



2026:CGHC:20817

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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR**Judgment reserved on: 10.04.2026Judgment delivered on: 05.05.2026**CRA No. 217 of 2009**

1 - Guddu @ Shiv Prasad, S/o Shri Shiv Mangal, Aged about 20 years,
R/o Village Dwarika Nagar, (Korwapara), Police Station- Jai Nagar,
District- Surguja (C.G.).

... Appellant**versus**

1 - State of Chhattisgarh Through The Station House Officer, Police
Station- Jai Nagar, District- Surguja (C.G.).

... Respondent(s)

For Appellant	:	Mr. Rahul Mishra, Advocate
For Respondent(s)/ State	:	Mr. Himanshu Yadu, P.L.

Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

1. This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973, has been filed by the appellant assailing the judgment of conviction and order of sentence dated 09.03.2009, passed by the learned Special Sessions Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989] in Special Sessions Trial No. 84/2008, whereby the trial Court convicted the appellant and sentenced him as follows:-

Conviction	Sentence
Under Section 511 of IPC	R.I. for 4 years
Under Section 450 of IPC	R.I. for 2 years and to pay fine of Rs. 200/- and in default of payment of fine to undergo additional R.I. for 1 month (Both the sentences shall run concurrently.)

2. The prosecution case, in brief, is that the complainant belongs to the Agariya caste, which is notified as a Scheduled Tribe, whereas the accused belongs to the Panika caste and does not fall within the Scheduled Caste or Scheduled Tribe category. On the date of incident i.e. 02.06.2008, at about 11:00 PM, the complainant was present at her residence situated in Dwarika Nagar, Korwapara. At that time, the accused allegedly trespassed

into her house and with the intent to outrage her modesty, forcibly caught hold of her and tore her salwar kameez. Upon her raising alarm, the accused gagged her and committed forcible sexual intercourse against her will and without her consent. It is further the case of the prosecution that shortly after the incident, the complainant's parents, who had gone to dine at her maternal uncle's residence, returned home. On their arrival, the accused fled from the spot, leaving behind his underwear, vest and slippers at the place of occurrence. The matter was reported to Police Station Jaynagar on the following day, upon which a First Information Report was registered. The investigation was carried out in accordance with law and upon completion of the same, a charge-sheet was filed before the Court of the Judicial Magistrate First Class, Surajpur. Subsequently, the case came to be committed/transferred to this Court. The learned Trial Court framed charges against the appellant for the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and in alternate Section 376(1) of IPC & Section 450 of the Indian Penal Code. The appellant denied the charges, pleaded not guilty and claimed to be tried.

3. In order to substantiate the charges levelled against the accused/appellant, the prosecution examined as many as 12 witnesses. Thereafter, the statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure,

1973, wherein all incriminating circumstances appearing in the prosecution evidence were put to him for explanation. The accused/appellant denied the said circumstances in toto, pleaded innocence and asserted that he has been falsely implicated in the present case. However, in his defence, he did not examine any witness.

4. The learned trial Court, upon appreciation of the entire oral as well as documentary evidence available on record, found the prosecution case to be credible and trustworthy. Accordingly, vide judgment dated 09.03.2009, the trial Court convicted and sentenced the accused/appellant as detailed in para 1 of the said judgment. Hence, this appeal.
5. Learned counsel for the appellant submits that the impugned judgment of conviction and sentence passed by the learned Trial Court is illegal, perverse and contrary to the settled principles of law as well as the material documents and evidence available on record. It is further submitted that the learned Trial Court has committed a grave error in misappreciating and misinterpreting the evidence on record, thereby erroneously holding the appellant guilty under Sections 511 and 450 of the Indian Penal Code, without there being sufficient legal evidence to substantiate such findings. The learned Trial Court failed to consider that there was an unexplained and inordinate delay in lodging the FIR which casts serious doubt on the veracity of the prosecution case and

creates suspicion regarding the alleged occurrence. The learned Trial Court erred in relying upon the testimony of the prosecutrix, which is materially contradicted by the evidence of PW-7 SI D.K. Sharma. While the prosecutrix alleged that her salwar was torn, the Investigating Officer clearly stated that the stitches were merely open and the cloth was not torn, thereby creating a material inconsistency which goes to the root of the prosecution case. Moreover, the father of the prosecutrix (PW-2), in his deposition, admitted that the person who fled from the spot was a neighbor, indicating that he did not identify the appellant and, therefore, his testimony does not establish the presence of the accused at the scene of occurrence. It is also pertinent to note that maternal uncle of the prosecutrix (PW-3) admitted in his cross-examination that there exists prior enmity between him and the appellant due to a matrimonial dispute involving his wife, who is related to the appellant and a maintenance case is pending. This clearly establishes a motive for false implication.

He further submits that the medical evidence on record does not support the prosecution case as it clearly indicates that there was no rupture of the hymen, nor any injuries suggesting an attempt to commit the alleged offence. Hence, the essential ingredients required to establish an offence under Section 511 IPC are not fulfilled. Furthermore, the prosecution has failed to prove beyond reasonable doubt that the appellant committed house trespass with the intent to commit an offence, as required under

Section 450 IPC.

It is also submitted that the prosecution evidence is riddled with material omissions and contradictions which further weaken the case and make it unsafe to base a conviction upon such evidence. Lastly, even assuming but not admitting the prosecution case to be true, the learned Trial Court failed to consider granting the benefit of the Probation of Offenders Act to the appellant, which ought to have been extended in the facts and circumstances of the case. Thus, the impugned judgment of conviction and sentence is liable to be set aside.

Reliance has been placed on this Court's judgment dated **25.11.2021** passed in **CRA No. 1075 of 2019** in the matter of **Sunil Singh Vs. State of Chhattisgarh.**

6. On the other hand, learned State counsel submits that the impugned judgment is well-founded and based on proper appreciation of evidence on record. The presence of the appellant and his intent stand proved from consistent ocular evidence and alleged enmity does not discredit otherwise reliable testimony. The delay in FIR has been satisfactorily explained. The Trial Court has rightly convicted the appellant under Sections 511 and 450 IPC and no ground for interference is made out.
7. Heard counsel for the parties and perused the material available on record.
8. It is clear from record of learned trial Court that learned trial Court

framed charges under Sections 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in alternate Section 376(1) of IPC and Section 450 of IPC against the appellant and after appreciation oral and documentary evidence, the learned trial Court acquitted the appellant of the offence under Sections 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in alternate Section 376(1) of IPC but convicted him for the offence punishable under Sections 450 and Section 511 of IPC.

9. The prosecutrix (P.W.-1) deposed that on the date of the incident, the accused unlawfully entered her room, removed her clothes as well as his own, and committed forcible sexual intercourse with her, after which he fled from the scene. She further stated that at the relevant time, her parents were not present in the house, having gone to her maternal uncle's residence for dinner. She added that approximately five minutes after the accused had fled, her parents observed the accused behind the house.

During her cross-examination, the prosecutrix admitted that her maternal uncle had kept the accused's aunt as his wife for some time and that the said aunt had instituted maintenance proceedings against him before the court at Surajpur.

She further stated that the accused had gagged her mouth and switched off the lights before committing the act. She also admitted that she did not raise any alarm or attempt to wake her

sister, who was sleeping at some distance from the place of occurrence.

In para 18, the prosecutrix stated that the accused had not committed any act on the cot but had committed the alleged act with her on the ground. She deposed that the accused had pushed her into the room and taken her approximately 16 feet away, and while doing so, he had gagged her. She further stated that her clothes were torn, though the stitches were not broken. According to her, the accused first removed her salwar with both hands, and while removing her kurta, she did not raise her hands. She also stated that the accused continued to gag her throughout the incident. She added that she had attempted to defend herself by hitting him with her hand but had not scratched him with her nails.

In para 21, she stated that when her parents arrived, the room was half-closed, and they switched on the light. She further deposed that upon hearing the noise made by her parents when they reached the backyard, the accused fled from the spot. She stated that her parents saw a man running outside the house, but at that time, they could not recognise him as the accused.

She further denied that the accused had not entered her house or that he had not committed any misdeed with her. She also denied the suggestion that she had not engaged in sexual intercourse with him on the date of her medical examination.

However, she admitted that they had not informed the Sarpanch or Patel about the incident during the night.

10. The father of the prosecutrix (P.W.-2) stated that on the date of the incident, at about 11:00 p.m., while they were returning home after having dinner at the house of his brother-in-law, he saw the accused fleeing from his house.

In his cross-examination, he admitted that it was true that his daughter did not raise any alarm when they approached near the house. He further admitted that the aunt of the accused had instituted a maintenance case against his brother-in-law.

11. Maternal Uncle of the prosecutrix (P.W.-3) stated that on the date of the incident, upon hearing commotion, he reached the house of the prosecutrix, whereupon the father of the prosecutrix informed him that the accused had committed rape upon the prosecutrix.

In his cross-examination, he stated that he had earlier kept the aunt of the accused as his wife but had subsequently separated from her. He further admitted that the said aunt of the accused had instituted a maintenance case against him, which was pending. He denied the suggestion that he, in collusion with the parents of the prosecutrix, had falsely implicated the accused in the present case.

12. It was stated that Dr. R.B. Tirkey, who had medically examined the prosecutrix, did not appear before the learned Trial Court. However, the accused admitted the said document under Section

294(2) of the Code of Criminal Procedure and in view of such admission, the document was exhibited as Ex.P/27.

13. As per the medical opinion of Dr. R.B. Tirkey, the hymen of the prosecutrix was found to be intact and no definite opinion could be given regarding the occurrence of recent sexual intercourse.
14. It has been held by Hon'ble the Apex Court in the matter of **Rai Sandeep Alias Deepu Vs. State (NCT OF DELHI)** and other connected matter reported in **(2012) 8 SCC 21** in para 22 as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end,

namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there

should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

15. It is evident that the learned trial Court has acquitted the appellant of the principal charge under Section 376(1) IPC as well as under

Section 3(2)(v) of the SC/ST Act, thereby disbelieving the allegation of rape. The conviction has been recorded only for attempt (Section 511 IPC) and house trespass (Section 450 IPC).

16. The prosecution case primarily rests upon the testimony of the prosecutrix (PW-1). However, upon close examination, her evidence does not inspire the confidence required to qualify as that of a "sterling witness" as laid down by the Hon'ble Supreme Court. Further, the testimony of PW-2 (father) and PW-3 (maternal uncle) does not corroborate the presence of the appellant beyond reasonable doubt. On the contrary, the admission regarding prior enmity arising out of a matrimonial dispute and pending maintenance proceedings provides a plausible motive for false implication. The delay in lodging the FIR, though explained, remains a relevant circumstance adding to the doubt, particularly in light of the inconsistencies in the prosecution evidence. Most importantly, the essential ingredients required to constitute an offence under Section 511 IPC (attempt) are not established. There must be clear evidence of intention coupled with an overt act towards commission of the offence. In the present case, the medical evidence does not support any such attempt nor is there reliable corroboration of the prosecutrix's version. Similarly, for an offence under Section 450 IPC, the prosecution is required to prove house trespass with intent to commit an offence punishable with imprisonment for life. In absence of credible evidence establishing such intent, the

conviction under this section also cannot be sustained.

17. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. The prosecution is required to establish its case beyond reasonable doubt. In the present case, the cumulative effect of contradictions, lack of medical corroboration, doubtful identification and admitted enmity creates serious doubt regarding the veracity of the prosecution story. Accordingly, this Court is of the considered view that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt.

18. The appeal is hereby **allowed**. The impugned judgment of conviction and order of sentence dated 09.03.2009 passed by the learned trial Court is set aside. The appellant is acquitted of all the charges levelled against him under Sections 511 and 450 of the Indian Penal Code.

19. The accused/appellant is reported to be on bail. Keeping in view the provisions of Section 437-A of CrPC (481 of the B.N.S.S.), appellant is directed to furnish a personal bond in terms of form No.45 prescribed in the Code of Criminal Procedure for a sum of Rs.25,000/- with one reliable surety in the like amount before the Court concerned which shall be effective for a period of six months alongwith 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 thereon shall appear before the Hon'ble Supreme Court.

20. 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/-
(Rajani Dubey)
JUDGE