

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 01/09/2021****Order Delivered on 01/10/2021****CRA No. 2579 of 2000**

- Raju @ Suraj S/o Johan Satnam aged about 30 years, R/o Ghothiya, P.S. Khairagarh, District-Rajnandgaon, M.P. (Now C.G.).

---- Appellant**Versus**

- State of M.P. (Now C.G.), Through : Police Station - Khairagarh, District- Rajnandgaon, M.P. (Now C.G.).

---- Respondent

For Appellant	:	Mr. J.A. Lohani, Adv.
For State/Respondent	:	Mr. Ishwar Jaiswal, PL.
For Complainant	:	Mr. B.M. Roy, Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****Date : 01/10/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 30.09.2000 passed by the learned Additional Sessions Judge, Khairagarh, District-Rajnandgaon, M.P. (Now C.G.), in S.T. No. 115/2000 whereby, the learned Additional Sessions Judge convicted the appellant and sentenced him as under :-

Conviction	Sentence
U/s 376 of IPC	R.I. for 10 years and fine of Rs. 1,000/- in default of fine additional R.I. for 6 months.

2. Brief facts of the case are that on 23.03.2000, at about 11:00 O'clock, the prosecutrix, went to the fields to attend the nature's call. After getting ready to back rid of nature's call, at that time the accused came from behind grabbed her and forcefully committed rape after threatening to kill her by filling her mouth with cloth. Thereafter, she came home and told her husband and the elders of the village about the incident. FIR Ex.-P/1 was lodged by the prosecutrix at police station.

After completion of investigation charge-sheet was filed before the trial judge and charges were framed.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 8 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. Upon consideration of oral and documentary evidence the trial Court held that the prosecution has established the guilt of the accused under Section 376 of IPC and sentenced him as mentioned above. Hence, this appeal.

5. Learned counsel for the appellant submits that the impugned judgment of conviction and sentence is contrary to law and facts available on record. He next submits that the impugned judgment is based upon conjunctures and surmises as there is no reliable evidence against the appellant. He also submits that the trial Court did not appreciate the oral and documentary evidence, appellant is convicted on the basis of insufficient and adverse evidence. Prosecution case is full of contradictions and omissions and is not supported by the medical evidence. He lastly submits that the prosecutrix has deposed on 05.07.2021 that a compromise has been taken place between the appellant and the prosecutrix, she has also filed an affidavit before this Court and application for permission to compound the pending case under Section 320(5) r/w Section 482 of Cr.P.C. Therefore, the impugned judgment and conviction is liable to be set aside. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Baldev Singh & Ors. Vs. State of Punjab** reported in **(2011) 13 SCC 705** and on the judgment of this Court passed in **CRA No. 273 of 1999 dated 27.07.2017** in the matter of **Saul @ Sholley vs. State of Madhya Pradesh (Now C.G.)**.

6. On the other hand, State counsel supports the impugned judgment of conviction and order of sentence.

7. Heard counsel for both the parties and perused the material available on record including the impugned judgment.

8. During the appeal prosecutrix filed an application for compounding the offence and in her deposition she has stated that during pendency of the instant appeal they have amicably settled their dispute and she does not want to pursue the criminal proceedings against the appellant, as they have already entered into compromise.

9. Hon'ble Apex Court in the matter of Baldev Singh & Ors. Vs. State of Punjab and the order of this High Court in CRA No. 273 of 1999 in the matter of Saul @ Sholley Vs. State of M.P. (Now C.G.), has modified the sentence. In the present case, keeping in view the fact that the incident had taken place in the year 2000, and thereby more than 21 years have rolled by since then, the appellant and the prosecutrix are now middle aged persons and statement of the prosecutrix shows that she wants to end the dispute and have already entered into a compromise, the appellant has already suffered the jail sentence of more than 10 months, taking into consideration the facts and circumstances, following the principle in case of **Baldev Singh & Ors. Vs. State of Punjab** reported in **(2011) 13 SCC 705**, I deem it proper to hold the sentence of the appellant as undergone. The judgment of conviction and sentence dated 30.09.2000 passed by Additional Sessions Judge, Khairagarh, Sessions Division - Rajnandgaon in S.T. No. 115/2000 is modified to the above extent.

10. In view of the above, the appeal is disposed of.

**Sd/-
(Rajani Dubey)
JUDGE**