

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 881 of 2010**

1. Manoj Kumar Koshaley S/o Shiv Prasad Koshaley, aged about 25 years, occupation Agriculturist, R/o village Raurpur, police station Bemetara, District Durg, Chhattisgarh.
2. Rajendra Kumar Koshaley S/o Chhilbi @ Dauram Koshaley, aged about 23 years, occupation Student B.A. Final, R/o Village-Raurpur, P.S. Bemetara, District Durg, Chhattisgarh.
3. Raju Dhritlahare S/o Mukund Dhritlahare, aged about 21 years, occupation Student 12th Class, R/o Village Hathband, Police Station-Bhathapara, District Raipur, Chhattisgarh

---- Appellants**Versus**

State of Chhattisgarh through Station House Officer, police station Bemetara, District Durg, Chhattisgarh.

---- Respondent

For Appellants	:	Shri J.K. Shastri, Advocate.
For the Respondent/ State	:	Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****19/08/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.11.2010 passed by the Learned Additional Sessions Judge (F.T.C.), Bemetara, District Durg, Chhattisgarh in Sessions Trial No. 27 of 2010 whereby and whereunder the learned trial Court after holding the Appellants guilty for wrongful restraint and committing gang-rape with the prosecutrix (PW-1), convicted all the Appellants under Sections 341 and 376(2)(g) of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced them to undergo rigorous imprisonment for 20 days, also to pay a fine of ₹300/- in default of payment of fine to further undergo R.I. for four days and RI for 10 years

and also to pay a fine of ₹5,000/- in default of payment of fine to further undergo R.I. for one year, with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, Learned Court below has convicted and sentenced the Appellants as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, on 30.03.2010, when the prosecutrix (PW-1) was returning from her school examination, in between the villages of Balsamund and Khairi, the Appellants committed gang-rape against her will and consent. Thereafter, when she returned home, she lodged a report against the Appellants. At the time of lodging the report, she was not in a fit condition to depose the entire story. Thereafter, when she regained stability, she informed to her parents regarding the gang-rape committed by the Appellants. She lodged the First Information Report (Ex. P/2). The police conducted investigation, seized her undergarments and sent them for examination. Dr. Smt. Rajshree Devdhar (PW-8) examined the prosecutrix and noticed abrasions over her left back shoulder, abdomen and found that hymen was recently ruptured. She gave her report vide Ex. P/13.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The Appellants were arrested and their undergarments were seized. They were examined and found that they were capable of committing intercourse.

(5) After completion of the investigation, charge-sheet was filed before the Judicial Magistrate, First Class, Bemetara, who, in turn, committed the case to the Court of Learned Additional Sessions Judge (FTC), Bemetara, District Durg, Chhattisgarh, who received the case and conducted the trial.

(6) During trial, the Court below framed charges under Sections 341 and 376(g) IPC. The prosecution examined 13 witnesses to prove the guilt of the Appellants. Statements of the Appellants were recorded under Section 313 of the Code wherein the Appellants denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.

(7) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the Appellants for the charges under Sections 341 and 376(g) of the IPC.

(8) Learned counsel appearing on behalf of the Appellants submits that he is not contesting the appeal on its merits regarding conviction under Sections 341 and 376(g) of the IPC. He is confining his argument to the quantum of punishment only. Learned counsel further submits that at the time of commission of the alleged offence, the Appellants were in the age group of 21-23 years and they are the first offenders with no criminal antecedents and are languishing in jail since 30.11.2010. During trial, Appellant No.1 – Manoj Kumar Koshaley remained in jail for 99 days, Appellant No.2 – Rajendra Kumar Koshaley remained in jail for 36 days and Appellant No.3 Raju Dhritlahare remained in jail for 35 days. They are not having any criminal antecedents and they will not commit

any offence in future. As per the provisions of law as prior to the Criminal Law Amendments Act, 2013 with effect from 3.2.2013, the Appellants are not assailing the conviction imposed upon them and prays for consideration on the question of quantum of the sentence.

(9) Looking to the age of the Appellants at the time of commission of offence and the fact that they are the first offenders, Learned counsel for the Appellants lastly submits that the Appellants be given an opportunity to live peacefully in the village and society and the sentence imposed upon them may appropriately be reduced.

(10) On the other hand, Learned Counsel for the Respondent/State opposing the submissions advanced on behalf of the Appellants submitted that looking to the act committed by the Appellants with the prosecutrix, the trial Court has rightly awarded the minimum sentence, which is appropriate. Hence, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

(11) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(12) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(13) The Appellants have not assailed the conviction imposed upon them and prays for consideration on the question of quantum of the sentence.

(14) Even otherwise on perusal of the entire evidence, I do not find any illegality or impropriety committed by the trial Court in passing the

impugned judgment of conviction, as such the judgment of conviction warrants no interference. The trial Court also sentenced for fine to the Appellants for the offence under Sections 341 and 376(g) of the IPC and sentenced them to pay a fine of ₹300/- in default of payment of fine to further undergo R.I. for four days and also to pay a fine of ₹5,000/- in default of payment of fine to further undergo R.I. for one year, respectively. In view of this, the fine sentence imposed upon the Appellants and also substantive jail sentence under Section 341 of the IPC is not on higher side and as such the same does not warrant any interference.

(15) So far as the quantum of substantive jail sentence under Section 376(g) of the IPC is concerned, the Appellants were convicted and sentenced under Section 376(g) of IPC to undergo rigorous imprisonment for 10 years with a direction that both the substantive jail sentences shall run concurrently.

(16) The Appellants, at the time of commission of offence, were at the age group of 21 to 23 years and they all belong to same village and community. They are the first offenders with no criminal antecedents. Looking to the entire facts and circumstances of the case and as per Criminal Amendment Act, 2013, the Court is empowered to reduce the sentence of imprisonment for a term less than ten years, for special reasons to be mentioned in the judgment.

(17) On due consideration, I am of the view that the sentence imposed upon the Appellants deserves to be reduced appropriately to meet the ends of justice.

(18) Consequently, the appeal filed by the Appellants is allowed in part. The conviction awarded against the Appellants is hereby affirmed. Fine sentences and the substantive jail sentence under section 341 of the IPC awarded by the trial Court is also hereby affirmed. So far as substantive jail sentence under Section 376(g) of the IPC is concerned the same is modified and instead of RI for 10 years, the Appellants are sentenced to RI for 5 years each alongwith the benefit of set off as per paragraph 39 of the judgment of the trial Court. The Appellants are also entitled for any remission given under the Rules.

(19) In view of the above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE