



2025:CGHC:19570-DB

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Date: 2025.05.01
14:44:58 +0530**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 925 of 2017***{Arising out of judgment dated 30.01.2017 passed in Sessions Trial No.56/2013 by
the learned Additional Judge to the Court of Additional Sessions Judge, Katghora}*

Shiv Kumar Yadav @ Jarhu @ Mithun, S/o. Dukhu Ram Yadav,
Aged About 26 Years, R/o. Fokatpara, Indira Nagar, Police Station
Kotwali, District Korba, Chhattisgarh.

... Appellant**versus**

State Of Chhattisgarh, Acting Through Station House Officer, Police
Station Kusmunda, District Korba, Chhattisgarh.

... Respondent*(Cause Title taken from Case Information System)*

For Appellant : Mr. Anand Kumar Gupta, Advocate

For Respondent : Mr. Arvind Dubey, Govt. Advocate

(Division Bench)**Hon'ble Shri Justice Sanjay K. Agrawal****Hon'ble Shri Justice Sanjay Kumar Jaiswal****Judgment on Board****(30.04.2025)**

Sanjay K. Agrawal, J.

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 30.01.2017, passed by the learned Additional Judge to the Court of Additional Sessions Judge Katghora, District Korba in Sessions Trial No.56/2013, by which the appellant herein has been convicted and sentenced as under :

CONVICTION		SENTENCE
U/s. 323 of I.P.C.	:	Rigorous imprisonment for 1 year and fine of Rs.1000/-, in default of payment of fine, 1 month's additional imprisonment.
U/s. 376 (D) of I.P.C.	:	Life imprisonment and fine of Rs.5000/-, in default of payment of fine, 3 months' additional imprisonment.
Both the sentence to run concurrently.		

2. Case of the prosecution, in brief, is that, on 12.04.2013 at about 10:30 to 11:00 P.M. near Railway Track Sarwamangla, Police Station- Kushmunda, the appellant herein and absconded co-accused Manoj committed gang rape to the

victim (PW-14) and thereby, committed the aforesaid offences. The FIR was lodged vide Ex.P-11 and victim (PW-14) was medically examined by Dr. Smt. V. Rawte (PW-12) who proved the medical report vide Ex.P-18 in which she found external injuries over the body of the victim and her hymen was absent but no internal injury was found on her private part. The vaginal slides were prepared and sent for chemical examination to FSL but no FSL report has been brought on record. After due investigation, the appellant was charge-sheeted for the aforesaid offences and the case was committed to the Court of Sessions for trial in accordance with law in which the appellant abjured his guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated.

3. During the course of trial, in order to bring home the offences, prosecution has examined as many as 15 witnesses and exhibited 24 documents and the appellant-accused in support of his defence has neither examined any witness nor exhibited any document.
4. The learned trial Court, after appreciating the oral and documentary evidence on record, convicted the appellant for

the aforesaid offences as mentioned in the opening paragraph of this judgment, against which the present appeal has been preferred.

5. Mr. Anand Kumar Gupta, learned counsel for the appellant, would submit that the victim (PW-14) has not supported the case of the prosecution. He would further submit that though the medical evidence is supported the case of the prosecution but there is no forensic evidence available on record and only on the basis of medical evidence, the appellant could not have been convicted. Therefore, the appellant is entitled for acquittal and the appeal deserves to be allowed.
6. Mr. Arvind Dubey, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offences beyond reasonable doubt and, therefore, the trial Court has rightly convicted the appellant for the aforesaid offences. As such, the appeal deserves to be dismissed.
7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. The case of the prosecution is that the appellant and one absconded co-accused Manoj committed sexual intercourse with the victim and, therefore, they were proceeded for trial. However, the careful perusal of the statement of the victim (PW-14) would show that she is suffering from psychiatric disease and on account of that she has not at all supported the case of the prosecution, though she was examined before the Court. As such, the victim (PW-14) has not supported the case of the prosecution. However, from the statement of Dr. Smt. V. Rawte (PW-12), it is apparent on record that on examination of the victim (PW-14) vide Ex.P-18, external injuries were found over the body of the victim and her hymen was found ruptured. However, she (PW-12) has not given opinion about the recent sexual intercourse, as there is no forensic evidence available on record. Furthermore, the trial Court has invoked Section 6 of the Indian Evidence Act to base the conviction, but upon consideration of the facts & circumstances of the case, we find that Section 6 of the Indian Evidence Act would not attract in this case. In that view of the matter, since neither the victim (PW-14) has supported the case of the prosecution nor the forensic evidence is available on record, mainly on the basis of external injuries found over the body of

the victim, the appellant could not have been convicted for the offences under Sections 323 & 376(D) of I.P.C.

9. Accordingly, the impugned judgment of conviction and order of sentence dated 30.01.2017 is hereby set aside. Consequently, the appeal is allowed. The appellant stands acquitted giving him benefit of doubt from the charges framed against him for the offences under Section 323 & 376(D) of I.P.C. The appellant is already on bail, he need not surrender; however, his bail bond shall remain in force for a period of six months in view of the provision contained in Section 437-A of the Cr.P.C.
10. Let a certified copy of this judgment along-with the original record be transmitted to the concerned trial Court forthwith for necessary information & action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge