



2026:CGHC:4053



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 808 of 2005

1. Rajendra Kumar Patel, S/o. Harprasad, Aged about 35 years, R/o. Village Kasahi, P.S. Kurud, District - Dhamtari (C.G.)

... Appellant

versus

1. State of Chhattisgarh, Through District Magistrate Dhamtari, Dist. Dhamtari (C.G.)

... Respondent

For Appellant	:	Mr. Navin Shukla, Advocate
For Respondent	:	Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment on Board

23.01.2026

- The appellant has filed this appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment dated 13.09.2005 passed by the learned Additional Sessions Judge, Dhamtari (C.G.) in Sessions Trial No. 178/2004 whereby the appellant has been convicted for commission of offence under Section 376(1) of IPC and sentenced to undergo Rigorous Imprisonment for 7 years and to pay fine amount of Rs. 200/-.
- The prosecution case, in brief, is that the victim has lodged an FIR bearing Crime No. 158/2004 on 23.04.2004 at Police Station Kurud, District - Dhamtari (C.G.) for commission of offence against the accused under Section 376 of IPC contending that she is residing in



Village Kasahi and on 23.04.2004 she had gone for agriculture work at about 6:00 AM and when she went gone to attend nature's call and sitting in the field, then the accused caught hold of her, made her lying down in the field and after closing her mouth with his hands he forcefully committed sexual intercourse with her and thereafter, he left away from the place of offence. It is also the case of the prosecution that the accused has forcefully closed her mouth which has prevented her to make hue and cry. After the incident she has informed about the incident to her husband, her in-laws, Amrit Thakur and Bhuwanlal Kotwar. Accordingly, the FIR was registered and after usual investigation, conducting medical examination of the victim, the prosecution has submitted charge-sheet before the learned Judicial Magistrate First Class Dhamtari which has been subsequently committed to the learned Additional Sessions Judge Dhamtari for trial.

3. The prosecution to bring home the guilt of the accused has exhibited the documents namely, First Information Report (Exhibit P/1), Consent Letter of the Victim for medical examination (Exhibit P/2), Property Seizure Memo (Exhibit P/3), Nazri Naksha (Exhibit P/4), Consent Letter (Exhibit P/5), Property Seizure Memo (Exhibit P/6), Statement of PW-7 (Exhibit P/7), Property Seizure Memo (Exhibit P/8), Letter to the Tehsildar for preparation of Nazri Naksha by Patwari (Exhibit P/9), Arrest/Court Surrender Memo (Exhibit P/10), Application to Assistant Surgeon for medical examination of accused (Exhibit P/11), Application to Assistant Surgeon for medical examination of accused (Exhibit P/12), Opinion of the doctor (Exhibit P/13), Letter to the Sub-Divisional Magistrate permission for medical



examination of the victim (Exhibit P/14), Letter to Medical Officer, Govt. Hospital Dhamtari for examining the victim (Exhibit P/15), Opinion of Doctor with regard to seized items (Exhibit P/15 'A'), Letter to Medical Officer, Govt. Hospital Dhamtari for examination of seized items of victim (Exhibit P/16), Opinion of the Doctor (Exhibit P/16 'A').

4. The prosecution to prove the case has examined the witness victim (PW-1), Madhuban Lal (PW-2), Bhuvanlal (PW-3), Rekhrum (PW-4), Fulubai (PW-5), Jamuna Lal (PW-6), Bisan Bai (PW-7), Dhansay Sahu (PW-8), C.L. Kosare (PW-9), Vijay Kumar (PW-10), Dr. V.K. Pandey (PW-11), S.N. Pandey (PW-12), Sunil Kumar Nirmalkar (PW-13), Natwar Singh (PW-14), Dr. Asha Tripathi (PW-15). The accused has not examined any witness, but he has exhibited document - Statement of BhuvanLal as (Exhibit D/1).
5. The learned trial Court after appreciating the evidence, material on record has convicted the accused/appellant under Section 376 of IPC and sentenced him as detailed above. Being aggrieved with this order of conviction the appellant has preferred this appeal before this Court.
6. Learned counsel for the appellant would submit that testimony of the victim in paragraph 6 of her deposition is highly exaggerated and does not find corroboration from medical evidence. He would further submit that independent witnesses Bhuvanlal (PW-3) and Rekhrum (PW-4) to whom the victim is alleged to have narrated the incident, did not support the prosecution story. He would further submit that the medical evidence of Dr. Smt. Asha Tripathi (PW-15) shows that on the date of incident victim was having menstruating period, but there was no blood stain found either in the undergarments of the



victim or on the garments of the accused. He would further submit that victim is married woman, aged about 35 years having 3 children, therefore, the finding given by the trial Court that since hymen of the victim is not intact, therefore, there is probability of forcefully commission of sexual intercourse which is totally illegal and contrary to the evidence and material brought on record and plea of false implication has also been raised by the appellant. He would submit that victim's statement is of not sterling quality which may lead the conviction of the appellant. Thus, he would pray for setting aside the judgment of conviction. The appellant to substantiate his submissions has referred to the judgment of High Court of Madhya Pradesh in case of **Jagdish vs. The State of Madhya Pradesh** in passed in **Criminal Appeal No. 1477/1999** on 22.08.2022, judgments of Co-ordinate Bench of this Court in case of **Onkar Singh vs. State of Chhattisgarh** passed in **CRA No. 396 of 2007** on 13.01.2026, **Hemant Kumar Verma vs. State of Chhattisgarh** passed in **CRA No. 223 of 2005** on 14.01.2026, **Mahesh Kumar Yadav vs. State of Chhattisgarh** passed in **CRA No. 2175 of 2024** on 14.01.2026.

7. On the other hand, learned State counsel opposing the submission would submit that the order of conviction is legal and justified as the victim in unequal term has deposed the incident and the manner in which offence has been committed by the appellant. He would further submit that sole testimony of the victim is sufficient to convict the appellant and no further corroboration is required. He would further submit that the victim has raised alarm and there was sufficient material on record to record such finding, therefore, he would pray for dismissal of the appeal. Lastly, he would submit that the offence



committed by the appellant is against the woman and if there is small contradiction and omission it should be ignored by this Court and would pray for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the record with utmost circumspection.
9. From the submissions made by the parties, the point emerged for determination by this Court is whether the order dated 13.09.2005 convicting the appellant for commission of offence under Section 376 is legal, justified and does not warrant any interference in the appeal by this Court.
10. To appreciate the point for determination, this Court has to examine the witnesses brought on record by the prosecution to prove their case. The victim was examined before the trial Court wherein she has categorically deposed the manner in which the offence has been committed, but in the cross-examination, the victim (PW-1) in paragraph 5 has stated that the accused by right hand has kept her mouth closed and by left hand he has kept his penis and put in her vagina and thereafter, the accused left after 15 minutes and later on she has also stood up. She has also admitted that the accused has pressed on breast and she kept her both hands on her chest, her both legs were spread and accused has pressed her both legs from his legs. Thereafter, in paragraph 6 she has also admitted that she has not made hue and cry after stood up, voluntarily she has stated that since the accused has threatened her, she has not cried. She has stated that in the Police report she has not mentioned about threat and she has also admitted that for the first time she has made this statement. She has also admitted that after the incident when



she was going to her house at that time 4-5 persons were there who were taking the bath in the pond, but she has not informed this incident to anyone. This creates doubt whether the victim was subjected to forceful sexual intercourse or consenting party.

11. Dr. Smt. Asha Tripathi (PW-15) who has examined the victim has also given her opinion that she cannot give any specific opinion about the fact that the victim was subjected to forceful sexual intercourse. The doctor in further cross-examination has also stated that the agriculture field is not smooth field and where after throwing the victim any sexual intercourse would have been committed forcefully, then there must be some injuries on the body part of the victim and if the hand was caught hold tightly then the bangles wore on the hands should be broken. From the said evidence, it is quite vivid that no forceful act has been committed and victim is a consenting party for committing the said offence.
12. PW-4 who was seizure witness (Exhibit P/6) has stated in his evidence that nothing was seized from the accused before him accordingly he was declared hostile witness and in the cross-examination he has stated that when Madhuban has taken him to his house then Madhuban informed him that accused Rajendra caught hold the hand of his wife and apart from that nothing has been told. Phool Bai (PW-5) has stated that he has not seen the incident of forceful rape has been informed by this son Madhuban. She has also stated that place where the victim has gone for attending the nature's call there villagers were also going at about 5 'O' Clock or 6 'O' Clock. From perusal of the said evidence, a doubt has been raised regarding the case of the prosecution.



13. From the evidence of the victim and the evidence of the doctor, it does not appear that the victim's statement is of sterling quality, natural, trustworthy and worth being relied on. In the case in hand no violence was found present over the victim, no injuries were found over the person of the victim, no sign or symptoms were found suggesting physical intercourse, as such, the statement of the victim does not inspire confidence that she was forcibly subjected to sexual intercourse. This Court in case of this nature is unable to hold that statement of victim was of sterling quality which can be accepted by this Court, therefore, such statement cannot be sole foundation to give stamp of approval to the judgment of conviction. Similarly, in the medical report also there was no injuries to the person of the victim, thus, medical report merely creates a doubt and cannot be treated to be a clinching evidence regarding commission of rape on the victim. Thus, the medical evidence does not support the ocular evidence.
14. The Hon'ble Supreme Court in case of **State of Himachal Pradesh vs. Mango Ram** reported in **2000 (7) SCC 224** has held in paragraphs 13, 14 and 16 as under:

13. Even if it is assumed that the prosecutrix was above 16 years, the reasons attributed by the learned Sessions Judge to prove that she had given consent for the sexual act are not true. According to the prosecutrix, she resisted the accused by scratching him with nails but as no nail marks were found on the body of the accused, the learned Sessions Judge was of the view that for this reason, it is to be assumed that there was consent on the part of the prosecutrix. The accused was examined on 20.4.1993. As the incident occurred on 17.4.1993, even if there were any marks of violence on the body of accused, the same would have been obliterated and were not so prominent so as to be noticed by the medical officer who examined him. Therefore, the absence of nail marks or minor injuries on the body of the accused is of not much significance. From the oral evidence of the prosecutrix (PW 5), it is proved that the accused caught her from behind and he lifted her and pushed her down and despite her attempt



to cover herself with the salwar, the accused pull it down. She also stated that the accused gagged her mouth when she attempted to cry a loud. The subsequent conduct of the prosecutrix also shows that she was very much resistant to the sexual onslaught on her. She came to her father immediately and told the entire incident as to how she was ravished by the accused. The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between the resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. From the evidence on record, it cannot be said that the prosecutrix had given consent and thereafter she turned round and acted against the interest of the accused. There is a clear credible evidence that she resisted the onslaught and made all possible efforts to prevent the accused from committing rape on her. Therefore, the finding entered by the learned Sessions Judge that there was consent on the part of the prosecutrix is without any basis.

14. The learned Counsel for the accused argued that there were no marks of violence over the breasts, nipples or cheeks and lips or other external genitals of the prosecutrix and that she herself had not deposed anything about the extent of penetration and this would indicate that there was no commission of the offence. It was argued that the absence of the spermatozoa in the clothes worn by the prosecutrix and the accused also indicated that there was no sexual act and at the most this would have been only an attempt to outrage the modesty of the girl. We are not inclined to accept this contention.

16. In view of the evidence of prosecutrix(PW 5), which is corroborated by medical evidence and other item of evidence and in the absence of any consent on the part of the prosecutrix, it is clearly established that the accused had committed rape on the prosecutrix and is liable for the offence punishable under Section 376 I.P.C. The finding given by the learned Sessions Judge is not based on proper appreciation of evidence and, therefore, unreasonable and we are of the view that the Sessions Court dealt the case so lightly. The offence of rape being a serious one, the case should have received careful attention and that the learned Sessions Judge and the learned Single Judge should have shown greater sensitivity to these type of cases. The evidence should have been appreciated on broader probabilities and not to be carried away by insignificant contradictions.



15. In the light of above cited judgment, it is clear that the statement of victim is not reliable, medical evidence also does not support the prosecution case. As such, this Court is of the considered opinion that the conviction and sentence recorded by the learned trial Court are not sustainable in law as the prosecution has failed to establish the charge against the accused/appellant beyond reasonable doubt, and the material on record leads to a plausible alternative hypothesis of false implication.
16. In the result, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 13.09.2005 is set aside. The appellant is acquitted of the charges leveled against him. The appellant is already on bail. Keeping in view the provisions of Section 437-A Cr.P.C.(481 of the B.N.S.S), the appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
17. The Trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Narendra Kumar Vyas)
Judge