



2026:CGHC:5632

AFR

Reserved on : 20.01.2026**Delivered on : 02.02.2026****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 18 of 2005**

1 - Mahaveer Chaik, S/o Bori @ Baisakhu, R/o Village – Ranpur, P.S. -
Narayanpur, District – Jashpur (C.G.)

... Appellant(s)**versus**

1 - State Of Chhattisgarh, P.S. - Narayanpur, District - Jashpur (C.G.)

... Respondent(s)

For Appellant : Ms. Ananya Tiwari o/b Mr. Sanjay Agrawal, Advocates

For Respondent : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas**CAV Judgment**

- 1.** The appellant by way of this appeal has challenged the judgment dated 22.12.2004 passed by the Sessions Judge, Jashpur (CG) in Sessions Trial No. 26/2003 whereby and whereunder, appellant has been convicted and sentenced as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
506 IPC	2 Years	--	---



323 IPC	1 Year	--	---
342 IPC	1 Year	--	---
376 IPC	7 years	Rs. 300/-	R.I. 1 month

2. Briefly stated, the case of the prosecution is that the victim lodged an FIR bearing Crime No. 7/2003 at Police Station Narayanpur, District Jashpur, alleging that on the date of the incident, i.e., on 14.03.2003, her husband had gone to Pandripani for earning his livelihood. As he did not return to his house that night, she went in search of him. While returning to her house, the accused met her in front of her house and told her that he would keep her as his wife and asked her to accompany him. He further threatened that if she raised an alarm, he would kill her. It is alleged that the accused assaulted her by hitting her right knee with the butt of an axe, forcibly lifted her on his shoulder, and took her to the house of his father, Baisakhu, where he threw her inside the house over the wall due to which she sustained injuries on her right ankle, right knee, and elbow, and her glass bangles on the right hand were broken. The accused also entered the house by scaling the wall, removed her clothes, and committed rape upon her thrice at intervals of half an hour and thereafter one hour. At about 3:00 a.m., her husband reached the spot by crossing the wall while searching for her. A brief scuffle ensued between the husband and the accused, however the accused managed to flee from the spot. The husband then brought the victim back to their house. She narrated the incident to Sushil Kumar, Satin, and Bandhanram



and thereafter lodged the FIR on 15.03.2003.

3. On the basis of the FIR, the police registered Crime No. 7/2003.

After completion of usual investigation, a charge-sheet was filed. Since, the offence alleged are under Sections 506B, 323, 342 and 376 of the IPC which is triable by the Sessions Court only. Therefore, Learned Chief Judicial Magistrate, Jashpur vide its order dated 14.07.2003 has committed trial to the learned Sessions Judge, Jashpur which was registered as Sessions Trial No. 26/2003. The accused denied the charges and faced trial.

4. To bring home the charges against appellant, the prosecution

examined as many as 8 witnesses namely PW/1 the victim, PW/2 Chiththuram, PW/3 Bandhan Ram, PW/4 Sushil Kumar, PW/5 T.R. Rajput, Asstt. Sub Inspector, PW/6 Plasiniyush Toppo, Patwari, PW/7 Dr. Shyamlal Siddarth, Medical Officer, PW/8 Dr. Ms. J. Minj, Medical Officer and exhibited documents Ex.P/1 FIR, Ex.P/2 and P/3 Seizure Memo, Ex.P/4 copy of counter FIR, Ex.P/5 consent of victim for medical examination, Ex.P/6 consent of victim's husband for medical examination of his wife, Ex.P/7 application for medical examination of the victim to SDM, Ex.P/8 application for medical examination of the victim to Medical Officer, Ex.P/9 Crime Detail Form, Ex.P/10 Seizure Memo, Ex.P/11 Arrest Memo, Ex.P/12 application for medical examination of the accused to Medical Officer, Ex.P/13 & 14 Seizure Memo, Ex.P/15 application for FSL, Ex.P/16 FSL Report, Ex.P/17 Najri Naksa Ex.P/18 Medical report of the accused, Ex.P/19 medical report of the victim. The accused was



examined under Section 313 of the Cr.P.C. and examined one witness DW/1 Madan Ram.

5. Upon appreciation of the evidence and material on record, the learned trial Court convicted the appellant and sentenced him as aforesaid. Aggrieved thereby, the appellant has preferred the present appeal under Section 374 of the Cr.P.C.
6. The appellant remained in jail from 19.03.2003 to 04.08.2003 and again from 22.12.2004 till the sentence was suspended and bail was granted by this Court on 09.03.2005.
7. Learned counsel for the appellant would submit that the victim was a consenting party and that there is no evidence on record to show that she raised any alarm or resisted. It is further contended that the prosecution case is improbable and that the evidence of the victim itself demonstrates consent. It is argued that the accused and the victim allegedly crossed a wall measuring about six feet in height, which could not have been possible without the victim's consent. It is further submitted that the accused and the victim were in an illicit relationship and, upon being seen by her husband, the victim concocted a false story. Learned counsel would further submit that the learned trial Court failed to consider that the victim was aged about 32 years and mother of two children, there were no injuries on her private parts as such the allegation of forcible rape is not established. The victim's testimony does not inspire confidence as there are a lot of contradictions and omissions in her statement. On these grounds, it is urged that the judgment of conviction and order of



sentence are perverse and contrary to the evidence on record and deserve to be set aside.

8. Per contra, learned counsel for the State would submit that the learned trial Court has rightly appreciated the evidence on record and convicted the appellant. It is contended that the victim, in her examination-in-chief, has categorically narrated the incident, which remained un rebutted in cross-examination. The commission of rape is further corroborated by the FSL report, which lends support to the testimony of the victim and other prosecution witnesses. It is also submitted that the accused was afforded an opportunity to explain the incriminating evidence during his examination under Section 313 of the Cr.P.C. Therefore, the impugned judgment does not suffer from any perversity or illegality warranting interference, as such, the appeal deserves to be dismissed.

9. I have heard learned counsel for the appellant and the State and perused the record of the trial Court with utmost satisfaction.

10. From the submission made by the learned counsel for the parties and perusal of the record, the point emerged for determination by this Court is ;

“whether the victim is a consenting party for the commission of the offence and whether the prosecution has proved its case beyond reasonable doubt?.

11. For appreciation of this point, this Court has to go through the evidence.

12. **Evidence of PW/1** : - The victim in her Examination in chief has



categorically stated that when on the date of incident at 10pm her husband did not return from the work, she went to the house of Lohra. Near to the House of Lohra the accused met her, he threatened her showing the axe and took her to the house of his father Baisakhu in forest. There was lock on the door, he tried to break the lock, but when he failed, threw the victim inside the house across the wall and he also entered the house crossing the wall, removed her clothes and committed rape on her. When she resisted, he assaulted her by fist and butt of the axe. He committed rape thrice after some interval. At around 3-4 am her husband reached the place of incident, got the door opened and took her to Sushil Maharaj where Bandhan was also called, where, she narrated the incident. She has also admitted that the police has seized her broken bangles of left hand and petticoat in which at two places human sperms were found (Ex.P/2), her broken bangles and iron axe of sharp edge of 3 Inch and length of wooden shaft 31 Inch (Ex.P/3) and the undergarments with human sperm (Ex.P/13). The witness was extensively cross-examined, wherein she has denied that she has consumed alcohol. She has denied that she has love affair with the accused. She has stated that the accused has thrown her over the wall. She has stated that the accused had threatened her therefore, she has not made any hue and cry.

13. Evidence of PW-2 – Chiththu Ram: PW-2, the husband of the victim, has deposed that upon reaching the house of Baisakhu, he found the door locked, but he heard noises coming from



inside the house. He entered the house by scaling the wall and saw the accused with his wife. He caught hold of the accused, but the accused managed to flee from the spot. Thereafter, his wife informed him that the accused had assaulted her and forcibly committed rape upon her thrice. Subsequently, the FIR was lodged on the same date. This witness was subjected to extensive cross-examination, but his testimony remained un rebutted. On the contrary, the witness has denied that he has doubt over the character of his wife and also denied that there was previous physical relationship between the accused and the victim.

14. Evidence of PW-3 – Bandhan Ram: PW-3 has supported the prosecution case and stated that the victim reached the house of Sonsai and left the house of Sonsai within half an hour. As soon as the victim reached the house of Sonsai, the accused also left the house of Sonsai. In cross-examination, he stated that there was no relationship between the victim and the accused. He specifically denied the suggestion that there was any love affair between the accused and the victim.

15. Evidence of PW-4 – Sushil Kumar: PW-4 has stated that after the incident, the victim narrated the occurrence to him. He has also denied the suggestion that there existed any physical relationship between the accused and the victim prior to the incident.

16. Evidence of PW-5 – T.R. Rajput: PW-5, Assistant Sub-Inspector, has stated that during the investigation he seized



broken glass bangles and one iron axe in the presence of witnesses Sambhunath and Sushil Kumar. He further admitted that during the course of investigation he did not inquire whether there was any love affair between the accused and the victim.

17. Evidence of PW-7 – Dr. Shyamlal Siddharth: PW-7, who medically examined the accused, opined that the accused was capable of performing sexual intercourse.

18. Evidence of PW-8 – Dr. Smt. J. Minj: PW-8, who examined the victim, stated that she had suffered multiple injuries, namely two abrasions each measuring $\frac{1}{2}$ " $\times$ 1 cm $\times$ 1 cm on the back of the right leg, a bluish blood clot on the right knee measuring 1" $\times$ 1", a scraped wound measuring $\frac{1}{2}$ " $\times$ $\frac{1}{2}$ " $\times$ 1 cm and a scraped wound on the right elbow measuring 1 cm $\times$ 1 cm $\times$ 1 cm. She further stated that all secondary sexual characteristics were well developed. She opined that the injury on the right knee could be caused by a hard and blunt object, while the remaining injuries could be sustained by contact with a hard and rough surface. In cross-examination, she stated that the injuries appeared to have been caused approximately 12 to 20 hours prior to the examination and admitted that such injuries could also be caused while jumping from a wall of about six feet in height and coming into contact with bushes or rubbing against a wall. She has admitted that there is no sign of immediate rape on the victim.

19. Evidence of DW-1 – Madan Ram: The accused examined DW-1 Madan Ram in defence, who stated that the victim had



followed the accused. According to him, when the accused objected, the victim stated that her husband was not at home and she would accompany the accused. She threatened to consume poison if he refused. He further claimed that due to love affair between the accused and the victim, a meeting was convened in the village. He stated that he occasionally lived with the accused. The witness has stated that when investigation was going on he has not narrated this fact to the police officer through Sarpanch.

20. Statement of the Accused: The accused was examined under Section 313 of the Cr.P.C., wherein the trial Court put questions Nos. 44 to 46 regarding the medical report Ex.P/19 and FSL report Ex.P/16. In the FSL report it has been found that in Article A,B,C and D which are Petticoat, slide of victim, undergarment of the accused and slide of the accused respectively wherein human sperms were found and a positive report was given. In response, the accused stated that he did not know.

21. The learned trial Court, while recording its findings, has elaborately discussed the evidence available on record and, in paragraph No. 20 of the judgment, declined to accept the testimony of the defence witness Madan Ram, observing that an illicit relationship cannot be openly acceptable and, therefore, his statement cannot be relied upon. The trial Court has categorically recorded a finding that if physical relationship was consensual, there was no reason for the victim to leave the village, travel a distance of about one kilometre, and scale a



wall. It has further observed that the injuries sustained by the victim the act do not appear to be voluntary in nature. The learned trial Court has also held that the victim could not have stayed with the accused from 10:00 p.m. to 3:00 a.m. voluntarily and, therefore, the act was forceful. It has further taken note of the fact that the victim was a mother of two children and, for that reason, absence of injuries on her private parts could not be a decisive factor. The trial Court has also relied upon the FSL report, medical evidence relating to the injuries, and the seizure of the axe and broken bangles to support the conclusion that the offence was committed under duress. Similarly, the accused had wrongfully confined the victim, the learned trial Court convicted him under Section 342 of the IPC.

- 22.** From the evidence brought on record, this Court is to examine whether the act of victim will be termed as consensual act to overcome the rider of rape as per Section 375 of the IPC as stood prior to amendment No. 13/2013 w.e.f. 03.02.2013. Section 375 is reproduced below:-

375. A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.- Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.



Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under sixteen years of age.

Seventhly – When she is unable to communicate consent.

Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

23. In this Section the consent has not been defined but consent has been defined in Section 90 of the IPC which is extracted below :-

90. Consent known to be given under fear or misconception.— A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

24. From perusal of Section 375 read with Section 90, it is quite vivid that consent obtained out of fear or misconception is not consent. The consent of a victim of rape case is the subject matter of examination before the Hon'ble Supreme Court in various cases. Few of them are as under:-

A'. The Hon'ble Supreme Court in case of **State of H.P. vs. Mango Ram {(2000) 7 SCC 224}** has held 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.

B. Hon'ble Supreme Court in case of **Uday vs. State of Karnataka {(2003) 4 SCC 46}** has held as under :-

22. The approach to the subject of consent as indicated by the Punjab High Court in Rao Har Narain Singh (supra) and by the Kerala High Court in Vijayan Pillai (supra) has found approval by this Court in State of H.P. vs. Mango Ram (2000) 7 SCC 224. Balakrishnan, J. speaking for the Court observed :-

"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 resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

C. Again Hon'ble Supreme Court in case of **Deelip Singh @ Dilip Kumar vs. State of Bihar {(2005) 1 SCC 88}** has held as under :-



17. The Indian Penal Code does not define 'consent' in positive terms, but what cannot be regarded as 'consent' under the Code is explained by Section 90. Section 90 reads as follows:

"90. Consent known to be given under fear or misconceptionA consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or misconception; "

18. Consent given firstly under fear of injury and secondly under a misconception of fact is not 'consent' at all. That is what is enjoined by the first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries.

19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the Court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology. Section 90 cannot, however be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code. The normal connotation and concept of 'consent' is not intended to be excluded. Various decisions of the High Court and of this Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word 'consent'.

25. In light of the above stated legal position, evidence brought on record by the prosecution, the victim's statement which inspires confidence in the case of the prosecution as she has narrated the facts how she was subjected to commission of offence of rape on the strength of axe



which was seized by the prosecution having wooden shaft of 31 inch and cutting edge 3 inch which seems sufficient to inflict fatal injury and the seizure of the four broken parts glass bangles coupled with injuries at right knee, back of leg and right elbow in the medical report clearly demonstrate that it was not the case of free consent, therefore, the submission made by the learned counsel that the victim was consenting party deserves to be rejected. Further, the presence of human sperm as reflected in the FSL report, wherein human sperm was detected on Articles A, B, C, and D, namely the petticoat, slides of the undergarments of the victim and the accused, and the slides of the accused, lends corroboration to the prosecution case.

26. Even it is trite law that conviction can very well be recorded on the basis of sole testimony of the victim provided such testimony inspires confidence. Hon'ble Supreme Court in case of **State of Himachal Pradesh vs. Manga Singh {(2019) 16 SCC 759}** has examined the issue and recorded its finding as under :-

10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

(11) It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of



credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

12.n State of Punjab v. Gurmit Singh and Others - (1996) 2 SCC 384, it was held as under:-

“8. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?.....”.

27. Learned trial Court has also framed question under Section 313 of the Cr.P.C. with regard to FSL and medical report in question No. 44 to 46 and the same has been replied by the accused as such, opportunity of explaining was extended to the accused, therefore, sufficient compliance of Section 313 of the Cr.P.C. has



been made. Hon'ble Supreme Court in case of **Raj Kumar vs. State (NCT of Delhi) {(2023) 17 SCC 95}** has examined the case under Section 313 of the IPC and held that all the incriminating circumstances appearing against the appellant in the evidence produced by the prosecution has to be put to the accused to explain and record of the case would clearly demonstrate that all the incriminating circumstances have been asked to the accused to explain, thus, there is sufficient compliance of Section 313 of the Cr.P.C. and all the opportunities to defend the case has been provided. Since, ample opportunity of explaining was extended to the accused, therefore, there was sufficient compliance of Section 313 of the Cr.P.C.

28. Rape is one of the gravest and most heinous offences against a woman. It is an affront to womanhood itself, striking at the core of her dignity, modesty, and honour. The offence inflicts deep and lasting trauma, shattering her sense of self, autonomy, and confidence. It is not merely a crime against an individual, but an offence against society at large. Such an act amounts to a brutal invasion of the most cherished fundamental right guaranteed under Article 21 of the Constitution of India, namely, the right to life with dignity, bodily privacy, and personal liberty. Therefore, considering the entire evidence and material on record, the finding of the learned trial Court cannot be found faulty or suffers from irregularity or illegality which warrants interference by this Court and the prosecution has proved the case beyond



reasonable doubt.

29. Accordingly, the Criminal Appeal sans merits and it is dismissed.

The appellant is directed to surrender before the concerned trial Court within three months to undergo the remaining part of the sentence, after giving set-off of the period of 7 months already undergone by him during trial as well as after conviction prior to his release on bail by this Court.

30. As, the appellant is reported to be on bail, his bail bonds stand cancelled in view of the provisions of Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

**Sd/-
(Narendra Kumar Vyas)
Judge**

kishore