

CRA No. 720 of 2022

2025:CGHC:47985-DB

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HIGH COURT OF CHHATTISGARH AT BILASPURCRA No. 720 of 2022

1. ABC Nil

... Appellant(s)

versus

1. State Of Chhattisgarh Through The Station House Officer, Police
Station Saraswati Nagar, District Raipur (C.G.)

... Respondent(s)

For Appellant : Ms. Sofia Khan, Advocate

For Respondent/State : Mr. Shailendra Sharma Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Bibhu Datta Guru, Judge****18.09.2025**

This criminal appeal filed by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 21.01.2022, passed by the learned Additional Sessions Court/ Second Fast Track Special Court, Raipur (C.G.) in Special Criminal Case (POCSO) No. 87/2018, whereby the appellant/accused have been convicted for the offence and sentenced as under:-

Conviction	Sentence
Under Section 376 (2) (n) of the IPC and Section 6 of POCSO	R.I. for life which shall mean the remaining of the conviction natural life and fine of Rs. 5,000/- (in default of payment for additional 1 year R.I.)

1. Facts of the case in brief is that on March 16, 2018, the victim submitted a written complaint against the accused, who is her own father, at Saraswati Nagar Police Station, stating that she had been a resident of the girls' hostel for two years. One and a half years prior to the report, in November 2016, during the Diwali holidays, the victim's uncle (bade papa), while bringing her home from the hostel, took her to an abandoned house in Naya Rajdhani and forcibly raped her. Upon returning home, the victim informed her father/accused about the incident. The accused/father told her to remain silent, but that night, he also raped her. According to the written complaint, the accused father raped the victim several times after the incident, including on Holi, March 2, 2018. Based on the written complaint and the victim's information, a report was filed against the accused at the Saraswati Nagar Police Station on March 16, 2018. A First Information Report (FIR) was filed against the accused at Mana Camp Police Station on 0/18, and subsequently, a First Information Report (FIR) was filed at Saraswati Nagar Police Station under Crime No. 45/2018 under Section 376 of the Code

of Criminal Procedure and Section 6 of the POCSO Act. Spot map was prepared vide Ex.P-5. After due investigation, the appellant was arrested. Medical Examination of victim was conducted by Dr. P. Sharma (PW-6) and submitted a report vide Ex.P/8.

2. The trial court has framed charges against the appellant for the aforementioned offence and the appellant abjured his guilt and pleaded innocence.
3. In order to establish the charge against the appellant, the prosecution examined as many as 11 witnesses and exhibited 26 documents. The statement of the appellant under Section 313 of Cr.P.C. was also recorded in which he denied the material appearing against them and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.
4. Learned counsel for the appellant submits that the impugned judgment dated 21.01.2022 is perverse, erroneous, and contrary to law as well as the facts and circumstances of the case, and therefore deserves to be set aside. It is contended that there is no cogent or clinching evidence to establish the involvement of the present appellant, who is the own father of victim, the entire prosecution case being based solely on circumstantial evidence,

wherein the chain of events is incomplete and missing vital links to prove the offence beyond reasonable doubt. Learned counsel further submits that the trial court has wrongly convicted the appellant merely on the basis of assumption and presumption, ignoring the material contradictions and omissions in the testimony of prosecution witnesses which completely falsify the prosecution case. It is urged that the learned trial court failed to properly appreciate the evidence and documents placed before it in their correct perspective, and as such, the conviction and sentence recorded against the appellant cannot be sustained in law. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.

5. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.
6. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
7. It is noteworthy to mention that levelling rape allegation against the uncle (bade papa) the victim lodged a report bearing Cr.No.69/2018, in which said accused tried in Spl. Cr. (POCSO) No.83/2018 wherein he has been convicted and sentenced,

however, in his appeal bearing CRA No.184 of 2021 this Court by judgment dated 8.8.2025 acquitted him from the charges levelled against him.

8. **The question which arises for consideration is, what are the circumstances which shows that the victim was raped by the appellants/accused.**
9. PW-1, victim stated in her examination-in-chief that the incident occurred approximately 1 year ago. She stated that she had been living at the Government Scheduled Caste Girls' Hostel in Arang for approximately 2 years, occasionally visits home. She stated that her biological mother had left her and moved elsewhere, so she lived in the hostel and studied. In November 2016, during the Diwali holidays, her uncle (bade papa), came to take her home from the hostel on his motorcycle. While taking her home, he took her to an empty house in Naya Rajdhani and forcibly raped her. She screamed at the time of the incident, but no one was present, and the said accused told her not to tell anyone about it. After this, he left her in the house in Jagannath Nagar and thereafter she went to her father's house (accused/appellant herein). She further stated that she told about the incident to her father, but he advised her not to tell about the incident to anybody and to remain silent and thereafter her father also forcibly did wrong things (rape) with her. During Holi also her father did wrong things (rape) with her in her house. She further stated that

one day in the hostel she collapsed and on enquiry she told about the incident in the hostel.

In her cross examination the victim stated that her mother had deserted her four children and remarried one another person who is a resident of Balaghat (MP) without obtaining divorce from her father, who resides at Jagannath Nagar, Kota Colony, Raipur, and works as a city bus driver. She deposed that for the last two years she had been living in Arang hostel for her studies, while her father remained unmarried and her three siblings resided with him. She admitted that her daily school attendance was duly marked, leave applications were signed by the hostel warden, and all visitors including her uncle signed the hostel register when taking her home, as during the Diwali holidays of October 2016. She further admitted that her uncle was a heart patient, had undergone multiple surgeries, suffered from diabetes and cataract, and was weak. She accepted that during Diwali holidays her uncle once saw her with a boy late at night, after which she apologised and requested him not to report the matter, and that she never met the boy again. She also stated that she disliked hostel life due to restrictions, that she never complained of any incident for two years despite visiting home 10–15 times and meeting relatives, and that even when 8–10 family members stayed together in one small room during Holi, she made no disclosure. She admitted that her mother never visited her, and

that she wished to stay with her mother but could not as her mother had remarried. Finally, she admitted that she lodged the report only at the instance of hostel warden Arti Sharma.

10. PW-4 Arti Sharma stated that she know the accused because he is the father of the victim. Victim used to live in the hostel. She further stated that she was posted as the Superintendent at the Government Primary Scheduled Caste Girls Hostel, Arang. The incident occurred last year during Holi. All the girls living in the hostel go home during Holi, but the victim refused to go home during the festival. On March 13, 2018, the victim received a call from her father on the hostel phone. The victim spoke to her father and then fell unconscious. Upon being told by the staff, she came to the hostel the next morning and questioned the victim. The victim began crying and told her that her father, had been raping her for the past one and a half years and had forbidden her from telling anyone. Upon further questioning of the victim, she told that her elder father while taking her home from the hostel during Diwali vacation and while bringing her back from home to the hostel, had raped her in Naya Rajdhani instead of taking her to the hostel. Thereafter she stated that she informed her senior officers about the incident. Then along with the victim gave a written complaint about the incident to the Station House Officer, Mana Camp.

In her cross examination she stated that victim went home for Holi last year, and her hostel entry and exit records should

reflect with whom and when she traveled. She further stated that the victim fainted after a phone call with her father, though this detail is missing in the police statement. The victim had been healthy, though poor in studies and often made excuses. Children used hostel or guard phones to contact family. After fainting, she was not taken to a doctor but to Arang or Raipur hospitals in emergencies. She regained consciousness and cited her father's scolding as the cause of fainting. The claim of fainting from physical weakness was denied. She accepted the suggestion that no complaint had been made against the accused before this event.

11. PW-6 Dr. P. Sharma stated that on 17.03.2018 at about 1:30 a.m., the prosecutrix, aged about 15 years was brought before her by Woman Constable for medical examination. On her examination she found that her secondary sexual characters, including breasts, axillary and pubic hair, were fully developed. No fresh external injury was found on her body. On internal examination, the Medical Officer observed that the genital organs bore no sign of injury. The hymen was found to be old ruptured with healed margins, and on touching the area the prosecutrix did not complain of pain; neither swelling nor bleeding was present. Two vaginal smear slides were prepared and sealed for chemical examination and handed over to the constable. In her opinion, the Medical Officer stated that possibility of sexual intercourse with the prosecutrix could not be ruled out, though confirmation would

depend upon the chemical examination of the vaginal smear slides. The report was exhibited as Ex. P-8 and bore her signatures. In cross-examination, the Medical Officer admitted that no injury, either external or internal, was found on the body of the prosecutrix. She further admitted that the slides were sent for chemical analysis precisely for the purpose of confirming whether any sexual intercourse had taken place, and also admitted that the medical report did not furnish a definite opinion regarding commission of sexual intercourse with the prosecutrix. FSL report vide Ex.P-25, is negative and semen stains and human sperm were not found.

12. The Supreme Court in the case of **Santosh Prasad @ Santosh Kumar v. State of Bihar, (2020) 3 SCC 443** held that a conviction for rape can be based solely on the statement of the victim, but only if the victim's statement inspires confidence and appears to be completely reliable, unblemished, and of excellent quality. Paragraphs 5.4.3, 5.5, and 6 hold the following:

5.4.3. In Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130 it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?"

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of

PW5-prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix-PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt."

13. In view of the aforesaid, law laid down by the Supreme Court, it would be appropriate to scrutinize the testimony of the victim. The statement of victim PW-1 is important. Going through the statement of the victim and the allegations against the father, the statement of the prosecutrix does not inspire confidence and cannot be relied upon for conviction. Though she alleged that after the Diwali incident her father also committed rape upon her and repeated the act during Holi, in her cross-examination she categorically admitted that she continued to reside in the hostel

for about two years, visited her father's house 10–15 times, and on occasions when 8–10 family members were present together in one small room during Holi, she never made any disclosure to anyone. She further admitted that she had never complained about any such incident to her teachers, relatives, or authorities despite having ample opportunity. It also stands admitted that she lodged the report only at the instance of the hostel warden and not out of her own will. The victim in her evidence has stated that once she was intercepted by her uncle (bade papa) when she was with a boy and when her uncle scolded the boy, the victim requested him to apologize and not to lodge any report. From the aforesaid fact narrated by the victim, the omissions and delays in lodging the FIR make her version highly doubtful. Even the report lodged by her, against her uncle (bade papa) as well as against her own father itself creates a doubt upon the allegations leveled by the victim. Significantly, there is no medical evidence to support the allegation of rape by the father. The conduct of the prosecutrix, her admitted dislike for hostel life, and her wish to reside with her mother who had remarried, further cast doubt on the genuineness of the allegations. In view of these contradictions, unnatural conduct, and absence of corroboration, the prosecution has failed to establish the charge against the father beyond reasonable doubt, and he is entitled to acquittal.

14. For the foregoing reasons, the prosecution has not proved its

case beyond reasonable doubt that the appellant had sexually assaulted the Victim, and from the evidence of the victim the same creates doubt, therefore, we are of the view that the appellant is entitled to be acquitted.

15. The accused is acquitted of the charges for which he was tried. The impugned judgment of conviction and sentence is set aside. Since the appellant is in custody, he be released forthwith, if not required in connection with any other case.
16. Keeping in view the provisions of Section 437-A of the CrPC, 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 two reliable sureties 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/-

(Bibhu Datta Guru)
Judge

SD/-

(Ramesh Sinha)
Chief Justice