

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 469 of 2003**

Ambika Minz, S/o Halkan Ram, aged about 22 years, R/o Village-  
Chitbishrampur, Thana- Balrampur, District- Surguja (C.G.)

**---- Appellant**

**Versus**

State of Chhattisgarh, Through: P.S.- Balrampur, District- Surguja  
(C.G.)

**---- Respondent**

**With**

**CRA No. 1112 of 2003**

Upendra, S/o Bholu Ram, aged about 26 years, R/o Village- Banuar,  
Thana- Balrampur, District- Surguja (C.G.)

**---- Appellant**

**Versus**

State of Chhattisgarh, Through: P.S.- Balrampur, District- Surguja  
(C.G.)

**---- Respondent**

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For Appellants : Ms. Preeti Jha, Advocate.

For State/respondent : Mr. Afroj Khan, Panel Lawyer.  
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**Hon'ble Shri Justice Ram Prasanna Sharma**

**JUDGMENT ON BOARD**

**21.01.2020**

1. Mr. Satish Gupta, Advocate has been engaged for arguing the case on behalf of the appellants. Despite repeated calls, he has not appeared when the case is called for hearing, therefore, Ms. Preeti Jha, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellants.

2. Since both the appeals are preferred against the same judgment, they are heard analogously and are being disposed of by this common judgment.
3. Both the appeals are preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 27.02.2003 passed by Second Additional Sessions Judge, Ambikapur, District- Surguja (C.G.) in Session Trial No. 282/2001, wherein the said court convicted both the appellants for commission of offence under Sections 376 (2) (g) & 450 of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 100/- on each count with further default stipulations. All the sentences to run concurrently.
4. In the present case, prosecutrix is PW-2. As per version of the prosecution, on 09.06.2001 at around 1:00 a.m. in night at Village- Suri, the prosecutrix was at home where both the appellants entered and threatened the prosecutrix and thereafter committed sexual intercourse with her without her consent and against her will one by one. The matter was reported, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
5. Learned counsel for the appellants submits as under:-
  - (i) Statement of the prosecutrix (PW-2) is full of contradiction and omission and identity of the appellants is not established in the FIR. The incident took place at night and the prosecutrix could not identify the appellants.

(ii) The medical report is not supporting version of the prosecution.

(iii) The appellants have been falsely implicated, therefore, the finding arrived at by the trial court is liable to be set aside.

6. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

7. The prosecutrix (PW-2) deposed before the trial court that on the date of incident, she was sleeping in her house and her father-in-law & mother-in-law were also sleeping in the same house. As per version of this witness, both the appellants entered into her house and ousted her father-in-law and mother-in-law from house, made her lie-down in the earth and thereafter, committed sexual intercourse with her one by one. This witness has clearly identified both the appellants. Version of this witness is supported with statement of Fuluva Bai (PW-3) who is mother-in-law of the prosecutrix who also identified both the appellants. Version of both the witnesses is unrebutted during searching cross-examination. Dr. N.K. Dutta (PW-8) examined both the appellants and found them capable of intercourse.

8. Looking to the evidence of the prosecutrix (PW-2) and in support, statement of her mother-in-law and further looking to the FIR which is lodged on the date of incident i.e. on

09.06.2001, there is nothing to disbelieve testimony of the prosecutrix and testimony of the prosecutrix is inspiring confidence, no corroboration is required, but in the present case, there is corroboration in statement of mother-in-law who was present at the time of incident. There is no reason to say that the appellants have been roped in false charge on account of any grudge or otherwise.

9. 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. The report was immediately lodged which strengthened the statement of the prosecutrix, therefore, there is no reason to say that both the appellants have been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and her mother-in-law who was present on the spot.
10. There is no delay in lodging the FIR. Where report of rape is to be lodged, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. There are several factors which weigh in mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In view of the above, the argument advanced on behalf of the appellant is not sustainable.
11. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the same, this Court has no reason to record contrary finding. The

act of the appellants falls within mischief of Section 376 (2)(g) & 450 of IPC for which the trial court convicted both the appellants and the same is hereby affirmed.

Heard on the point of sentence

12. The trial court awarded R.I. for 10-10 years for commission of offence under Sections 376 (2)(g) & 450 of IPC respectively, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, both the appeals are liable to be and are hereby dismissed.
13. The appellants are reported to be on bail and their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 7<sup>th</sup> May, 2020.

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