

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Order reserved on 01.08.2019**

**Order pronounced on 05.12.2019**

**CRA No. 3243 of 1999**

Premchand S/o Laxman, aged about 28 years, R/o Village Kudaknar,  
PS Jagdalpur, District Bastar, MP(Now CG) -- **Appellant**

**Versus**

State of MP through PS Jagdalpur, District Bastar (Now CG)  
-- **Respondent**

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| For Appellant  | - | Mr. C.R. Sahu, Advocate |
| For Respondent | - | Ms. Shriya Mishra, PL   |

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**Hon'ble Smt. Vimla Singh Kapoor, J.**

**CAV Order**

Facts of the case in brief are that on 09.10.1989 in the mid night when prosecutrix (PW-1) along with her friends was participating in a dance program in the neighbouring village, accused/appellant herein along with his 6 companions came there, dragged her upto the distance of about 60 yards and after inserting a piece of cloth in her mouth committed forcible sexual intercourse with her. While the accused/appellant herein was having sex with her, the other accused persons namely Bhadru and Somsay were holding her limbs and thus facilitated the commission of crime by him. FIR (EX.P-5) was lodged by PW-1 which was recorded by the police official (PW-5). After medical examination of the prosecutrix and completion of investigation charge sheet was filed against the accused/appellant and others under Section 376/34 IPC. However, the charge was framed against them under Section 376 (g), which in fact should have been 376 (2) (g).

2. Learned Court below vide judgment impugned dated 29.10.1999 passed in Sessions Trial No.166/1994 acquitted accused Bhadru of the charge levelled against him but convicted the accused/appellant herein under Section 376 (2) (g) IPC and sentenced him to undergo RI for 10 years with fine of Rs.5000, plus default stipulation. It is relevant to note here that as accused Somsay went absconding, he could not be tried along with the present appellant.

3. Counsel for the accused/appellant submits that almost all the witnesses including the prosecutrix and her friends have not supported the case of the prosecution and therefore, the conviction of the accused/appellant for committing rape on the prosecutrix is not sustainable in law. He submits that the story put-forth by the prosecutrix that she was dragged in the presence of number of people enjoying the dance program and subjected to sexual intercourse by the accused/appellant duly assisted by others seems to be highly unnatural and too difficult to be relied upon so as to ensure conviction.

4. State counsel however supports the judgment impugned.

5. Prosecutrix (PW-1) has though initially not supported the case of the prosecutrix yet in the cross-examination she has categorically stated that after upturning the clothes worn by her the accused/appellant committed forcible sexual intercourse with her. She has further stated that on being informed by the people present in the dance program she came to know that the person dragging her away was none else but the accused/appellant herein. From her evidence it is also apparent that while she was watching the dance program the accused/appellant came there, dragged her away and when he covered her with the blanket she started fainting and did not know as to what happened thereafter. But the cross-examination, as mentioned above, clearly speaks about her being subjected to forcible

sexual intercourse by the accused/appellant. Subhadra (PW-2) has also been declared hostile but has categorically stated about PW-1 being dragged away by the accused/appellant and his companions and that when she tried to save her, the accused persons moved her aside. Dr. Manorama Tiwari (PW-11) who conducted the medical examination of the prosecutrix on 12.10.1989 and gave her report Ex.P-16 stating that she noticed swelling on her private part coupled with rupture of hymen and has opined the commission of sexual intercourse with her about 48 hours prior thereto. Radiologist (PW-5) who did radiological examination of the prosecutrix has opined her age at the relevant time to be above 15 but below 16 carrying 3 years variation thereto. PW-6 – mother of prosecutrix (PW-1) has supported the case of the prosecution stating that PW-1 and PW-2 both have informed her that the accused/appellant along with his colleagues came to the place where the dance program was going on and took the PW-1 away by neck. Investigating Officer has also supported the case of the prosecution.

6. The evidence as discussed above clearly goes to show that on the date of incident, when the prosecutrix along with her friends was participating in the dance program, accused/appellant along with his colleagues came there, took the prosecutrix (PW-1) away and committed forcible sexual intercourse with her after inserting a piece of cloth in her mouth. This was done by the accused/appellant with the active connivance of other accused persons who facilitated the crime by holding the limbs of the prosecutrix. Medical report (Ex.P-16) given by the lady doctor (PW-11) clearly opines the prosecutrix being subjected to sexual intercourse 48 hours prior to the medical examination which was conducted on 12.10.1989. Since the incident took place on 09.10.1989, the time of incident opined by the doctor tallies correctly.

7. Thus there is no illegality in the judgment impugned warranting interference therewith in this appeal. Appeal thus being without any substance is liable to be dismissed and is hereby dismissed. As the accused/appellant is on bail, his bail bond stands cancelled and he is directed to taken into custody and sent to jail for completing remainder of the sentence.

Sd/-

**(Vimla Singh Kapoor)**

**Judge**

Jyotishi/ajay