

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 965 of 2013**

- Thepa Ram S/o Ratu Ram Nagwanshi, Aged About 56 Years, Occupation Agriculturist, R/o Kukricholi, Khamtarai, Police Station Bagbahar, Civil & Revenue District Jashpur (C.G.) , Chhattisgarh

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

- State of Chhattisgarh, through the Station House Officer, Police Station Bagbahar, Civil & Revenue District Jashpur (C.G.), Chhattisgarh

**---- Respondent**


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For Appellant : Shri Jitendra Kumar Saxena, Advocate.

For Respondent/State: Shri Himanshu Kumar Sharma, Panel Lawyer.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Judgment On Board****14/03/2019**

1. This appeal has been preferred against judgment dated 20-09-2013 passed in Sessions Trial No.99/12 by the Additional Sessions Judge Kunkuri, District Jashpur, C.G. convicting the appellant under Section 450 and 376(1) of the IPC and sentencing him with R.I. for 5 years, R.I. for 7 years, along with fine Rs.1000/- and Rs.4000/- respectively with default stipulations and direction that both the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that on 29-09-2012 at about 9 a.m. in the morning, the appellant committed house trespass in the house of the prosecutrix (PW-3) and forcefully raped her. The FIR Ex.-P/3 was lodged against the appellant and on that basis investigation was made. On completion of the investigation charge sheet was filed against him.
3. The appellant was charged with offence under Sections 450, 376 of

the IPC, to which he denied and sought trial.

4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied all the incriminating evidence against him, pleaded innocence and false implication. One witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that the appellant has been erroneously convicted by the trial Court without there being any evidence of prosecution beyond reasonable doubt. The statement of the prosecutrix (PW-3) is unreliable and she has brought forth a totally improbable story, narrating about the incident to have taken place in the morning at 9.00 a.m. None of the other witnesses have supported the prosecutrix. The appellant is in jail since 02-10-2012. Therefore, it is prayed that the appeal may be allowed and the appellant may be acquitted of the charges. In alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charges against him, then the sentence of imprisonment imposed upon him may be reduced to the period already undergone by him in jail.
7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant in this respect. It is submitted that the prosecution has proved its case beyond reasonable doubt and the evidence of the prosecutrix (PW-3) is reliable and trustworthy. Her statement is supported by eye-witness Reku Ram (PW-5), therefore, no case is

made out for acquittal or reduction of sentence.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt?
10. Relevant and important witness in this case is Prosecutrix (PW-3) she has stated that she had been to see immersion of Ganesh idol in the night, from where she came back in the morning and was sleeping in her house at about 9.00 a.m., when she was alone in her house the appellant forced his entry into her room and then by tearing her underwear he forcibly raped her. She raised alarm, then her father Reku Ram (PW-5) came on the spot and saw the incident, then the appellant fled from the spot. She has stated about lodging of the FIR Ex.-P/3. In cross-examination her statement has remained unrebutted and there is no such statement made by her so as to contradict the statement given by her. She has also denied all the adverse suggestion given in defence.
11. Reku Ram (PW-5), has stated that on the date and time of the incident he came back from a meeting and he heard that the prosecutrix has raised alarm, on which he went to her room and saw that the appellant was engaged in rape with her. In cross-examination, he has denied all the adverse suggestion given in defence and has remained firm on this statement.
12. Other witnesses, namely, Raghu Ram (PW-1), Bhugol Yadav (PW-2), Arjun Ram (PW-8) were produced as witness of the meeting in

which the prosecutrix presented herself and had narrated about the incident, but these witnesses have not supported the prosecution case, therefore, they were declared hostile.

13. One witness namely Phool Sai (PW-9) has stated about the narration of the incident given by father of the prosecutrix before the persons present in the meeting. The persons present in the meeting first tried to settle the matter between the parties, but when none of them agreed, they left the complainant and the appellant to take decision on their own. His statement further corroborates the statement of prosecutrix (PW-3) supporting in this manner that the incident had taken place, therefore the complaint was made in the meeting in which the appellant himself was also present.
14. Rest of the witnesses are witnesses of investigation and procedures.
15. After considering on all the evidence present in the record of the trial Court and closely scrutinizing the statement of the relevant witnesses who have supported the prosecution case, I am of this opinion that the prosecution has proved its case beyond reasonable doubt on the basis of reliable and trustworthy evidence of the prosecutrix (PW-3) and Reku Ram (PW-5), which is further supported with the circumstantial evidence of other witnesses. Therefore, no case is made out for acquittal of the appellant and reduction of sentence.
16. Consequently, the appeal filed by the appellant is dismissed.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
Judge