingers.
- (v) Vaginal Swab- No spermatozoa, alive or dead found,
pus cell-nil. R.B.C.-Nil epithelial cell presents in fair
number, bacteria present.
- (vi) X Ray-fusion of epiphysis lower end radius and ulna-
not complete.
Fusion of epiphysis of iliac crest not complete.
- (2) **Opinion** (i) Victim in habit of habitual intercourse.
- (ii) Age of victim-below 18 yrs.

- (iii) No injury on genital or any part of body. This witness has proved this medical report which is marked as Ext.-2.

P.W.-4, Raju Samad is also prime witness of this case, who has saved the victim and brought her at maternal grandmother's house. According to his evidence, he is acquainted with victim girl/informant who is resident of village Jharbera. He has further deposed that his maternal uncle resides in village Raikera. He also used to reside there. The informant used to go to her school passing through village Raikera. He has further deposed that on 03.12.2001 in the evening while he was returning from village Bandhu Nasa and reached near Pokhar, he heard alarm of a girl and rushed towards the place of sound **and when reached at the place of occurrence, he found the informant was lying unconscious. No any other person was present there.** The girl was asking for water, then, he brought some water from nearby pond and served her and also sprinkled some water on her face. He has further deposed that on request of victim girl he went to her maternal grandmother's house at village Jharbera and returned back.

He has given a serious jolt to the prosecution story saying that the victim did not disclose about the incident. On this point, this witness has been declared hostile by the prosecution and his attention has been drawn towards the

statement recorded under Section 161 Cr.P.C. where he has disclosed the name of all the accused persons as disclosed by the victim girl to him.

P.W.-5 Saundi Toppo is the maternal grandmother of informant/victim girl. According to her evidence, Javni Toppo (P.W.-2) is her daughter and informant of this case is her granddaughter (Natini). She has deposed that on the date of occurrence, her daughter Javni Toppo returned to home from Manoharpur and told that in the way she along with informant were stopped by some boys of Raikera village but her daughter Javni Toppo managed to flee away and her Natini was caught by accused persons. **Her daughter Javni Toppo (P.W.-2) had not disclosed the name of any of the miscreants who intercepted in her way along with the informant.** Later on, informant was brought to home of this witness in the night with a boy but at that time, she was in sound sleep, hence did not ask anything about her Natini. She was also not interrogated by the police in relation to any occurrence.

She has been declared hostile by the prosecution and her attention has been drawn towards statement under Section 161 Cr. P.C. wherein she stated that when her daughter Javni Toppo returned to home, she disclosed that Mangilal Mahto, Anand Mahto, Udhisthir Mahto and Nishikant Mahto chased her and the informant in the way but she anyhow managed to

flee away. She has also denied any statement before the police that after receiving information from Javni Toppo, her son Banu Toppo (P.W.-8) and grandson Jaun Paul Kachhap (P.W.-7) along with Javni Toppo went in search of the informant. She has also denied any statement that the victim girl has disclosed about commission of rape by all the four accused persons, after arrival to home in the night itself, she has clearly admitted that she had no personal knowledge about the occurrence.

P.W.-6 Anjela Kachchap is the mother of informant. According to her evidence also, in the next morning of the occurrence, her daughter met with her and told that she along with Javni Toppo were returning to home, then she was raped by some boys of village Raikera. Her daughter is handicapped by one hand and she could not escape away but the Javni Toppo fled away from the place of occurrence. **She also admits that her daughter did not disclose the name of any accused persons who had committed rape with her.** This witness has also been declared hostile by the prosecution to the extent that the name of the accused persons was disclosed to her by the informant which she is not disclosing.

P.W.-7, John Paul Kachhap is the tender year boy of 12 years and brother of the informant. According to him, on the date of occurrence, in the night, Javni Toppo was returning along with victim girl, where four accused persons caught hold of her and

anyhow, she managed to flee away. In the night, the informant came to house along with Raju Samad. He has stated nothing about the commission of rape with the victim girl.

P.W.-8, Banu Toppo is the tender witness.

P.W.-9 Nandowa Kachchap is the father of informant. According to his evidence, his daughter told him about the occurrence on 04.12.2001 in the morning stating that in the evening of 03.12.2001, some boys have misbehaved with her while she was returning to home along with Javni Toppo. His daughter has also disclosed the name of accused persons as Anand Mahto, Nishikant Mahto, Udhisthir Mahto and one other boy who was working in the post office. He could not lodge the FIR because on 05.12.2001, engagement of Javni Toppo was scheduled and relatives had to come.

In his cross-examination, he admits that Javni Toppo is his *saali* i.e. sister of his wife. He further admits that in the late night Javni Toppo did not disclose about the incident to him. His mother-in-law, brother-in-law and sister-in-law also did not disclose about the incident in the night. **He further admits that on 03.12.2001, about 15-20 relatives had come to house from Orissa in connection with engagement of Javni Toppo, hence, on that day, Javni Toppo did not went for work anywhere.** He did not go in search of his daughter in the night because he had no knowledge about the incident. He also

admits that at first the informant narrated about the incident to her mother and nothing was told to him and he came to know about the incident from his wife. He has denied the suggestion of defence that he has given evidence due to enmity with the accused persons.

P.W.-10 Hemant Kr. Lakara is a local villager who has proved his signature as Exhibit 3 and 3/1 in respect of seizure of red color underwear, hanky and pieces of Bengals, etc. from the place of occurrence. In his cross-examination, he admits that the seized materials bear no marks of identification.

P.W.-11, S.I. Srikant Singh is Investigating Officer of this case. According to his evidence, on 06.12.2001, he was posted as J.S.I., Manoharpur Police Station, on that day, informant along with her father came to Police Station and her *ferdbeyan* was written by the then Officer-in-charge Sr, Rajiv Ranjan. He has proved the formal FIR as exhibit-4 and the signature of Nandowa Kachhap on the *ferdbeyan* as exhibit 1/2. Charge of investigation was given to this witness on the same day. He has recorded restatement of the informant and her father Nandowa and mother Anjela Kacchap in the course of investigation. He further interrogated with witnesses Jamini Toppo, Banu Topp, Jaun Paul Kachhap and Raju Samad, etc. He has further deposed that he visited the place of occurrence which is situated towards southern side of Raikera to Jharbera

road. At Lokra Huri Hillock covered with forest and bushes and rocky land. He has further deposed that **adjacent to the place of occurrence, from a bush, underwear, hanky and pieces of Bengals of informant were recovered. The seizure list of above materials was prepared by him in presence of two independent witnesses** which is marked as Exhibit -5. He sent the victim for medical examination on 07.12.2001 and obtained medical report. He has arrested only one accused person namely Udhisthir Mahto and other accused persons have surrendered before the Court. After finding sufficient evidence, he submitted charge-sheet against the accused persons.

In his cross-examination, **this witness admits that he has not mentioned in the case-diary as to who has identified the place of occurrence and further recollects that place of occurrence was identified to him by witness Raju Samad (P.W.-4) and on the same day, he recorded statement of Raju Samad.** He further states that about the seized materials mentioned in the seizure list the informant in her statement had disclosed but she has not disclosed about color of above materials. He has not conducted TIP of the seized materials from the informant. The attention of this witness has been drawn towards the statement of P.W.-2 Javni Toppo wherein she has not stated before this witness that she has disclosed

about the incident to the informant's brother. He has denied the suggestion that his investigation is defective and he has submitted charge-sheet against the accused persons without sufficient evidence.

13. We have given thoughtful consideration to the evidence of prime witnesses examined in this case as well as the second category witnesses who have come to know about the incident from victim girl, in the light of other attending circumstances brought on record by the medical officer as well as I.O. Upon thorough scrutiny of the evidence of prime witnesses, it is crystal clear that the informant proceeded from Gopipur to her village Jharbera at about 5 pm as it was Monday and school closed at about 4 pm. She also admits that from the place of occurrence, she proceeded by cycle and it would take about one and half hour to reach her home. Just After covering a distance of about 30 minutes, she visited her friend Javni Toppo (P.W.-2) who also accompanied her on the same cycle. The real story starts thereafter as covering some more distance they got hilly area in between the village Bandhu Nasa and Raikera. The accused persons/appellants intercepted them, caught hold of them and started pushing towards bushy area of rocky road. P.W.-2, Javni Toppo managed to flee away but informant was crushed by the accused persons by fulfilling their sexual lust one by one due to which the informant became unconscious.

The story further turned around when informant regained consciousness after half an hour of the occurrence and started shouting for help. The hero in the shape of Raju Samad (P.W.-4) appeared as godfather of the informant, who served her water and also brought her at the home of maternal grandmother of the victim at about 12 PM and went away to his own home.

14. It is admitted fact that the informant-cum-victim did not disclose the above ghastly occurrence to her maternal grandmother in the night when she arrived at the home. It is also very surprising that P.W.-2, Javni Toppo who fled away from the place of occurrence escaping herself and returned to home did not talk about the incident to her mother or any other family members and even to the parents of the informant. It is admitted position that P.W.-2 is none else but Mausi of the informant and sister of her own mother. P.W.-9, father of the informant has also stated that Javni Toppo is sister of his wife (Saali in relation).

15. It is stated by P.W.-1 and P.W.-2 that the accused persons/appellants met them in between 6:00-6:30 pm and from the place of occurrence, they can reach to their home within 15 minutes. It is also admitted that from the house of P.W.-2, the house of the parents of the victim is very close and may be covered within 10 minutes. Therefore, if P.W.-2 was present at the time of occurrence and she managed to escape and returned

to home in between 7:00-7:30 PM in spite of knowledge of such a serious offence being committed by the accused persons with a tender year girl, she kept herself mum and disclosed to no one including her mother and parents of the informant does not stand to reason. Further presence of P.W.2 at the spot is also doubted from her own testimony wherein she admits that she is working as a labour and on the date of occurrence, she worked till 6 PM, thereafter proceeded to her home through same way which was adopted by P.W.-1. She also admits that she was going on foot and walked about 30 minutes then P.W.-2 met with her at Trila Chowk.

16. As against it, P.W.-1 proceeded from Gopipur by cycle at about 5 PM, then it is impossible to meet at the place as disclosed by P.W.-2 Javni Toppo when she was going by foot.

17. The other point showing non-presence of P.W.-2 appears from the evidence of P.W.-9 who is father of P.W.-1 and brother-in-law of P.W.-2 that on 03.12.2001, the marriage engagement ceremony of P.W.-2 was scheduled and several relatives from the Orissa had come. Therefore, P.W.-2 did not go anywhere on that day. The conduct of P.W.-2 in the light of evidence of her close relatives cast a serious cloud about her presence at the place of occurrence.

18. So far, the manner of identification of the accused persons is concerned, the victim has disclosed a very strange story.

Initially, she admits that she was acquainted with the accused persons from one year prior to the occurrence because they used to come at her village for picking firewood and Mahuwa but no one disclosed their name to her. She improves and says that some villagers were calling them by name and again failed to disclose the name of any villagers who were calling the accused persons by name. P.W.-2 has also given a similar story regarding acquaintance with the accused persons prior to the occurrence. The parents of the informant have clearly admitted that the name of the accused persons were not disclosed to them. Similarly, P.W.-5, the grandmother of the informant also expressed that the name of accused persons was not disclosed to her either by P.W.-1 or P.W.-2. The brother of informant has been tendered having no knowledge of occurrence. Then, a common question arises here as to who was instrumental in disclosing the name of accused persons to the victim girl. Admittedly, she has developed intimacy and friendship with P.W.-4 Raju Samad prior to one year. It is not just a chance that at the time of occurrence when P.W.-1 became unconscious and after regaining conscious started shouting for help, Raju Samad as a Hero approached there and none else. This story speaks some other things.

19. Similarly, place of occurrence was not identified by the informant as admitted by the I.O.(P.W.-11), rather, it was the

Raju Samad (P.W.-4) who identified the place of occurrence as well as seized materials were searched from the bushes. Here, at this juncture, the seized materials like red color underwear, pieces of Bengals, Hanky were not put for identification by the informant. Moreover, such type of recovery is itself doubtful when the informant herself admits that after commission of rape with her, she wore underwear and went to her house. Then, there was no question of recovery of any underwear of the victim.

20. In view of the above glaring suspicious circumstances, no credence can be attached to the testimony of P.W.-1, P.W.-2 and P.W.-4. It has also surfaced that P.W.-4 Raju Samad has been turned hostile. He also admits that the victim has not narrated to him about the commission of rape with her nor the name of any miscreants. In spite of this fact, attention of I.O. has not been drawn towards above contradiction/omission appearing in the evidence of P.W.-4 by the prosecution.

21. The story of commission of gang rape with the victim also stands falsified by medical report of the victim wherein no mark of injury was found on her body either external or internal. No sign of recent rape was also found and the victim was opined to be habitual of sexual intercourse. As against it, the victim in her evidence has stated that it was her first experience of sexual intercourse, when the incident took place.

In the above suspicious circumstances, delay in lodging the F.I.R. becomes fatal to prosecution case, casting serious doubt against the occurrence as projected by witnesses.

22. Although, it is settled principle of law that there is no legal impediment in basing the conviction of the accused for the offence under Section 376 of the IPC solely on the basis of testimony of the victim without further corroboration from any independent source. But the condition is that the victim must be wholly reliable and her evidence must not suffer from any malice, falsehood or concoction.

23. In the instant case, we have noticed as discussed above, several circumstances appearing in the evidence of witnesses clearly indicating that not only the prime witnesses P.W.-1, P.W.-2 and P.W.-4 are making absolutely false story, contradictory to each other and further falsified by the evidence of close relatives who have been examined in this case as P.W.-5, P.W.-6, P.W.-7, P.W.8 and P.W.-9. Therefore, false implication of the accused persons/appellants for whatsoever reasons cannot be overruled.

24. In our considered view, the learned trial Court has failed to scrutinize the evidence of witnesses comparing the probative value of their testimony. The cumulative effect of the evidence of primary witnesses P.W.-1, P.W.-2 and P.W.-4 and other circumstances brought on record by the close relative witnesses namely P.W.-5, P.W.-6, P.W.-7, P.W.8 and P.W.-9 as well as

delay of three days in lodging the F.I.R. in this case leads towards conclusion that the prosecution has miserably failed to prove the chain of events against the appellants beyond all reasonable doubt, rather, the whole prosecution story as projected by witnesses cannot be believed to be true and convincing. Therefore, conviction of the appellants suffers from serious error of law and beyond the weight of evidence on record.

25. Therefore, we are constrained to set aside the impugned judgment and order of conviction and sentence of the appellants.

26. Accordingly, **these Appeals are allowed** and appellants are acquitted from the charges leveled against them.

27. The appellants are on bail; hence, they are discharged from their liabilities of bail bonds. The sureties are also discharged.

28. Pending I.A(s), if any, is also disposed of, accordingly.

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

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 26/02/2026

Basant/-N.A.F.R.

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