

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 38 of 2001**

Narbadiya Bai W/o Shri Biselal Aged about 30 years, Resident of village Attara,
Police Station Ambagarh Chowki, District Rajnandgaon, Chhattisgarh

---- Applicant**Versus**

1. Bhagwat @ Bhaggu S/o Mehhattar Lal Mochi, Aged 45 years, R/o village Attara, Thana Ambagarh Chowki, District Rajnandgaon.
2. The State of Madhya Pradesh (Now the State of Chhattisgarh) Through Police Station Ambagarh Chowki, District Rajnandgaon.

---- Non-Applicants

For Applicant	:	Shri Utsav Mahisvar, Advocate
For Non-Applicant No. 1	:	Shri S.S.Baghel, Advocate.
For Non-Applicant No. 2	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board**Per Deepak Gupta, Chief Justice****26/10/2016**

1. This criminal revision is directed against the judgment dated 05.09.2000 passed by the Sessions Judge, Rajnandgaon, in Sessions Trial No. 82 of 2000 whereby he acquitted the Accused/Applicant-Bhagwat @ Bhaggu of having committed offence punishable under Section 450 and 376 of the Indian Penal Code.
2. FIR (Exhibit P-1) was lodged at the instance of the prosecutrix (name withheld) (PW-1) in which she stated that she is a resident of village Attara, District Rajnandgaon. On the previous day (Tuesday), she was sleeping on the floor of her hut. At about 10:00 pm, one man entered the house, lifted her saree

and *lehanga* and forcibly committed sexual intercourse with her. When she tried to raise alarm, the said person covered her mouth and prevented her from raising an alarm. After he had committed rape, the man ran away and then she shouted "chor-chor". Thereupon, Sendas (PW-2) and other villagers gathered and Sendas informed her that the person who had ran away was the Applicant-Bhagwat. It is important to note that the prosecutrix did not name the person who allegedly committed rape upon her but according to her she was told by Sendas (PW-2) that the person who had ran away was the Applicant-Bhagwat. When the prosecutrix appeared in the Court, she named the Accused as the person who had committed rape upon her. She also stated that she knew the Accused for the last many years since he was also resident of the same village in which she was residing. She was confronted with the FIR (Exhibit P-1) from which it is clear that the name of the Accused was told to her by Sendas (PW-2). The learned Trial Court held that in this view of the matter, chances of their being consensual intercourse cannot be ruled out and acquitted the Applicant-Accused. Being aggrieved, the prosecutrix has filed the present criminal revision.

3. We have carefully gone through the records of the case.

4. In revisional jurisdiction, we cannot substitute our view with the view of the trial Court unless the view taken by the trial Court is totally perverse or is such which no reasonable man can take. This Court while exercising revisional jurisdiction cannot reassess the evidence. It is more than amply clear that the prosecutrix had not named the person who had committed forcible sexual intercourse with her. If the Applicant was guilty, the prosecutrix could have easily named him because admittedly she knew the Applicant for many years. In fact, a suggestion has been put to her that she had illicit liaison with the Applicant. She has denied the suggestion.

5. Another aspect of the matter is that the prosecutrix admits that a her 12 years old son was sleeping in the same room. A 12 year old child is not such a small child who would be unaware of what has happened in the room. The son has not been examined. According to the prosecutrix, her father-in-law was sleeping just outside the room. He has also not been examined. In this view of the matter when the son and the father-in-law have not been examined and that the prosecutrix in the initial report has not named the Applicant/Accused as the culprit, the view taken by the learned trial Court cannot be said to be a totally erroneous or perverse view.

6. We do not find that this is a case where we should exercise our revisional jurisdiction. It is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE