

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2324 of 1998**

1. Hariram son of Jhaduram Sidar, aged about 23 years, resident of village Paterapali Jhurd, PS.Sakti, Distt. Bilaspur (Chhattisgarh)
2. Harishanker alias Konda alias Raju, son of Satan Singh Sidar, aged about 19 years, resident of village Paterapali Jhurd, P.S.Sakti, Distt. Bilaspur (Chhattisgarh)
3. Kholbahra Ram, son of Bhagauram Sidar, aged about 23 years resident of village Paterapali Jhurd, P.S.Sakti, Distt. Bilaspur (Chhattisgarh) --- **Appellants**

Versus

The State of Madhya Pradesh (Now Chhattisgarh) --- **Respondent**

For the appellants	:	Mrs. Renu Kochar, Advocate
For the State	:	Mr. Anupam Dubey, Dy.Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****31.07.2017**

1. This appeal is against the Judgment/order of conviction and sentence dated 22.09.1998 passed by the learned Court of Additional Sessions Judge, Sakti, Distt. Bilaspur in Sessions Trial No.170 of 1998 (*State of M.P Vs. Hariram and others*) whereby the appellants were convicted for the offence punishable u/ss 366 & 376 IPC and sentenced to undergo R.I., for 5 years and 7 years each and to pay a fine of Rs.1000/- & Rs. 2000/- respectively in respect of A-1 Hariram and Rs.1000/- & Rs.3000/- in respect of A-2 & A-3 Harishankar and Kholbahra with further default stipulation.
2. Briefly stated facts of the prosecution case are that on

13.12.1997 the prosecutrix had gone to answer the call of nature and at that time the present appellants caught hold of her and closed her mouth and threatened to her life and took her to a vacant house of one Chamar Singh who was watchman of the village and closed her inside. Subsequently on 14.12.1997 Hari Ram A-1, committed forcible rape, thereafter Hari Shankar @ Konda A-2 and Kholbahra Ram A-3 took her to a place at village Sakreli wherein she was subjected to rape and when the relatives of victim came, the incident was reported and the case was registered u/s 363, 366 & 376 read with section 34 of IPC.

3. Before the Court, the appellants have abjured their guilt and claimed to be tried. The prosecution during the course of trial has examined as many as 19 witnesses i.e., Meerabai (P.W.1), Dhiyabai (P.W.2), Salikram (P.W.3), Malikram (P.W.4), Bedram (P.W.5), Dileshwar Prasad (P.W.6), Chamru (P.W.7), Chitrarekha Bai (P.W.8), Bhagwat Singh (P.W.9), Kheraram (P.W.10), Inder Ram (P.W.11), Mohanlal Sahu (P.W.12), Taturam (P.W.13), Smt. C.K. Singh (P.W.14), Jayendra Singh (P.W.15), Surendra Singh (P.W.16), Smt. Madhulika Singh (P.W.17), Samaru Ram (P.W.18) and Dr. S. Chaterjee (P.W.19). The trial Court after evaluating the evidence of witnesses, had convicted and sentenced as aforementioned. Hence the instant appeal.
4. Learned counsel for the appellants would submit that the appellants have been falsely implicated; the prosecutrix was major on the date of incident and was a consenting party . He further submits that the statements of prosecutrix would show that in fact no rape has been committed and she

herself had gone with the appellants, therefore, the conviction and sentence is required to be set aside.

5. Per contra, learned State counsel supports the conviction and sentence of the Court below and submits that the judgment/order of the Court below is well merited which do not call for any interference by this Court.
6. Perused the case file of the trial Court and the statement of the prosecutrix and the relevant witnesses. The prosecutrix in this case has been examined as P.W.1. The statement of P.W.1 would show that she has stated that in the night of 13th of 1887 (month is not mentioned) at 11 o' clock when she went to answer the call of nature, at that time, accused Hariram, Harishankar @ Konda and Kholbahra all of them at the point of knife took her to the house of one Chamar Singh Kotwar. The house was in abandoned condition wherein Hari Ram was was locked inside along-with prosecutrix and from outside the door was locked by other accused. Thereafter, Hari Ram has committed forcible sexual intercourse. It is stated that in the night of next day, Kholbahara and Konda Ram came and opened the door and thereafter along-with Hariram and Kholbahara, she went to the place of Kholbahra i.e., village Patherapali wherein she stayed the whole night and in the morning, she went to village Sakreli wherein she was instructed that if some one asks about her identity she should say that she is wife of Hari Ram. It is stated that since she was pressurized and threat was extended, as such, when the in-laws of Kholbahara had asked about the identity of victim, she stated that she is wife of Hari Ram. She further stated that her age at the relevant time was 17-18

years.

7. Further with respect to age, P.W.6 Dileshwar Prasad who is Headmaster of the School of Ragja stated that he cannot tell that on what basis, the date of birth was recorded in admission register (Ex.P-14) but it has been written on the basis of 5th Class mark sheet and he did not know as to on what basis, she was admitted in Class I.
8. The radiological report which is marked as Ex.21-A is proved by P.W.19 Dr. S. Chatterjee. He stated that according to his opinion, at the time of examination which was stated to be on 08.01.1998 her age has been opined as 17-19 years as per Ex.P-21. In the cross examination, P.W.19 has further stated that according to the atmosphere and circumstances of hierarchy, dieting, etc., the same keeps on changing and 2 years on either side can also be added to or deducted from the age, therefore, the statement of Dr.P.W.19 if is read along-with Ex.P-21, the benefit of doubt goes in favour of accused to hold that the victim was major i.e., more than 18 years of age at the time of incident.
9. Now coming back to the statement of victim P.W.1, the allegation of sexual intercourse has been attributed to Hariram only. She further stated that she was taken from her house at the knife point, therefore, she did not raise any alarm. She has also stated that they passed through a lane and darkness was prevalent at the time when the accused were taking her through the lane to another house at village Patherapali, therefore, she did not identify the persons as to who were taking her and while going on foot they reached the house of Chamardas and her both hands were held by all

three accused and the knife was placed on her neck.

10. The statement u/s 161 Cr.P.C., of the victim is marked as Ex.D-1 wherein it has not been stated that while she was being taken to the house of Chamar Das, the knife was placed at her neck and it appears from the statement u/s 161 Cr.P.C., that certain omission and improvement have been made. She has further stated that at the time of incident, her mouth was closed by Hariram, however, her hands were free and as he was holding a knife, she did not resist. She further stated that they entered into the house of Chamar Singh from back door and while committing the act, her clothes were not taken out. She further stated that after the incident they stayed in the room at village Patherapali and from Patheripali at about 4 a.m., they started to go to Sakreli and village Sakreli was far off, as such, she went with the accused in a bicycle and sat on the front bar of the bicycle.
11. Describing the route leading to village Sakreli, it is stated that they passed through the road behind Sakti Police Station and arrived at village Patherapali but when she was going from Patherapali to Sakreli along with accused, on the way, they did not met any person and even at Patherapali they did not met any person. When she was brought to Sakreli, two ladies were also present there. She has also stated that at the time when she was going from Patherapali to Sakreli by cycle, she was accompanied by Kholbahra on his cycle. When she was asked by the Court about the veracity of her statement, she had stated that accused Hariram had gone on cycle and accused Kondaram had gone

to Sakreli by Bus and while she was going to village Sakreli at that time, they crossed the bus, however, she did not raise any alarm to say that she was being forcibly taken. She has further stated that even after arriving at village Sakreli, she has not disclosed it to the ladies about the incident who were present in the house. She stayed there for the entire day along-with the ladies and having asked her identity by the ladies, she stated that she was wife of Hariram. The map has been marked as Ex.P-4 which describes that while she was taken to the house of Chamar Singh, initially she passed through quite a distance to reach that house.

12. Dr. Maithili Singh in this case was examined as P.W.17. According to her, she had examined the victim and had given her report vide Ex.P-19 & P-20 wherein she has expressed that no definite opinion can be given about the rape. The examination report also do not show the presence of any mark of injury over any part of body of the victim.
13. If the statement of P.W.1, the prosecutrix, is analyzed, it would show that while she travelled along-with accused quite a long distance, she did not resist or raise any alarm. It further shows that she was locked in side the house along-with Hari Ram wherein she remained there for the entire night and on the next date, she came out from the room and in the night she went to other village and travelled on the bicycle. She never raised any alarm or resisted the company of accused. When she further reached at a house in village Sakreli, she met 3 women wherein she disclosed her identity as wife of Hari Ram. Consequently if the evidence is taken together, it would show that the prosecution has not been

able to prove that she was minor on the date. On the contrary, it has been proved that that she is major. The statement of prosecutrix on analysis would show that she was a consenting party. She remained with accused Hari Ram in a house and travelled to other village on bicycle and disclosed her identity as wife of Hariram. The statement, therefore, raises a doubt and leans in favour of Hari Ram about his non-involvement of crime. The allegation against the other two accused is that on the first day when she was taken away, Harishankar and Kholbahra also accompanied the other accused Hari Ram. Thereafter on the next day when she went along-with Hari Ram to other village which is at a quite distance they went by a bus, therefore, their involvement in the crime also is in doubt.

14. Taking into totality of the facts and circumstances of the case, the statement of victim do not inspire confidence so as to sustain the conviction. On the contrary the benefit of doubt should lean in favour of the accused appellants. Therefore, I am of the considered opinion that no positive evidence is available to sustain conviction. Consequently, the judgment/ order of conviction and sentence is set aside. The appeal is allowed. If the appellants are on bail, their bail bonds shall continue for a period of six months subject to the provisions of section 437 Cr.P.C.

**Sd/-
GOUTAM BHADURI
JUDGE**