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Date : 24/08/2025

# Sunil Gond Vs State Of Chhattisgarh

**Court:** Chhattisgarh High Court

**Date of Decision:** Feb. 20, 2019

**Acts Referred:** Code Of Criminal Procedure, 1973 â€" Section 374(2)
Indian Penal Code, 1860 â€" Section 376(1)

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Manoj Kumar Mishra, Vijay Bahadur Singh

**Final Decision:** Dismissed

## Judgement

Ram Prasanna Sharma, J

1. Mr. Vineet Kumar Pandey, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not

appeared when the case is called for final hearing, therefore, Mr. Manoj Kumar Mishra, Advocate, who is present in the Court has been appointed as

Amicus Curiae to argue the case on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 21.06.2011 passed by Sessions

Judge, Bilaspur (C.G.) in Session Trial No. 203/2010, wherein the said court convicted the appellant for commission of offence under Section 376(1)

of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 1000/- with further default stipulation.

3. In the present case prosecutrix is (PW-1). As per the version of the prosecution, on 07.08.2010, the prosecutrix and her sister namely Shraddha

were searching buffalo on her bicycle under the instruction of her mother. She back with her bicycle where appellant said that her buffalo has gone

towards forest. The appellant went with the prosecutrix and her sister to the forest where they did not find the buffalo, then prosecutrix returned back

and this time the appellant caught hold her and made her lay down beside a rock, removed her panty and when she cried, cover her mouth, threatened

her to kill and then committed rape on her. The Matter was reported, appellant was charge-sheeted and convicted as mentioned above.

4. Learned counsel for the appellant submits as under under:-

(i) Age of the prosecutrix is not proved to be below 16 years and it may be a case of consent therefore, charge under Section 376(1) of IPC, is not

established.

(ii) The doctor who examined the prosecutrix cannot opined that rape is committed on her therefore, version of the doctor is not corroborative piece of

evidence.

(iii) There was dispute regarding property, therefore, the appellant has been falsly roped with the charge in question.

(iv) The trial court has overlooked the contradiction and omission in the statement of the witnesses, therefore, finding arrived at by the trial court is

liable to be set aside.

5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the

same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. The prosecutrix (PW-1) and Shrardha (PW-8) are eyewitness account to the incident. Both have deposed before the trial court that the appellant

accompanied them in searching buffalo and when they were returning, the appellant caught hold the prosecutrix, made her lie down on rock,

undressed her and committed forcibly sexual intercourse with her. Version of these witnesses remained unshaken during cross- examination and

nothing could be elicited in favour of the defence.

7. Dr. Smt. Sumit Raj (PW-2) examined the prosecutrix and found abrasion on her back and left elbow. As per version of Dr. G.S. Kanwar (PW-3),

after taking X-ray of the prosecutrix, he minutely observed bone and in opinion of this ragiologist, age of the prosecutrix is between 15-17 years which

is unrebutted.

8. Dr. Nand Raj (PW-5) is medical expert who examined the appellant and found him capable to intercourse. Version of this witness is supported by

version of Rukhmina (PW-7) who is mother of the prosecutrix. As per version of this witness, the prosecutrix informed her about bad work committed

by the appellant. From all the evidence, it is established that they have no grudge against the appellant to rope him in false charge.

9. The statement of the prosecutrix and other witnesses is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive

bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by

sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is

inspiring confidence, no corroboration is necessary.

10. In the present case, date of incident is 07.08.2010 and report was lodged on the same date at police out-post-Behgahna, Police Station- Kota in

which name of the appellant is mentioned as culprit and his act of commission of rape is also mentioned in the said report.

11. There is no delay in lodging the report. Where report of rape is to be lodged many questions would obviously crop up for consideration before one

finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously

prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. There are several

factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge complaint. In a tradition bound

society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is

some delay in lodging the FIR.

12. Looking to the entire evidence, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the

evidence adduced by the prosecution, therefore, argument advanced on behalf of the appellant is not sustainable.

13. The trial court has elaborately discussed the entire evidence and opined that case of the appellant falls within mischief of Section 376 (1) of IPC

and this Court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

14. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) which is minimum sentence and less than minimum

cannot be awarded and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is

liable to be and is hereby dismissed.

15. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no

further order etc. is required.