

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 280 of 2011**

Girdhari Singh Baiga S/o Durga Prasad Baiga, aged about 20 years,  
R/o Village Kargara, Police Station Gaurella, District Bilaspur (CG)

**---- Appellant**

**Versus**

State of Chhattisgarh, Through: The Police Station Gaurella, District-  
Bilaspur (C.G.)

**---- Respondent**

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For Appellant : Mr. M.K. Bhaduri, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.  
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**HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA****JUDGMENT ON BOARD**

**28/11/2018**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 24.3.2011 passed by Additional Sessions Judge, Pendraroad, District Bilaspur (C.G.) in Session Trial No. 28/2010, wherein the said court convicted the appellant for commission of offence under Sections 376 (1) of IPC and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- with default stipulation.
2. In the present case, prosecutrix is PW-3. As per the case of prosecution, the accused/appellant was the Watchman of the Girls Hostel where the prosecutrix had been residing with other students. The prosecutrix was aged about 12 years and student of Class VIII. On the date of incident i.e. 30.3.2010, at about 11.00 pm in the night while the prosecutrix came out from Hostel for easing herself and while she was returning to hostel room, the appellant caught hold and committed forcible

sexual intercourse with her. The matter was reported and investigated and after completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The FIR is belated and there is no sufficient explanation of delay in lodging the FIR, therefore, version of the prosecution is doubtful.

(ii) School certificate is not conclusive proof of age of the prosecutrix, therefore, it is not proved that she was minor on the date of incident.

(iii) There are huge material contradictions and omissions in the statement of the prosecution witnesses, therefore, the finding arrived at by the trial Court is not liable to be sustained.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the trial Court.

6. As per version of the prosecutrix (PW3), she was residing in the Girls Hostel, where the appellant was working as Watchman. On 30.3.2010, at about 11.00 pm in the night she came out of her room for easing herself where the appellant caught hold her and taken to Kitchen Room, pressed her

mouth and committed rape after removing her garments. As per version of this witness, she informed the incident to one Anila, Pramila and Principal of the Institution. Version of this witness is supported by the version of Pramila (PW1), Shyamanand Sahu(PW2). All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Direct version of this witness is supported by the version of Dr. Kamal Kumar Soni (PW4), who examined the appellant and found him capable of performing sexual intercourse. Again, it is supported by the version of Dr. (Smt.) Nalini Singh(PW5) who conducted examination of the prosecutrix and opined that sexual intercourse has been performed against her. Version of these witnesses is also supported by the FIR which is lodged against the present appellant.

7. It is true that there is delay of seven days in lodging the report, but where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault cannot be equated with the case involving other offences. There are several factors in the mind of the

prosecutrix before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is delay in lodging FIR.

8. After assessing the evidence, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bound society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence, therefore, finding of the trial Court appears to be based on evidence on record. This Court has no reason to substitute a contrary finding, therefore, conviction of the appellant under Section 376 (1) IPC is hereby affirmed.

9. Heard on the point of sentence:

The trial court awarded jail sentence of 7 years and fine of Rs. 500/- for commission of offence under Section 376 (1) of IPC. Looking to the gravity of the offence, it cannot be termed

as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

10. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

Sd/  
**(Ram Prasanna Sharma)**  
Judge