

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 3-1-2019****Pronounced on 10-1-2019****CRA No. 3255 of 1999**

Rohit Kumar Sahu, aged about 22 years, son of Mohanlal Sahu,  
R/o. Village Tusda, P.S. Mahasamund, Distt. Mahasamund (C.G.)

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

State of Madhya Pradesh (now in Chhattisgarh)

**---- Respondent**


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For appellant : Shri Sunil Sahu, Adv.

For State : Shri A.K. Swarnkar, Panel Lawyer.

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**Hon'ble Shri Sharad Kumar Gupta, J****C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 4-11-1999 passed by the 2<sup>nd</sup> Additional Sessions Judge, Mahasamund, MP (now in CG) in ST No. 87/1998 whereby and whereunder he has convicted and sentenced the appellant as under :-

| Conviction u/S. | Sentence RI. | Fine        | In default of payment of fine |
|-----------------|--------------|-------------|-------------------------------|
| 376(1) IPC      | 7 Years      | Rs. 5,000/- | 1 year RI                     |

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was 15 years old. She was a resident of village Tusada. On 15-12-1997 in the evening she had gone towards road in search of her paternal grand mother who had gone to sell chana murra to village Khuterigaon. At about 6.30 pm the appellant reached near her and took her back side of the haller mill of Govind Tamboli by dragging. When she shouted, he pressed her mouth by hand, threw her on ground and forcibly committed sexual intercourse with her. She went to her house and

narrated the incident to her family members. On 16-12-1997 at about 0.15 hrs. she lodged report in police station Mahasamund. After completion of the investigation, a charge sheet was filed against him for the offence punishable under Section 376, of the Indian Penal Code (in brevity 'IPC'). The trial Court framed the charge against the appellant under Section 376(1) of the IPC. To bring home the charge against him, the prosecution examined as many as 15 witnesses. The appellant abjured the guilt and faced trial. He did not examine any witness in his defence. After conclusion of trial the trial Court convicted and sentenced the appellant as mentioned above.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has preferred this criminal appeal.

4. Shri Sunil Sahu, counsel for the appellant submits that the appellant has been falsely implicated. No rape has been committed by the appellant with the prosecutrix. As per the medical examiner of the prosecutrix, it was found that hyman was intact which shows that prosecution story is improbable. Therefore, the impugned judgment of conviction and order of sentence may be set aside and the appellant may be acquitted of the charge.

5. On the other hand, Shri Swarnkar, Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence the appeal may be dismissed.

6. Trial Court has given the finding that on 15-12-1997 prosecutrix had completed 16 years of age.

7. As per the MLC report Ex. P-10, P.W. 12 Dr. R.K. Pardal had examined the appellant and opined that he was able to perform sexual

intercourse.

8. There is no such evidence on record, on the strength of which it can be said that Ex. P-10 is not believable. Thus, this Court believes on Ex. P-10.

9. As per MLC report Ex. P-11, P.W. 11 Dr. Alka pardal had examined the prosecutrix and found that no external injury was present on her person. In internal examination, she found that there was no sign of internal injury in her private part. Her hyman was intact. She opined that no definite opinion can be given regarding sexual intercourse.

10. There is no such evidence on record, on the strength of which it can be said that Ex. P-11 is not believable. Thus, this Court believes on Ex. P-11.

11. As per the alleged seizure Ex. P-4, P.W. 15 Shri V.K. Gupta, Inspector had seized one ear ring, two pieces of broken glass bangles.

12. There is no such evidence on record on the strength of which it can be said that Ex. P-4 is not believable. Thus, this Court believes on Ex. P-4.

13. As per the alleged seizure Ex. P-6, P.W. 15 VK Gupta had seized 3 glass bangles after taking out from her hand.

14. There is no such evidence on record on the strength of which it can be said that Ex. P-5 is not believable. Thus, this Court believes on Ex. P-5.

15. P.W. 4 Prosecutrix says in para 1 of her statement given on oath that when she had gone outside in search of her grand mother, appellant came near her, pressed her mouth and took her to haller mill by dragging. He had committed forcible sexual intercourse with her at back side of the

said haller mill. As per the para 3 of her statement her ear ring had fallen on the spot. She says in para 12 that her bangles had broken.

16. P.W. 3 Mohan Lal Nishad who is brother of the prosecutrix says in para 1 of his statement given on oath that prosecutrix had told her that appellant had taken her forcefully by dragging and committed bad act with her.

17. P.W. 5 Leela Bai who is grand mother of the prosecutrix says in para 1 of her statement given on oath that prosecutrix had told her that the appellant had taken her forcibly in the back side of haller mill and after removing her underwear committed act.

18. P.W. 9 Chhabiram says in para 2 of his statement given on oath that prosecutrix had told that appellant had taken her by pulling.

19. Hon'ble Supreme Court in the matter of **Radhu Vs. State of M.P.** (2008)2, S.C.C. 207, laid down following judicial precedent :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape, sufficient to disbelieve the victim. However courts should , at the same time , bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

20. In the matter of **Mohd. Ali -v- State of UP** [2015 (7) SCC 272], Hon'ble Supreme Court observed in para 30 as under :-

“30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.”

21. Counsel for the appellant placed reliance on a decision of Hon'ble Supreme Court in the matter of **State of Karnataka -v- F. Natraj** [(2015) 16 SCC 752], para 10, para 13 and 17 are quoted below :-

“10. As per the averments made by the prosecutrix in the complaint (Ext. P-1) filed by her on 15-11-2003, she was in love with the respondent and it is because of her coercion that the accused took her to Bangalore where they got married and led life like a married couple for a period of 20 days. She mentioned that their marriage had consummated as well. However, the evidence in examination-in-chief of the prosecutrix (PW 1), is totally inconsistent with the averments in the complaint (Ext. P-1). In her testimony made before the court she has stated that in the early morning of 26-10-2003, when she came out of her house to ease herself, the accused met her and forcibly took her to Bangalore saying that he loved her and would marry her. She further stated that she was made to stay in the house of Kaveramma (aunt of the accused) for about 20 days and they lived there as husband and wife. But in her examination-in-chief she also mentioned that she did not lodge any complaint or make any statement and the document Ext. P-1 though has her sign, was not read over to her by the police. After being treated as hostile, when the Public Prosecutor cross-examined her, she admitted that after they came to Bangalore, the accused brought a readymade Thaali and tied it to her neck and they got married and sexual intercourse took place between them. But she vehemently and categorically denied the suggestion that the averments made in Ext. P-1 are true and correct and that the

complaint came to be written at her instance. In cross-examination by the advocate for the accused, she categorically stated that she was well aware of the meaning of the word “intercourse” and that it was painful and she felt like screaming when the accused had intercourse with her for the first time.

13. It is not elicited by the evidence of PW 5 as to what was the nature of the hymen that was found intact in the person of the prosecutrix. Though it may be true that the rupture of the hymen may not occur in all cases of sexual intercourse, but it is the burden of the prosecution to extract from the medical examiner examining a rape victim, that the nature of the hymen was such that it could remain intact despite there being intercourse with the girl on several occasions within a period of 15 to 20 days. The medical examiner has merely mentioned that there were no signs of recent sexual intercourse which is inadequate to establish that sexual intercourse took place before that at all.

17. In the present case, the gaps in the evidence of the prosecutrix and the medical officer make it highly improbable that sexual intercourse took place. It would be erroneous to rely upon such discrepant testimonies and convict the accused. It can thus be stated with certitude that the solitary evidence of the prosecutrix, in absence of any corroboration by the medical evidence, is not of such quality which can be relied upon. The respondent-accused is, therefore, entitled to benefit of doubt.”

22. P.W. 4 Prosecutrix and P.W. 3 Mohan Lal Nishad say in para 4 during their cross-examination that in other side of the road there is a haller mill. This is true that villagers used to commute by walking and by vehicle by that road. P.W. 4 Prosecutrix says in para 11 that place of occurrence is an open place and people used to commute from that place. P.W. 3 Mohan Lal Nishad further says in para 4 that habitation is adjoining to that road. P.W. 1 Deendayal Patel says in para 6 during his cross-examination that the house of Chobaram Singh is 20 ft. away from the place of occurrence.

23. There is no such evidence on record on strength of which it can be said that at the time of alleged incident some persons were commuting by that road and alleged place of occurrence. At the time of alleged incident it was evening of winter season, thus, a few people commute on the road in rural areas in such time and such season. In these circumstances, from the aforesaid statements of para 4 and 11 of P.W. 4 prosecutrix, para 4 of P.W. 3 Mohallal Nishad, para 6 of P.W. 1 Deendayal Patel, it cannot be said that prosecutrix was allegedly a consenting party.

24. P.W. 4 prosecutrix says in para 7 and 12 that the land of the place of occurrence was uneven and rough. There was bleeding from her hands due to breaking of bangles, though as per the Ex. P-11 no external injury was found on the person of prosecutrix. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Radhu** (supra), this Court finds that on the basis of said circumstances it does not establish that prosecutrix was allegedly a consenting party.

25. P.W. 3 Mohanlal Nishad says in para 7, P.W. 9 Chhabiram says in para 3 and 4, that this is true that P.W. 2 Dhaniram Sahu and his family had a house dispute with appellant and his family. P.W. 2 Dhaniram had come along with them in police station.

26. In the matter of **Shree Kant Shekari** [(2004) 8 SCC 153] the Hon'ble Supreme Court has dealt with the false implication, the relevant portion of para 22 which reads as under :-

“22. “..... In any event no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse”

27. There is no such evidence on record on strength of which it can be said that on saying of P.W. 2 Dhaniram, the appellant had been allegedly falsely implicated on account of appellant and his family

members' animosity with P.W. 2 Dhaniram and his family. Thus, looking to this circumstance and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Shree Kant Shekari** (supra), this Court finds that appellant does not get any help from the aforesaid statements of para 7 of P.W. 3 Mohanlal Nishad, Para 3 and 4 of P.W. 9 Chhabiram.

28. FIR Ex. P-8 had been lodged within 6 hours from the alleged incident. Distance is mentioned as 18 km from village Tusda to PS Mahasamund, in Ex. P-8. There is no material available on record on strength of which it can be said that from said village to P.S. Mahasamund distance is not 18 km. In Ex. P-8 it has been mentioned that appellant had pressed her mouth, took her to back side of the haller mill of Govind Tamboli by pulling, committed sexual intercourse with her.

29. There is no such evidence on record on the strength of which it can be said that Ex. P-8 is fabricated or concocted to falsely implicate the appellant in alleged offence.

30. In the case in hand it is not the situation that the examination-in-chief of the prosecutrix is totally inconsistent with the averments in the alleged complaint or FIR Ex. P-8. In the case in hand, the facts are not like that appellant had allegedly committed sexual intercourse on several occasions within a period of 15 to 20 days with the prosecutrix. Thus, appellant does not get any help from the aforesaid judicial precedent laid down by the Supreme Court in the matter of **State of Karnataka** (supra).

31. Committing allegedly 'bura kam' or act removing the underwear of prosecutrix, means that allegedly sexual intercourse was committed with the prosecutrix.

32. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid statement of para 1, 3, and 12 of P.W.

4 Prosecutrix, para 1 of P.W. 3 Mohanlal Nishad and P.W. 5 Leelabai, in the reference of committing sexual intercourse, Para 2 of P.W. 9 Chhabiram are simple, normal and natural.

33. Because the aforesaid statement of Para 1, 3 and 12 of P.W. 4 Prosecutrix is simple, natural and normal, thus on the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Radhu** (supra) and **Mohd. Ali** (supra), this Court finds that Court can act upon aforesaid sole testimony of P.W. 4 Prosecutrix.

34. In the case in hand, the aforesaid statement of para 1, 3 and 12 of P.W. 4 prosecutrix gets corroboration from the aforesaid statement of para 1 of P.W. 3 Mohanlal Nishad, and P.W. 5 Leela Bai, in the reference of sexual intercourse, para 2 of P.W. 9 Chhabilal, Ex. P-10, Ex. P-4, Ex. P-5, Ex. P-8.

35. After the appreciation of the evidence discussed herebefore this Court believes on para 1, 3 and 12 of P.W. 4 prosecutrix.

36. After appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt that appellant had committed rape with prosecutrix which is punishable under Section 376(1) of the IPC. Thus, this Court affirms the judgment of conviction passed by the trial Court.

37. As regards sentence awarded to the appellant for offence punishable under Sections 376(1) of the IPC, considering the facts and circumstances of the case, it appears to be just and proper, and does not call for any interference. Hence, this Court also affirms the sentence regarding Section 376(1), IPC.

38. The appeal being devoid of merit deserves to be and is hereby dismissed.

39. The appellant is reported to be on bail. His bail and bonds are cancelled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of sentence. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentence.

**Sd/-  
(Sharad Kumar Gupta)  
Judge**