

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 510 of 2004**

1. Sanjay Singh, S/o Lalan Singh aged 32 years
2. Robert Dishulwa, S/o Jeril Dishulwa, aged 33 years

Both R/o Village Surajpur, Police Station Surajpur, District Sarguja, CG

---- Appellants**Versus**

1. State of Chhattisgarh through PS Surajpur, District Sarguja, CG

---- Respondent

For Appellants	:	Shri A.K. Prasad & Shri Shakti Raj Sinha, Advocates
For Respondent/State	:	Shri Vivek Sharma, GA

CRR No. 336 of 2004

1. Kumari Rashmi Karnik, D/o Suresh Kumar Karnik, aged 19 years, C/o Shri Prahlad Rai Agrawal, Surajpur, District Sarguja, CG

---- Applicant**Versus**

1. Sanjay Singh, S/o Lallan Singh, aged about 32 years
 2. Robert Dishulwa, S/o Jeril Dishulwa
- Both R/o Village Surajpur, Police Station Surajpur, District Sarguja, CG
3. The State of Chattisgarh Through Collector, Sarguja, CG,

---- Respondents

For Applicant	:	None appeared
For Respondents/accused	:	Shri A.K. Prasad & Shri Shakti Raj Sinha, Advocates
For Respondent/State	:	Shri Vivek Sharma, GA

AND
CRA No. 669 of 2004

1. State of Chhattisgarh through Superintendent of Police, Ambikapur, District Sarguja, CG

---- Applicant

Versus

1. Sanjay Singh, S/o Lallan Singh, aged about 32 years
 2. Robert Dishulwa, S/o Jerril Disulwa, aged about 33 years
- Both R/o Village Surajpur, Police Station Surajpur, District Sarguja, CG

---- Respondents

For Applicant/State	:	Shri Vivek Sharma, GA
For Respondents/accused	:	Shri A.K. Prasad & Shri Shakti Raj Sinha, Advocates

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice RP Sharma

Judgment on Board by Pritinker Diwaker, J

28/06/2017

As the aforesaid Criminal Appeals and Criminal Revision arise out of the same judgment and order dated 24.5.2004 passed by Additional Sessions Judge, Surajpur, District Sarguja, in Sessions Trial No. 369/1994, they are disposed of by this common judgment.

2. Facts of the case in brief are that on 22.7.1994 written report Ex. P-2 was lodged by the prosecutrix (PW-3) – an unmarried girl aged about 19 years at the relevant time to the effect that she was working as teacher in the Shining Star School and on that day in between 1.30 and 2 PM when she

went into the room to change the dress, accused Sanjay Singh caught hold of her hand and took into another room. It is alleged that she raised an alarm calling the principal of the school namely Robert Dishulwa (one of the accused herein) for help but instead of giving protection he scolded her and forced her to go into the room along with accused Sanjay Singh. It is further alleged that accused Sanjay Singh then holding both her hands started removing her panty with one of his hands but having failed in doing so, he removed his own pant, mounted over her and committed forcible sexual intercourse with her and when she tried to raise alarm, he inserted the handkerchief in her mouth putting her under threat of her brother's life in case she did not submit to him. Written report further says that when the prosecutrix somehow managed to come out and asked accused Robert Dishulwa as to why he did like that, he again scolded her and acting upon the words of accused Sanjay Singh he drove her out of the school with a note of caution not to turn up again. Thereafter, she came home and narrated all her miseries to her mother and elder brother. Written report further says that all this was done by accused Sanjay Singh on the point of knife and the door was shut by accused Robert Dishulwa from outside. Based on this written report, FIR Ex. P-3 was registered on the same day at 9 PM against the accused persons for the offence punishable under Section 376 IPC. Prosecutrix was sent for medical examination to Primary Health Centre Surajpur but she was not examined there and

was referred to District Hospital Ambikapur but there also her examination was not done and ultimately she was medically examined at Vishrampur on 23.7.1994 by Dr. Pratibha Rajul Jain (PW-5). After arrest, accused Sanjay Singh was also medically examined on 26.9.1994 by Dr. K.N. Sharma (PW-6) vide report Ex. P-6. After completion of investigation, charge-sheet was filed against the accused/appellants for the offences punishable under Sections 376/34, 324, 323, 450 and 342 of the Indian Penal Code. Court below however framed the charge under Sections 342/34 and 376 (2) (g) against accused Sanjay Singh and under Sections 342 and 376 (2) (g) against accused Robert Dishulwa.

3. In order to prove its case the prosecution has examined 14 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. This apart, Dr. R.S. Verma (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties and going through the record the Court below acquitted the accused/appellants of the charge u/s 376 (2) (g) IPC but has convicted and sentenced them under Sections 376/511 and 342 IPC and sentenced them to undergo RI for three years with fine of Rs. 5000/- u/s 376/511 and RI for six months u/s 342 IPC plus default stipulation.

5. Aggrieved by the findings of conviction the accused/appellants have filed Criminal Appeal No. 510/2004 whereas aggrieved by their acquittal of the charge under Section 376 (2) (g) IPC Criminal Revision No. 336/2004 has been preferred by the applicant/prosecutrix herself and Criminal Appeal No. 669/2004 by the State.

6. Counsel for the accused/appellants submits as under:

(i) That the accused/appellants have been implicated in a false case as a counter blast of the report lodged against the father and brother of the prosecutrix by Robert Dishulwa (one of the accused herein) which is clear from the fact that the prosecutrix lodged the FIR only after the report was registered against these two persons in connection with his assault.

(ii) That on 22.7.1994 at 8 PM accused Robert Dishulwa was assaulted by Suresh Karnik (PW-2) - father of the prosecutrix and Ravi Kant Karnik (PW-9) - brother of prosecutrix for which a prompt report was lodged by him at 8.30 PM and it is as a counter-blast the prosecutrix too lodged a false report.

(iii) That in order to save themselves, Suresh Karnik (PW-2) and Ravi Kant Karnik (PW-9) forced the prosecutrix (PW-3) to lodge a report against the accused/appellants implicating them in a false case of rape.

(iv) That had the rape been committed by the accused/appellants in between 1.30 and 2 PM, report would have been lodged by the prosecutrix promptly and she would not have waited for about seven hours for doing so.

(v) That on the report of Robert Dishulwa, PW-2 and PW-9 were prosecuted for the offence punishable under Section 307 resulting in their conviction by the trial Court under Section 326/34 IPC.

(vi) That there is no evidence that the prosecutrix was working in the Shining Star School as teacher and that accused Robert Dishulwa was the principal of the said school.

(vii) That being the son of a Congress leader, accused Sanjay Singh has been implicated in a false case and in fact he had no connection with the said school. Even his presence in the said school at the relevant time is doubtful.

(vii) That accused/appellants have been implicated in a false case at the behest of K.K. Agrawal, Advocate with whom father of accused Sanjay Singh namely Lalan Singh was not having intimate relationship as he had helped accused Robert Dishulwa in lodging the FIR against PW-2 and PW-9.

(viii) That there are material contradictions and omissions in the statement of the prosecutrix.

(ix) That the other witnesses from the concerned school though are said to have been present at the time of alleged incident, they have not supported the case of the prosecution.

(x) That as per the material on record as many as 300 students and 10 staff members were available in the school and in these circumstances no prudent man would think of committing such an offence like rape.

(xi) That though the prosecutrix alleges to have been subjected to rape by accused Sanjay Singh, her medical report does not support her version as even her hymen was found to be intact.

(xii) That seizure witnesses Pravin Agrawal (PW-7) and Ashok Kumar (PW-8) have also not supported the case of the prosecution.

(xiii) That even if entire case of the prosecution is taken as it is, at best the offence under Section 354 IPC is made out against the accused/appellant Sanjay Singh and nothing against accused/appellant Robert Dishulwa.

(xiv) Reliance is placed on the decisions of the Apex Court in the matter of **Pandharinath v. State of Maharashtra (2009) 14 SCC 537**, in the matter of **Aman Kumar and another v. State of Haryana - AIR 2004 SC 1497**, in the matter of **Narender Kumar v. State (NCT of Delhi) - (2012) 7 SCC 171**, in the matter of **Lalliram and another v. State of Madhya Pradesh (2008) 10 SCC 69**, in the matter of **Sadashiv Ramrao Hadbe v. State of Maharashtra and another - (2006) 10 SCC 92** and in the matter of **Krishan Kumar Malik v. State of Haryana - AIR 2011 SC 2877**.

7. State counsel, on the other hand, supports the case of the prosecution and submits as under:

(i) That 8 hours delay in lodging the FIR in such cases where a young girl has been molested, is not fatal and cannot

be termed as inordinate one.

(ii) That whatever delay is there in lodging the report, the same has been properly explained by the prosecution assigning the reason that immediately after the incident prosecutrix disclosed the same to her mother and elder brother and in the evening at 6.30 PM when her father returned home, the matter was consulted and then the report was lodged.

(ii) That normally in the matters relating to sexual abuse, it is not so easy for the family members of the victim to immediately approach the police and vomit out the miseries having social implications for the victim throughout. Such matters are thought over thoroughly and after due deliberations as a last resort, the doors of police station are knocked to get the culprit punished.

(iii) That as regards the argument of the defence counsel that the prosecutrix lodged the report as a counter blast of the report lodged by accused Robert Dishulwa against PW-2 and PW-9, State counsel submits that no father or mother of a girl would take such a measure involving the reputation of his or her daughter and make her future a stigmatic one.

(iv) That according to accused Robert Dishulwa the report pertaining to assault on him was made at 8.30 PM whereas the prosecutrix lodged the report at 9 PM i.e. just half an hour thereafter, and therefore, it cannot be possible either for the prosecutrix herself or the witnesses PW-2 and PW-9 to cook up

an altogether false story of rape implicating the accused/appellants in the crime in question.

(v) That the prosecutrix herself has stated that all the female teachers were required to teach in the school only by wearing sari and that the prosecutrix used to come to school in Salwar suit and then change the dress in the school premises.

(vi) That on the date of incident when the prosecutrix went into a room for changing the dress, accused Sanjay Singh committed the crime in question whereas the accused Robert Dishulwa duly helped him in so doing.

(vii) That even if the hymen of the prosecutrix was found intact but from the record it appears that accused/appellant Sanjay Singh made an attempt to commit forcible sexual intercourse on her and that is why the spermatozoa was found on her pubic hair.

(viii) That though the hymen of the prosecutrix has been found intact, accused/appellant Sanjay Singh cannot derive any benefit of the same because to hold one guilty for the offence under Section 376 IPC even the slightest penetration is sufficient.

(ix) That though seizure witness Pravin Agrawal (PW-7) has not supported the case of the prosecution, he has duly admitted his signature on the seizure memo Ex. P-1.

(x) That the other seizure witness Ashok Kumar (PW-8) has duly supported the case of the prosecution.

(xi) That after seizing the pubic hair, it was sealed by the doctor and handed over to the police for being taken to Forensic Science Laboratory and before the chemical examination the seal was found intact.

(xii) That the absence of external injuries on the body of the prosecutrix does not have any adverse impact on the case of the prosecution.

(xiii) That if during trial some help is taken from a lawyer, it does not mean that it was just to falsely implicate the accused persons as everyone is entitled to have legal assistance.

(xiv) That from the document of Ex. P-19 it is clear that the prosecutrix was working as teacher in the Shining Star School and information to this effect was sent by the Head Master of the said school to the Deputy Director, School Education Department.

8. Heard counsel for the parties and perused the evidence available on record.

9. Prosecutrix (PW-3) was examined in the Court on 30.1.1997 whereas the incident had taken place on 22.7.1994. She has stated that she knew the accused persons and that in the year 1994 she was working as teacher in the Shining Star School, Surajpur where the school timing was from 10.30 AM and she used to leave for school at 10 AM. She has further stated that as per the school norms the female teachers were required to teach after wearing Sari but she used to go to school in Salwar Kurta carrying sari with her. On the date of

incident at about 1.30 PM she went to a nearby room for changing the dress and when she came out after doing so, accused Sanjay Singh caught hold of her, forcefully took her to the same room where she changed the dress and when she raised an alarm, accused Robert Dishulwa came there and was scolded by accused Sanjay Singh. Thereupon, instead of rescuing her, accused Robert Dishulwa started scolding her and asked her to submit to accused Sanjay Singh as he was a good boy and saying so he went back. Accused Sanjay Singh then bolted the door from inside, threw her down, pulled out the string of the Salwar worn by her, removed her panty by pressing her both hands, gagged her mouth and committed forcible sexual intercourse with her by inserting his private part into that of her. Thereafter, she somehow tried to wriggle out of the clutches of accused Sanjay Singh but the door was closed from outside. On hearing her cries some teacher of the school namely Om Gupta opened the door and then she could come out. When said Om Gupta asked accused Sanjay Singh as to why he was doing like that, he scolded him too saying as to who he was to save the prosecutrix. Subsequently, she approached accused Robert Dishulwa and told him that he should not have done like that but he too told her to have agreed to the act of accused Sanjay Singh. Thereafter, as the waist string of her Salwar was broken, she wore sari in the room of accused Robert Dishulwa. This witness has further stated that as soon as she came out of the room, accused Sanjay Singh again came to her, took her to the nearby room

and told her to agree for sex with him as the first act was without her wishes. When she did not agree to his say, accused Robert Dishulwa came there and asked as to why they were quarreling. Thereafter, when she requested accused Robert Dishulwa to get her scarf returned by accused Sanjay Singh, he asked her not to come to school thenceforth and at that time some Sahu Sir was also present there with whom she returned home after a while. After reaching home, she narrated the entire incident to her mother and at that time her brothers were also there who tried to console her. On hearing her cries, people of the locality also came there to whom also she narrated the incident as a whole. In the evening when her father returned home, her mother disclosed the incident to him also. Thereafter written report Ex. P-2 was lodged based on which FIR Ex. P-3 was registered and for the whole night she remained in the police station along with her parents and her panty and Salwar were seized under Ex. P-4. In spite of the fact that she was put to very lengthy cross examination but barring certain trivial contradictions and omissions, she stood firm on all the material particulars. While clarifying the things she has further stated that in the said school there were 300 students and 07 teachers but on the date of incident only three teachers including her were present. She has categorically denied that under the influence of Shri K.K. Agrawal, Advocate the police has registered the case against the accused persons. She has also denied that for giving false evidence against the accused persons she was tutored for

three long days. She has clarified that for the first time she was subjected to sexual intercourse on 22.7.1994 by accused Sanjay Singh inspite of the protest made by her and that while protesting against his act, she had suffered injuries on the back side of head. Suresh Kumar Karnik (PW-2) - the father of the prosecutrix has stated that on the date of incident he had gone to Bhatgaon and after returning to Surajpur in between 6 and 6.30 PM he straightaway went to his office where he was told to go home and get back after getting fresh. When he went home, all the family members were weeping and on being asked his wife disclosed to him the entire incident of his daughter being made victim of rape at the hands of accused Sanjay Singh. On coming to know about the incident, he got annoyed and went to accused Robert Dishulwa, who, on seeing him started abusing and took out the knife to assault him. He has stated that while warding off the knife blow, he sustained injuries near the left eye. Thereafter, he accompanied by his wife and the prosecutrix, went to the police station where the report was lodged. Almost similar statement has been made by Smt. Sulekha (PW-3) - the mother of the prosecutrix and Ravi Kant Karnik (PW-9) - the brother of the prosecutrix. Dr. Pratibha Rajul Jain (PW-5) is the doctor who medically examined the prosecutrix and gave her report Ex. P-7. The report given by the doctor does not mention any external injury on the body of the prosecutrix including the genitalia; her hymen was also intact; and that definite opinion regarding intercourse can be given after

chemical analysis of the slides of vaginal discharge prepared by her. Report however mentions that after being cut the pubic hair were kept in a sealed packet. As per the FSL report Ex. P-16-A spermatozoa was found in the panty marked as article - "A" and pubic hair marked as article "B-2". Dr. K.N. Sharma (PW-6) is the witness who medically examined accused Sanjay Singh and gave his report Ex. P-6 stating that he was capable of performing sexual intercourse. Pravin Agrawal (PW-7) - the witness to seizure of Salwar and undergarment of the prosecutrix has not supported the case of the prosecution. Other witness to seizure namely Ashok Kumar (PW-8) has however duly supported the case of the prosecution. G.L. Shrivastava (PW-12) is the investigating officer who has duly supported the case of the prosecution. Murli Prasad (PW-13) is the clerk in the office of District Education Officer has proved the application for affiliation of the school vide Ex. P-19 and the said application contains the name of the prosecutrix as one of the teachers in the said school.

10. We have heard counsel for the respective parties quite patiently and gone through the evidence on record arduously. Having done so it becomes apparent that on the date of incident when the prosecutrix was coming out of the room after changing the clothes, accused Sanjay Singh approached her, pushed her inside the same room, tried to remove the panty worn by her and having failed in so doing, removed his own pant, mounted over and made an attempt to gratify his

passions upon her person at all events notwithstanding the resistance on her part. Evidence further reveals that when the prosecutrix raised an alarm, accused Sanjay Singh gagged her mouth incapacitating her from inviting the attention of anyone present outside. However, on hearing the cries of the prosecutrix, accused Robert Dishulwa came there but instead of extending a helping hand, he forced her to submit to the gestures of accused Sanjay Singh and subsequently when she asked him as to why he did so, he rebuffed her and banned her entry in the school thenceforth. Thereafter, she somehow went to her house and described her woes to her mother and after her father returned home in the evening, her mother transmitted the same to him followed by submission of written report leading to registration of FIR. Though according to the say of prosecutrix accused Sanjay Singh violated her chastity by forcing his penis into her vagina, the medical report given by Dr. Pratibha Rajul Jain (PW-5) does not speak of intercourse with her and the hymen has been found intact. External Injury, according to the doctor, was absent even on her genitalia. However, the FSL report Ex. P-16-A indicates the presence of spermatozoa in the panty marked as article - "A" and pubic hair marked as article "B-2". Thus in the wake of overall evidence - ocular and medical, this Court arrives at an irresistible conclusion that accused Sanjay Singh was hellbent in making hellish the life of the prosecutrix by violating the most precious gift of nature bestowed on a feminine gender characterized as chastity but somehow, may be for various

reasons including premature ejaculation, he could not succeed in the penile penetration desired by him. Material before us further dissuades us from acceding to the argument of the counsel for the accused persons that it is hardly a case of conviction under Section 354 IPC for the reason that the FSL report confirms the presence of spermatozoa on the pubic hair and panty of the prosecutrix and no explanation for that has come from accused Sanjay Singh. Such submission is therefore negated. At the same time, the Court below has rightly acquitted both the accused persons of the charge under Section 376 (2) (g) IPC as the prosecution has not collected any material to show that the prosecutrix was subjected to rape by any of the accused persons. Further, the other limb of argument advanced by the counsel for the accused persons that there are contradictions and omissions in the written report, case diary statement and the statement of the prosecutrix recorded in the Court, has no force keeping in mind the long interval between the date of incident i.e. 22.7.1994 and the Court statement which was recorded on 30.1.1997 and the lengthy cross examination she was subjected to. Even otherwise, on material particulars as to the overtures of accused Sanjay Singh and indifferent attitude of accused Robert Dishulwa she remained firmfooted. There is no force in the argument of the counsel for the accused/appellants that the accused/appellants have been roped in a false case only on account of report lodged by accused Robert Dishulwa against her father and brother under

Section 307 IPC. The interval between the reports lodged by accused Robert Dishulwa and by the prosecutrix is just seven hours and therefore it cannot be possible for anyone to cook up an altogether untrue story, much less the one involving the allegation of rape having a long lasting scar on her forehead. This Court also does not find any substance in the argument of the defence counsel that inspite of number of students and teachers present in the school, none of them has been examined by the prosecution. This is mainly because such type of offences are committed in solitude skipping the eye of even the persons present nearby and therefore this argument is also turned down. Furthermore, just to avoid un-necessary implication at the hands of police people no layman comes forward to be a witness in such cases, and this may also be the reason of non-examination of the person or persons present in the school at the relevant time. In addition to this, the defence has not adduced any evidence to the contrary that at the relevant time the prosecutrix was not working as teacher in the Shining Star School where the incident is said to have taken place. Likewise, the defence has also not brought anything on record to show the false implication of the accused/appellants by the prosecutrix at the behest of a local advocate. Even if the prosecutrix has taken some help from a lawyer for setting the criminal law in motion, nothing wrong is there on her part as there is no bar which could deprive her of doing so.

11. Likewise, seven hours delay in lodgement of the report

by the prosecutrix, as argued by the defence counsel, cannot be termed as inordinate for the reason that before taking such matters beyond the four walls of the house the family members are bound to think over so many times about the possibility of uninvited ill-effects on the life span of the victim. Even otherwise, whatever delay is there in the present case, satisfactory explanation mentioned above, has come forth from the prosecutrix. Dealing with delay in lodging the FIR in a case of sexual assault in the matter of **State of Himachal Pradesh v. Prem Singh (2009) 1 SCC 420** the Supreme Court has held as under:

“6. ...the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.”

12. Further dealing with another case of like nature in the matter of **Deepak v. State of Haryana (2015) 4 SCC 762** Apex Court has held as under:

“15. The courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One

of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by the victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384.”

13. In yet another case involving delay in lodging the FIR in sex related offences it has been held by the Apex Court in the matter of **Om Prakash v. State of Haryana (2011) 14 SCC 309** as under:

“18. There is some delay in lodging the FIR but that delay has been well explained. A young girl who has undergone the trauma of rape is likely to be reluctant in describing those events to anybody including her family members. The moment she told her parents, the report was lodged with the police without any delay. Once a reasonable explanation is rendered by the prosecution then mere delay in lodging of a first information report would not necessarily prove fatal to the case of the prosecution.”

14. The argument advanced by the counsel for the accused/appellants with regard to delay on the part of prosecutrix in lodging the FIR is accordingly turned down. The judgments sought to be take support of by the counsel for the accused/appellants being altogether on different facts are not applicable to the cases in hand.

15. Thus in the light of aforesaid factual and legal position, this Court is of the considered opinion that the findings recorded by the Court below convicting the accused persons under Sections 376/511 and 342 IPC are based on due appreciation of the evidence on record and there is no illegality or infirmity in the same. Being so, all the aforesaid cases i.e. Criminal Appeal No. 510/2004 preferred by the accused/appellants, Criminal Appeal No. 669/2004 preferred by the State and Criminal Revision No. 336/2004 preferred by the complainant are without any substance and they are accordingly dismissed. Accused persons being on bail are directed to be arrested forthwith and sent to jail to serve out the remaining part of the sentence imposed on them.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.P. Sharma)

Judge