

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 366 of 2011**

1. Dinesh Toppo, S/o Mogal Toppo, aged about 20 year, Occupation- Laborer, R/o Village- Tehdi, Thana- Bhandariya, District- Gidhwa (Jharkhand)
2. Vinod, S/o Ramkishun Singh Kherwar, aged about 30 year, Occupation- Agriculture/ Laborer, R/o Village- Nagra, Thana- Ramanujganj, District- Surguja (C.G.)

**---- Appellants****Versus**

State of Chhattisgarh, Through: Police Thana- Ramanujganj,  
District- Surguja (C.G.)

**---- Respondent**

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For Appellants : Mr. Sanjay Agrawal, Advocate.

For State/respondent : Mr. Vinod Kumar Tekam, PL.  
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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****07/01/2019**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 05.03.2011 passed by Additional Sessions Judge (FTC), Ramanujganj, District- Surguja (C.G.) in Session Trial No. 171/2009, wherein the said court convicted both the appellants for commission of offence under Section 506 (Part-II), 342/34, 363/34 & 376(2) (g) of IPC, 1860 and Sections 25(1-AAA), 27(1) & 25 (1-BB) of the Arms Act, 1959 in the following manner:-

| <b>Sections</b>      | <b>Appellant No. 1-<br/>Dinesh Toppo</b> | <b>Appellant No. 2-<br/>Vinod</b>     |
|----------------------|------------------------------------------|---------------------------------------|
| 506 (Part-II) of IPC | R.I. for 1 year & fine of Rs. 500/-      | R.I. for 1 year & fine of Rs. 500/-   |
| 342/34 of IPC        | R.I. for 6 months & fine of Rs. 500/-    | R.I. for 6 months & fine of Rs. 500/- |

|                       |                                       |                                       |
|-----------------------|---------------------------------------|---------------------------------------|
| 363/34 of IPC         | R.I. for 5 years & fine of Rs. 500/-  | R.I. for 5 years & fine of Rs. 500/-  |
| 376(2)(g)/34 of IPC   | R.I. for 10 years & fine of Rs. 500/- | R.I. for 10 years & fine of Rs. 500/- |
| 25(1-AAA) of Arms Act | R.I. for 3 years & fine of Rs. 500/-  | -                                     |
| 27(1) of Arms Act     | R.I. for 3 years & fine of Rs. 500/-  | R.I. for 3 years & fine of Rs. 500/-  |
| 25(1-BB) of Arms Act  | -                                     | R.I. for 1 year & fine of Rs. 500/-   |

2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 23.12.2008 at about 10:00 p.m. when the prosecutrix was present at her home with her family members, the appellants came there and took her to forest side and committed gang rape with her. They threatened her to kill. They were in possession of fire-gun and sword and used the same during the offence. The matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellants submits as under:-
  - (i) Medical expert did not find any internal or external injuries on person of the prosecutrix, therefore, charge of rape is not established.
  - (ii) Statement of the prosecutrix, if minutely scrutinize, the same appears to be fabricated one, therefore, the finding of the trial court is not sustainable.
  - (iii) The report was lodged on 07.01.2009 i.e. after 15 days of the date on incident i.e. on 23.12.2008 and there is no

explanation for the delay, therefore, finding arrived at by the trial court is not proper.

(iv) There is material contradiction and omission in the statement of the prosecution witnesses, therefore, finding of 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 marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Prosecutrix (PW-1) deposed that at the time of incident at about 10:00 p.m., she was within her house with family members and at the same time, both the appellants entered there, threatened to kill her and then, dragged her forcibly by cycle near Natwawar forest where firstly, appellant No. 2- Vinod committed forcibly intercourse with her and then, appellant No. 1- Dinesh Toppo committed forcibly intercourse with her.
6. Version of the prosecutrix is supported by version of father of the prosecutrix- Vifan Ram (PW-2), mother of the prosecutrix- Smt. Sitapati (PW-3), Pradeep (PW-5), to whom the incident was informed by the prosecutrix and then matter was reported. Version of all the witnesses has been supported by version of Dr. S.K. Sinha (PW-16) who conducted examination of the appellants and found them capable of intercourse.

7. From evidence of the prosecutrix and statement of Ghasiram-Headmaster (PW-14), it is established that date of birth of the prosecutrix is 12.07.1996 and she was minor on the date of the incident. Again, from the evidence, it is established that one country made revolver was seized from appellant No. 1- Dinesh and one sword was seized from appellant No. 2- Vinod which they used during the offence.
8. Rameshwar Prasad Sawara (PW-19) is Armour who examined the said country made revolver and after examination opined that the said firearm is fit to fire. O.P. Singh (PW-17) is Reader of District Magistrate who stated before the trial court that the District Magistrate granted sanction for prosecution as per Section 39 of the Arms Act, 1959.
9. Looking to the entire evidence which is unshaken during cross-examination, there is nothing against the witnesses. The trial court opined that the charges leveled against the appellants are established beyond shadow of doubt. There is no material contradiction in the statement of the prosecution witnesses.
10. 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 by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at

par with the witness and when her evidence is inspiring confidence, no corroboration is necessary.

11. It is true that there is delay in lodging report. 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 delayed FIR. The delay in 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 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.
12. 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. Considering all the facts and circumstances of the case, it appears that the trial court has evaluated the entire evidence elaborately and this Court has no reason to record contrary finding.

13. Commission of offences by the appellants for which the trial court awarded the appellants with minimum imprisonment for 10 years and less than minimum cannot be awarded. Conviction of both the appellants is hereby affirmed.

Heard on the point of sentence

14. The trial court awarded R.I. for 10 years which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. It is reported that the appellants have suffered full jail sentence and have been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

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