

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.715 of 2009**

Washim Beg, Aged 20 years, S/o. Shamim Beg, R/o. Rani Gate Purani Basti Korba, Tahsil & Distt. Korba (CG)

---- Appellant

**Versus**

State Of Chhattisgarh, Through Station House Officer, Police Station City Kotwali, Korba Distt. Korba (CG)

---- Respondent

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For the appellant : Shri KK Singh, Advocate

For the respondent/State: Shri Lav Sharma, Panel Lawyer  
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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****02.01.2019.**

1. Shri SV Purohit, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri KK Singh, Advocate present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellant.

2. This appeal is directed against the judgment dated 31.8.2009 passed by Second Additional Sessions Judge (FTC), Korba (CG) in Session Trial No.92/2004 wherein the said Court convicted the appellant for commission of offence under Sections 342, 506 Part-II and 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for one year and to pay fine of 1000/-; RI for one year and to pay fine of R.1000/-, RI for seven years and to pay fine of Rs.5000/- with default stipulations with a direction to run the sentences concurrently.

3. In the present case, prosecutrix is PW-5. As per the prosecution case, on 09.01.2004 at about 9.00 in the night the prosecutrix was proceeding to the shop to purchase material. At that time Samir Baig and his wife Akku @ Afroj Begam called the prosecutrix and when she entered into their house, they shut the door from outside where the present appellant after undressing her committed rape on her forcefully. The matter was reported and investigated and the appellant was convicted as mentioned above.

4. Learned counsel for the appellant submits that the evidence of the prosecution witnesses is unbelievable because they have made false statement before the trial Court. There is delay in lodging report, therefore, report itself is not acceptable. As no injuries were found on the body of the prosecutrix, corroborative piece of evidence is lacking. Laboratory report is also not corroborating the version of the prosecutrix, therefore, finding of the trial Court is not liable to be sustained.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. As per the version of the prosecutrix (PW-5) she was going to one grossery shop at about 9.00 pm and in the meantime, step-mother of the appellant namely Akku called her, took her to her house where she was confined and thereafter the appellant after

undressing her committed sexual intercourse with her without her consent and against her will by inserting his penis into her vagina.

7. Version of the prosecutrix is supported by the version of Abdul Rahman (PW-1), Abdul Rashid (PW-3) and Saira Bano (PW-6) to whom the incident was informed. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Again version of all these witnesses is supported by the FIR which was lodged on 14.01.2004 at Police Station Korba in which name of the appellant was mentioned as culprit and his act of rape was also mentioned in the said FIR. There is no material contradictions in the statement of the prosecutrix and other witnesses and all have deposed in one voice and therefore, it is not the case where material contradiction is established. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

8. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

9. In the present case date of incident was 09.01.2004 and the report was lodged on 14.01.2004 i.e. after five days. Where report

of rape is to be lodged 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. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

**10.** After reassessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecution.

**11.** Considering the facts and circumstances of the case, the trial Court opined that the charges levelled against the appellant is established beyond the shadow of doubt and this Court has no reason to record a contrary finding.

**12.** Wrongful confinement is an offence under Section 342 IPC and threatening to kill is an offence under Section 506 Part II IPC and the rape is an offence punishable under Section 376(1) of the IPC for which the trial Court convicted the appellant and the same is not liable to be interfered with. The arguments advanced on

behalf of the appellant is not acceptable. The conviction of the appellant is hereby affirmed.

**13. Heard on the point of sentence.**

The trial Court awarded minimum sentence for the offence punishable under Section 376 (1) IPC and less than minimum cannot be awarded. Therefore, sentence part is also not liable to be interfered with.

**14.** Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

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