

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1 of 2010**

Kamaldas S/o Amardas Satnami, aged about 23 years, R/o  
Kunrawa, P.S. Nandghat, District Durg (CG)

**---- Appellant****Versus**

State of Chhattisgarh Through -Police Station, Nawagarh,  
District Durg (CG)

**---- Respondent**

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For Appellant : Shri Vikas Shrivastava, Advocate

For the respondent/State: Shri Sanjeev Pandey, Govt. Advocate

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**HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA****JUDGMENT ON BOARD****24/8/2018**

1. Shri A.S. Rajput, Shri Sushobhit Singh and Shri Sushil Sahu, Advocates have been engaged by the appellant, but despite repeated calls, none appeared on all dates of the week, therefore, Shri Vikas Shrivastava, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 24.12.2009, passed in S.T.No.23/2009 by the Additional Sessions Judge, Bemetara, District Durg (CG) for commission of the offence under Sections 376(1) and 450 of the I.P.C. and sentenced to undergo R.I. for 7 years and fine of Rs.2000/- and R.I. for 3 years and fine to Rs.500/- with default stipulations.

3. In the present case as per prosecution case, the prosecutrix was all alone in the house situated at village Manpur on 20.4.2009 at about 7.30 pm and at the same time, the appellant entered into the house of the prosecutrix and after having talks with her, committed forcible rape on her. The matter was reported and after investigation the appellant was charge sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

4. I have heard learned counsel for the parties and perused the record.

5. Learned amicus curiae appearing on behalf of the appellant submits as under :

(i) The birth certificate in which the date of birth of the prosecutrix is mentioned as 5.1.1993, is suspicious in nature and no finding can be arrived at on the basis of such certificate.

(ii) The prosecutrix has not supported the case of prosecution and Dr. Rajshri Devdhar (PW6) found no injury on the body of the prosecutrix and there is no definite opinion regarding rape, therefore, an offence under Section 376 (1) I.P.C. is not made out against the appellant.

(iii) No Test Identification Parade was conducted in the present case and the appellant has been falsely implicated.

(iv) The trial Court has overlooked lot of omissions and contradictions in the statement of the witnesses and came to a wrong conclusion.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on cogent and reliable evidence and the same is not liable to be interfered with.

7. To substantiate the charge prosecution has examined as many as 13 witnesses.

8. The prosecutrix is PW9 and she has deposed that on the date of incident, at about 7.30 pm, the accused/appellant entered into her house situated at village Manpur when she was all alone in the house. Thereafter, he enquired about her mother and father and she replied that they have gone to village Korba. After that the appellant made good conversation with her and then pushed her to bed and committed forcible intercourse with her. She has made clear statement regarding commission of intercourse that the appellant inserted his penis into her vagina. As per version of the prosecutrix at the same time, her brother Keshav entered into the house and the appellant admitted his guilt before him and he was restrained there and thereafter was taken to Police Station.

9. Version of the prosecutrix is unshaken during searching cross-examination and there is nothing to discard her testimony. Her version is supported by the version of Rambagas (PW10) who

deposed that the appellant was taken to Police Station. Again, version of the prosecutrix is supported by the version of Keshav (PW11) and Ajay Kumar (PW3). Version of all these witnesses have been subjected to incisive cross-examination but nothing could be elicited in favour of the defence. Version of all these witnesses is supported by the version of Bikharidas (PW1) who is a village Kotwar and accompanied the appellant and other persons to Police Station. Version of this witness is again supported by the version of Ramkumar (PW2), Kamta Prasad (PW5), Parmeshwar Prasad (PW7) and Police Inspector, R.P. Singh (PW13).

**10.** Dr. Rajshri Devdhar (PW6) has examined the prosecutrix on 21.4.2009 at government Hospital, Bemetara and as per opinion of this medical expert, hymen of the prosecutrix was found torn and same is torn due to hard and blunt object.

**11.** Dr. P.C. Thakur (PW4) examined the appellant and found him capable of committing intercourse.

**12.** True it is that there may be some contradictions or omissions but, only material contradictions may be a ground for rejection of prosecution witnesses and insignificant contradictions and omissions are not sufficient to reject the prosecution case. Present is a case where the appellant was caught on the spot by the witnesses and his presence in the house of the prosecutrix is fully established by ample evidence. Again, there is nothing substantial to discard the evidence of the prosecutrix. Age of the prosecutrix is material only when there is consent in making physical relations. In

the present case, the prosecutrix is firm regarding commission of rape on her and it is against her will and without consent. Therefore, age is not material in the facts and circumstances of the case. From the evidence of medical expert, it is clear that the appellant is capable of committing intercourse and hymen of the prosecutrix was torn by some hard and blunt object.

**13.** Looking to the evidence in its entirety all the grounds raised by the appellant are not sustainable. Entering into house with an intention to commit rape is an offence under Section 450 I.P.C. and rape is an offence under Section 376 (1) I.P.C., for which, the trial Court has convicted and sentenced the appellant as above and the same is hereby affirmed.

**14.** Heard on the point of sentence :

**15.** The trial Court had awarded minimum sentence for commission of offence under Section 376 (1) I.P.C. and less than minimum sentence cannot be awarded.

**16.** Accordingly, the appeal is liable to be and is hereby dismissed. As per report, the appellant has already suffered the full jail term, therefore, no order for his arrest etc. is required.

Sd/

**(Ram Prasanna Sharma)**  
**JUDGE**