

**(2018) 02 CHH CK 0083**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 32 Of 2001

Seetal Ram

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Feb. 5, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 363, 366, 376
- Code Of Criminal Procedure, 1973 - Section 161, 313

**Hon'ble Judges:** Arvind Singh Chandel, J

**Bench:** Single Bench

**Advocate:** Savita Tiwari, Neeraj Sharma

**Final Decision:** Allowed

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### **Judgement**

Conviction,Sentence

Under Section 363 of the Indian Penal Code,"Rigorous Imprisonment for 5 years and fine of

Rs.500/- with default stipulation

Under Section 366 of the Indian Penal Code,"Rigorous Imprisonment for 10 years and fine of

Rs.500/- with default stipulation

Under Section 376 of the Indian Penal Code,"Rigorous Imprisonment for 10 years and fine of

Rs.500 with default stipulation

away. After 4-5 days of her running away, the prosecutrix had returned home along with the Appellant. In her cross-examination, this witness has",

stated that the prosecutrix had run away from home at her own will.,

14. Jairam (PW5), brother-in-law of the prosecutrix has not supported the above statement of Pirobai (PW6) and has stated that he came to know",

from a woman of the village that the prosecutrix had run away from her house.,

15. Jogiram (PW10) and Sadhram (PW11) have stated that at about 10:00-11:00 p.m., they were participating in a Keertan (Recital). At that time, a",

noise came out from the house of Shankar. They went to the house of Shankar. There they saw that the Appellant and the prosecutrix were present,

inside the house of Shankar. In their cross-examination, both of them have stated that in the same night, the Appellant and the prosecutrix had run",

away from the village.,

16. The prosecutrix (PW9) has stated that she was alone at home in the night. At about 12:00 O'clock in the night, the Appellant came inside her",

house and dragging her out took her to Patthalgaon. He kept her there in a room of his friend and committed forcible sexual intercourse with her,

there. He thereafter threatened her of life on her not coming to Raigarh and thereby he took her to Raigarh in a bus. They stayed there in a hotel. Later,

on, they returned their village by a bus. In her cross-examination, in paragraph 6, she has admitted that her house is situated in the mid of the village",

and 10- 15 houses are situated nearby her house. In paragraph 7, she has further stated that the Appellant came inside her house at about 12:00",

O'clock in the night and dragging her out, he took her to Patthalgaon. It took 1 hour for them to reach to Patthalgaon. She has stated that she shouted",

in the house while taking out by the Appellant, she also shouted on the way while going to Patthalgaon. She has further stated that on the way,",

Jogiram (PW10) and Sadhram (PW11) had met them, but she did not tell them anything. In paragraph 9, she has stated that 2-3 friends of the",

Appellant were also present in the room of the house where the Appellant had kept her at Patthalgaon. But, these persons have also not been",

examined by the prosecution. In paragraph 10, she has further stated that she and the Appellant sat at the bus-stand of Patthalgaon for about  $\frac{1}{2}$ ",

hour. On reaching the bus, first she entered the bus and thereafter the Appellant entered the bus. Since no seat was vacant beside her seat, the",

Appellant sat on another seat in the bus. 40-50 other passengers were travelling in the said bus. She has further stated that she did not tell anything to, any of the passengers travelling in the said bus. She also did not tell anything to anyone at Raigarh Bus-Stand and in the hotel also where they stayed, in Raigarh.,

17. Dr. A. Minj (PW2) has stated that she examined the prosecutrix on 3.5.1996. She gave her report (Ex.P5) in which she found that the prosecutrix, was habitual to sexual intercourse. Dr. P. Suthar (PW3) has stated that he examined the Appellant and gave his report (Ex.P6) in which he found the, Appellant to be capable of committing sexual intercourse.,

18. Patwari Shaniyaram (PW8) has stated that he prepared spot-map (Ex.P3). Assistant Sub-Inspector B.D. Tripathi (PW12) is the witness who, investigated the offence in question.,

19. A minute examination of the evidence available on record makes it clear that Nohar Sai (PW1) and Pirobai (PW6), parents of the prosecutrix", have not supported the case of the prosecution. Jairam (PW5), brother-in-law of the prosecutrix has also stated that the prosecutrix had run away", along with the Appellant. Jogiram (PW10) and Sadhram (PW11) have also categorically stated that in the night they had seen the Appellant and the prosecutrix together in the house of Shankar. Though the prosecutrix has stated that the Appellant had taken her out of her house in the night at about,

12:00 O'clock by dragging her out and had taken her to Patthalgaon Bus-Stand. He committed forcible sexual intercourse with her in a house situated, at Patthalgaon. Thereafter, he took her to Raigarh. They stayed there together in a hotel. Then again, by bus, they came back to Patthalgaon and", thereafter to their village. If the Appellant had taken the prosecutrix away from her house forcibly and committed sexual intercourse with her against,

her will, she had ample opportunity to disclose about the incident to the nearby people met them on the way, in the bus, at the bus- stand etc. She also", did not disclose anything about the incident to Jogiram (PW10) and Sadhram (PW11), who met them on the way.",

20. From the above, it is established that the prosecutrix was a consenting party. It is also established that on the date of incident, her age was not",

below 18 years. She had gone out of her house along with the Appellant at her own will. Thus, no case is made out against the Appellant.",

21. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges",

framed against him.,

22. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,