

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****ACQA No. 48 of 2010**

- State of Chhattisgarh Through: District Magistrate, District - Surguja Chhattisgarh,

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

1. Puran Prasad Rajwade Aged About 28 Years S/o Ishwar Prasad Village-Udaypur, Patrapara P.S. Udaypur District Surguja Chhattisgarh
2. Rewati Raman Rajwade Aged About 29 Years S/o Ghuran Rajwade R/o Village Khakhat, Charcha, District Korea Chhattisgarh

**---- Respondents**

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| For Appellant/State | Mr. P.K. Bhaduri, Govt. Advocate. |
| For respondents     | Mr. Mahendra Dubey, Advocate      |

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**Hon'ble Shri Prashant Kumar Mishra,**  
**Hon'ble Shri Ram Prasanna Sharma, JJ**

**Oral Judgment****Per Ram Prasanna Sharma, J****(27-2-2018)**

1. This acquittal appeal is preferred against the judgment dated 11-8-2009 passed by 3rd Additional Sessions Judge (FTC) Surguja at Ambikapur, Sessions Division Surguja in Sessions Trial No. 01 of 2007 wherein the said Court acquitted the respondents from the charges under Section 395, 376 (2)(g) of IPC, 1860.

2. As per prosecution case, on 25-4-2004, in wee hours, complainant Shankar Ram Kachhap, his wife Chandramani and other family members were sleeping in their house situated at village Tirmitti and at the same time some persons entered into their house having fire arms and other weapons, assaulted them and committed robbery by removing some electronic items like stabilizer, torch and cash Rs. 500/-. and thereafter they committed rape on the wife of the complainant and his daughter. The matter was reported to Police Station Lakhanpur by Shankar Ram Kacchap. The statements of the witnesses were recorded under Section 161 of the Cr.P.C After completion of investigation charge-sheet was filed against the respondents. Respondents did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statements of respondents under Section 313 of Cr.P.C., were recorded and after hearing both the parties, the trial Court acquitted the respondents and other person as mentioned above.

3. Learned State counsel submits as under:

- i) The trial Court erred in disbelieving the statement of prosecutrix (PW/13) in which she has stated that respondent Puran committed sexual intercourse with her against her will and without her consent and she identified the respondent Puran in the Court and the impugned judgment of the trial Court is mechanical.
- ii) Prosecutrix (PW/5) identified the respondents in test identification parade but the trial Court has given weightage to minor contradictions and passed the judgment on the basis of mere technicalities.
- lii) Marshaling of the evidence by the trial Court is improper because the charges were proved by the cogent

evidence and the same is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on facts and circumstances of the case and same is not liable to be reversed while invoking jurisdiction of the appeal.
5. We have heard learned counsel for the parties and perused the material on record.
6. Case of the prosecution is based on the statements of the witnesses present at the place of occurrence and their identification during trial and deposition because there is no seizure from any of the respondents of any article. PW/1 Shankar Lal Kachhap identified the late accused Vijay Rajwade before the court but he did not identify the present respondents. He deposed that he visited Baikunthpur and Manendragarh and there late accused Vijay Rajwade was shown to him and his photo was shown at Udaypur. He further deposed that Police were present at the time of identification parade.
7. Prosecutrix (PW/5) deposed that respondent Puran and late accused Vijay Rajwade surrounded her and her husband and accused late Vijay Rajwade committed rape on her, but she admits that the fact regarding rape is not mentioned in the first information report. She further deposed that she has seen accused late Vijay Rajwade at Jainagar Police Station and at the time of identification parade, police were present. She further deposed that she had not seen Puran earlier before seeing him at Police Station Jainagar. She further deposed that she has seen accused late Vijay Rajwade at

Baikunthpur before identification parade. She further deposed that respondents Puran, Vijay Rajwade and Rewati Raman Rajwade were with the Police and she had seen them while they were in custody of Police before identification parade. She further deposed that she is telling the names of respondents as the Police Officers asked their names before her. Another prosecutrix (PW/13) deposed that respondent Puran committed sexual intercourse with her but she did not state regarding Vijay Rajwade and Rewati Raman Rajwade. She further deposed that she has seen respondent Puran for the first time in Court and further stated that accused persons were in the custody of Police Station at Jainagar and there she had seen them.

8. From the evidence of these three witnesses, it is established that accused persons were shown to them by the Police before identification parade and Police personnel were present at the time of identification parade. Any document prepared and signed in presence of Police is hit by Section 162 of the Code of Criminal Procedure, 1973 and same cannot be used against any of the accused persons/respondents. When the witnesses have seen the respondents prior to identification parade, the parade lost its significance. Other witnesses namely PW/1 Chitrakutpuri, PW/6 Kumari Sarita, PW/7 Meena Bai. PW/2 Chitrakutpuri are not sure about any of the respondents as to whether they are culprits or not. PW/6 Sarita deposed that at the time of identification, Police were present. PW/7 Meena Bai deposed that the persons who had entered into their house had covered their faces, therefore, she had no occasion to see any of the culprits.

9. Looking to the entire evidence on record, it was not satisfactorily proved that the witnesses have seen the culprits at the time of incident because they had covered their faces and again their version is suspicious regarding test identification parade and identification before the court. It was thus, not safe for the trial Court to conclude beyond shadow of doubt that any of the respondents or accused late Vijay Rajwade participated in crime for which they are charged.
10. In view of the above, finding arrived at by the trial Court is not liable to be interfered while invoking jurisdiction of the appeal. Accordingly, the appeal fails and is same hereby dismissed.

Sd/-  
Judge  
**(Prashant Kumar Mishra)**

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

Raju