

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment reserved on 25-01-2019  
Judgment delivered on 07-02-2019

**CRA No. 32 of 2011**

- Heeralal age 19 years, s/o. Shri Bhagirathi Diwan, r/o. Village Gandhi Gram Tamora, Police Station & District Mahasamund (CG).

---- Appellant

**Versus**

- The State of Chhattisgarh through PS City Kotwali, Mahasamund, Dist. Mahasamund (CG).

---- Respondent

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For Appellant : Mr. J.A. Lohani, Advocate.

For respondent/State : Mr. Ravish Verma, Govt. Advocate.  
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**Hon'ble Shri Justice Ram Prasanna Sharma****CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-12-2010 passed by the Sessions Judge, Mahasamund (CG) in Sessions Trial No. 23 of 2010 wherein the said Court has convicted the appellant for commission of offence under Sections 376(1), 342 and 506 Part 2 of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- RI for one year and RI for two years with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/9. As per prosecution case, the appellant took the prosecutrix forcefully while she was going to Madarsa and she was wrongfully confined in the house of the appellant for three days where the appellant committed forceful sexual intercourse with her without her consent and against her will. It is alleged that the appellant threatened her to kill. After three days, somehow she escaped herself and narrated the story to her mother. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Prosecutrix was having love affair with the appellant and she wish to marry him and came to the house of the appellant, therefore, appellant has been falsely implicated.
- ii Evidence of other witnesses is not incriminating the appellant in crime in question and story of the prosecution is concocted.
- iii) Medical expert has not supported the version of prosecution, therefore, case of the prosecution is doubtful, even then the

trial Court convicted the appellant, therefore, finding of the trial court is liable to be reversed.

4. 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/9 prosecutrix deposed before the trial Court that on the date of incident she was going for study to Madarsa where two boys were standing near railway line. Appellant and one other person took her to room of the appellant where she was confined for three days and raped by the appellant. When appellant was out of room, she escaped from that place and narrated the incident to her paternal aunt. Version of this witness is supported by version of Shakeela Begam (PW/8) who is mother of the prosecutrix and as per version of this witness, prosecutrix was missing for the last three days and she narrated the incident against the present appellant. Version of this witness is supported by version of Dr.

Onkeshwari Sahu (PW/5) who examined the prosecutrix on 10-2-2010 and found that her hymen was ruptured. Dr. Sanjay Dave (PW/7) who examined the appellant and found him capable of intercourse. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence and their version remained unshaken.

7. In the present case, date of incident is between 7-2-2010 to 9-2-2010 and report was lodged on 9-2-2010 in the Police Station naming the appellant as culprit and act of rape is also mentioned in the said report. All the witnesses are stable on material point, therefore, their version cannot be discarded.

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. True it is that there was delay of three days in lodging the report. Prosecutrix escaped from the place of

confinement and report was lodged on the same day when she was released from the house. 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. In the present case, prosecutrix and her family members boldly decided to lodge the complaint on the same day, therefore, their version is inspiring confidence of the Court. There is nothing on record to say that the appellant has been falsely roped with charges. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Looking to the entire evidence, argument advanced on behalf

of the appellant is not sustainable. The trial Court evaluated the entire evidence and looking to the evidence recorded a finding of guilt for all the offences.

11. 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 and this court has no reason to substitute a contrary finding. The act of the appellant falls within Section 376(1), 342 and 506(b) for which the trial Court has convicted the appellant and same is hereby affirmed.

12. Heard on the point of sentence.

The trial Court awarded minimum sentence for rape and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

**(Ram Prasanna Sharma)**  
**Judge**

Raju