

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 462 of 2010**

Narayan Prajapati S/o Shri Vijay Prajapati, aged about 37 years, R/o Satguwa, Police Station Pathariya, District Damoh (MP)

Present address : Ratakhar near Ice Factory, Police Station Kotwali Korba, District Korba (CG)

**---- Appellant**

**Versus**

State of Chhattisgarh, Through: Station House Officer, Police Station Kotwali Korba District Korba (CG)

**---- Respondent**

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For Appellant : Mr. Deepak Jain, Advocate.

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

**05/12/2018**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.3.2010, passed by Sessions Judge, Korba, District Korba(C.G.) in Session Trial No. 120/2009, wherein the said court convicted the appellant for commission of offence under Sections 376 (2)(f) of IPC and sentenced to undergo R.I. for 10 years and fine of Rs. 5000/- with default stipulation.
2. In the present case, prosecutrix is PW2, who is aged about 6 years. As per version of the prosecution, on 2.8.2009, at about 8.00 am, the prosecutrix was taken by the daughter of the appellant to his house and the appellant sent her daughter to purchase biscuits and thereafter, he taken the prosecutrix in his kitchen room, open her undergarments and committed rape on her. The matter was reported and the appellant was

charge sheeted and after completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits that there are contradictions and omissions in the statements of the prosecutrix and other witnesses and judgment is delivered on the basis of own imagination of the trial Court which is fabricated, therefore, finding arrived at by the trial Court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record of the trial Court.
6. Prosecutrix (PW2) deposed before the trial Court that the appellant removed her underwear and acted against her which caused pain to her. Version of the prosecutrix is supported by the version of Malti Gupta (PW3) who is mother of the prosecutrix. As per version of this witness vaginal part of the prosecutrix was swelling and she slept for 3 days in bed. Version of both the witnesses is supported by the version of Dr. Smt. S. Shrivastava (PW1). As per version of medical expert, when she examined internal part of the prosecutrix, found that membrane of urethra was torn  $\frac{1}{2}$  inch in both sides and there was reddishness in all four corners of the urethra. She further deposed that age of the prosecutrix was appeared

to be 5-6 years. Looking to the direct and medical evidence the trial Court opined that the appellant inserted penis into private part of the prosecutrix to some extent and full penetration is not required for commission of offence under Section 376 IPC. Version of all these witnesses is supported by the version of Dr.G.S. Kanwar(PW8) who examined the appellant and found him capable of committing intercourse. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

7. In the present case report is lodged on the date of incident and there is no delay in lodging the report. For lodging the report of rape 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. When there is no delay in lodging the FIR case of the prosecution cannot be doubted.
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.
9. Considering the facts and circumstances of the case, this Court is of the view that the finding arrived at by the trial Court

after evaluating the evidence elaborately is proper and there is no reason to substitute a contrary finding. Rape on a woman under 12 years of age is an offence under Section 376 (2) (f) of the IPC for which the trial Court has convicted and sentenced the appellant and same is hereby affirmed.

10. Heard on the point of sentence:

The trial court has awarded minimum sentence for the offence proved and less than minimum cannot be awarded. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

11. 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