

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRA No. 7 of 2010

- Lalit Mandal aged about 25 years, S/o Mani Mandal R/o PV 52, Thana Bande, Kanker (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Bande, Dist. Uttar Bastar, Kanker.

---- Respondent

For Appellant : Mr. Parag Kotecha, Advocate.

For Respondent/State : Ms. K. Tripti Rao, PL.

**Judgment on Board
(23-08-2018)**

1. This appeal is preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 30-11-2009 passed by Additional Sessions Judge (FTC), Bhanupratappur, Sessions Division North Bastar, Kanker (CG) in Sessions Trial No. 23 of 2009 wherein the said Court convicted the accused/appellant for commission of offence under Section 376 (1) of the IPC 1860 and sentenced him to undergo RI for seven years and fine of Rs.1000/- with default stipulations.
2. As per prosecution case, prosecutrix was sitting nearby pond in village PV 52 to ease herself and at the same time appellant

caught hold of her hand and dragged her nearby the field and committed rape on her.

3. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court convicted the appellant as mentioned above.

4. Learned counsel for the appellant submits as under:

i) Version of the prosecutrix is wholly unreliable as she did not depose in her examination-in-chief against the appellant and narrated the story upon leading questions put-forth by the prosecution side, but in her cross examination she again denied that any offence was committed by the appellant.

ii) Version of other witnesses are hearsay in nature which is inadmissible in evidence.

iii) Medical evidence in the case is not supportive to the prosecution and that part is also not implicating the appellant for commission of offence.

iv) Finding of the trial Court is contradictory to the settled principles of law and the same is not sustainable.

5. On the other hand, learned State counsel supporting the impugned judgment submits that the finding of the trial Court is

based on proper marshaling of evidence and the same is not liable to be disturbed.

6. I have heard learned counsel for the State, perused the judgment impugned and record of the trial court.
7. Offence of rape is committed in secrecy, therefore, prosecutrix is the main witness to the incident. In the present case, PW/3 Prakash Haldhar, is hearsay witness. PW/4 Kailash deposed that he is not having any knowledge regarding commission of rape. PW/5 Sanku Ram deposed on same line. PW/6 Ramen Majumdar is hearsay witness. PW/7 Shivpad Sarkar, Assistant Sub-inspector and PW/10 Shiv Kumar Mandavi are witnesses of investigation. (PW/8) Dr. Nisha Nouratan is medical expert who examined the prosecutrix. Dr.D.S. Nareti (PW/9) is a person who examined the appellant.
8. Prosecutrix (PW/2) deposed in her cross-examination that when the appellant caught hold of her hand, she became unconscious and after half an hour when she regained conscious, appellant was not present there. From her examination-in-chief, it is not established that the appellant committed any act against her body. This witness has been subjected to leading questions by Additional Public Prosecutor and on his suggestion she answered affirmatively regarding commission of rape. Version of

the witness in leading questions is not her own version, but it is version of the prosecution side.

9. As per Section 141 of the Indian Evidence Act, 1872, any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question. In the present case, prosecution side suggested the answer and the same was given by the prosecutrix in affirmative which is not her independent version. All the suggestions put-forth by the prosecution side with a view to receive the answer in their favour cannot be termed as independent version of the prosecutrix. Again when the prosecutrix was subjected to cross examine she deposed what she has stated in examination-in-chief. She again deposed that when the appellant caught hold her, she became unconscious. She further deposed that she does not know as to what happened with her thereafter.
10. Looking to the entire version of the prosecutrix it appears that she is not stable regarding commission of offence. As per Section 134 of the Indian Evidence Act, 1872, quality of the evidence has to be weighed and when a witness is affirmed on he/her statement, from the date of investigation till the date of he/her examination before the court, then only he/she can be treated as reliable witness. If a person states differently at different stages, he cannot be termed as reliable witness. It is

settled principle of law that “graver the offence, stricter the proof”. It is also settled that there is long mental distance between “may be true and must be true”. The prosecution is under obligation to bring its case in the category of must be true. In the present case, since version of the prosecutrix is not a sterling quality, it is not safe to conclude that offence of rape was committed against her. Therefore in absence of strict evidence against the present appellant, charge under Section 376 (1) of the IPC is not established. The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.

11. Accordingly, the appeal is allowed. Conviction and sentence imposed upon the appellant by the trial Court is hereby set aside. The appellant is acquitted of the charge under Section 376 (1) of the IPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_