



2026:CGHC:8245

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 355 of 2005****Reserved on : 21.01.2026****Delivered on : 16.02.2026**

Vasudeo Gond, S/o Bahur Singh, Aged About 25 Years, R/o Sakra, P.S. Arjuni, District- Dhamtari (C.G.)

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

State of Chhattisgarh

... Respondent

For Appellant : Mr. Rahil Arun Kochhar & Mr. Leekesh Kumar, Advocates.
 For State : Mr. Manish Kashyap, Panel Lawyer.

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

1. This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 06.04.2005 passed by learned Additional Sessions Judge, Dhamtari, Camp- Raipur (C.G.) in Sessions Trial No. 217/2004, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s 376 (1) of IPC	: R.I. for 7 years and fine of Rs. 200/- and in default of payment of fine, additional R.I. for 1 month.
U/s 342 of IPC	: R.I. for 6 months. (Both the sentences are directed to run concurrently)

2. The case of the prosecution, in brief, is that on 21.05.2004, the victim was alone in her house and at that time, the accused came there and asked her whether she would go to shop and when the victim asked

him for money to go to the shop, the appellant caught hold her hand, forcibly dragged her to his house where he removed his own clothes as well as the victim clothes and committed sexual intercourse with her without her will and thereafter, he locked her inside the room of his house, tied her hands and legs and stuffed cloth into her mouth. The information regarding the incident was lodged at Police Station Arjuni, upon which an offence was registered and investigation was conducted. After completion of investigation, the charge-sheet was submitted before the Court of Chief Judicial Magistrate, Dhamtari. The case was committed to the Court of the Sessions Judge, Raipur for trial. Learned trial Court vide its judgment dated 06.04.2005, convicted and sentenced the appellant as mentioned in paragraph No. 1 of the judgment.

3. The prosecution, in order to bring home guilt of appellant, has examined 19 witnesses namely the victim (PW-1), Kalendri Bai (PW-2), Kartikram (PW-3), Pusauram (PW-4), Rameshwar Kurre (PW-5), Ramkrishna (PW-6), Fulsai Uraon (PW-7), Dhavalram (PW-8), Krishna Kumar (PW-9), Satyanarayan (PW-10), Smt. Aasha Tripathi (PW-11), Angeshwar Netam (PW-12), Tukaram Sahu (PW-13), Hridayram Devdas (PW-14), Bhagatram (PW-15), Sanjay Lanje (PW-16), Anil Yadu (PW-17), Dr. C.B.S. Banjare (PW-18) & U.R. Diwan (PW-19) and exhibited documents namely FIR (Ex. P/1), consent letter (Ex. P/2), property seizure memo (Ex. P/3), map (Ex. P/4), memorandum (Ex. P/5), property seizure memo (Ex. P/6), crime detail form (Ex. P/8), property seizure memo (Ex. P/9 to P/11), doctor's report (Ex. P/12), property seizure memo (Ex. P/13 to P/14), dakhil kharij register (Ex. P/15C), memo of P.S. Arjuni (Ex. P/17 & P/18), memo of P.S. Arjuni

(Ex. P/19), doctor's report (Ex. P/20), memo of P.S. Arjuni (Ex. P/21 & P/22) & FSL report (Ex. P/23).

4. The victim (PW-1) was examined before the trial Court wherein she has narrated the incident that the appellant caught hold her hand and dragged her to his house, committed sexual intercourse with her and thereafter he left the victim by locking her inside the room. She has further stated that on the date of incident at about 7:00 p.m., when her mother returned to home, she took her out of the room and brought her to home. The victim was extensively cross-examined wherein she has stated that when the appellant has caught hold her hand and removed his pant then he has penetrated his private part in her vagina. She has further stated that the appellant had kept his private part above her vagina for about 10 minutes and she has affirmed that the appellant has kept his private part above her private part but he has not penetrated. She has also stated that she could not open her mouth as the appellant had tightened her both hands. She has admitted that she remained in the closed room for eight hours and when her mother entered into the room, she untied her hands and mouth.
5. Kalendri Bai (PW-2) who is mother of the victim has been examined before the trial Court wherein she has stated that the appellant's mother came and said that your daughter came to our house from the courtyard then she went to appellant's house and opened the lock of the room and saw that the victim hands and mouth were tied with a cloth and then she untied her and brought her to the house and after bringing her to home, the victim narrated the incident which had taken place. This witness in the cross-examination has denied about any love affair between the appellant and the victim due to their age difference.

She has further stated that when she removed the victim from the room, her hands and mouth were tightened by cloths and she removed the said cloths.

6. Kartikram (PW-3) who is grandfather of the victim has also been examined before the trial Court wherein he has supported the case of the prosecution and also affirmed the version of the victim as well as her mother Kalendri Bai (PW-2). This witness was also subjected to cross-examination, but nothing was brought on record to dilute the said evidence. This witness has admitted in the cross-examination that the appellant is doing tailoring work, therefore, cloths are kept in his room.
7. The prosecution to prove guilt of the appellant has also examined Doctor Smt. Aasha Tripathi (PW-11) who medically examined the victim and found that her hymen was not ruptured and no definite opinion can be given with respect to commission of offence of rape and also stated about partial penetration. In the cross-examination, she has reiterated that there is possibility of partial penetration. She has also stated that there was redness in the vulva and the victim was complaining pain in her private part and white liquid was also found in it.
8. The prosecution to prove guilt of the appellant has also sent the undergarment of the victim as Article A & slide as Article B and undergarment of the appellant as Article C, slide as Article D1 & hair as Article D2. As per the FSL report (Ex. P/23), in Article A, B & D1, the human sperms were found and in Article C & D2, no human sperm was found. The prosecution also examined Dr. C.B.S. Banjare (PW-18) who examined the appellant and found him capable of doing sexual intercourse.
9. Tukaram Sahu (PW-13) who was Head Master of Govt. Primary School

Sankara was also examined before the trial Court wherein he has stated that as per *dakhil kharij* register, victim's date of birth is 28.06.1989 and also stated that the date of birth of student is usually recorded on the basis of information given by the parents at the time of taking admission in the school. In support of his contention, he has submitted copy of *dakhil Kharij* register (Ex. P/15C). In the cross-examination, he has admitted that the entry in the *dakhil kharij* register has not been made by him as he was not posted in that school in the year 1989.

10. The accused was examined under Section 313 of the Cr.P.C. wherein he has denied the charges levelled against him and pleaded innocent.
11. Learned trial Court in its judgment dated 06.04.2005 while convicting the appellant has recorded its finding that the appellant has committed sexual intercourse with the victim against her will by tightening her hands and mouth, therefore, he has committed offence punishable under Sections 376(1) & 342 of IPC. Being aggrieved with the aforesaid judgment of conviction, the appellant has preferred the instant appeal under Section 347 (2) of the Cr.P.C. before this Court.
12. Learned counsel for the appellant would submit that the prosecution has not proved the case beyond reasonable doubt that the appellant has committed the crime in question. He would further submit that the trial Court has committed error in placing reliance upon evidence of victim (PW-1), PW-2 (Kalendri Bai) and PW-3 (Kartikram), who are interested witnesses and close association with the complainant party, admitted enmity with the appellant and there is contradiction and omission in the evidence of these witnesses which renders their testimony unsafe for conviction without independent corroboration. He

would further submit that the alleged incident is stated to have been occurred on 21.05.2004, yet the statements of material witnesses were recorded after delay of four to five days, without any plausible or satisfactory explanation and such unexplained delay creates serious doubt regarding the authenticity of the prosecution version and suggests embellishment and afterthought.

13. He would further submit that despite alleged immediate knowledge, the witnesses failed to disclose the name of the accused either to villagers, relatives, or Police on the date of incident which creates doubt over the prosecution story. He would further submit that though the incident allegedly occurred in a village setting, no independent witness was examined to support the prosecution case. He would further submit that the medical evidence does not corroborate the prosecution version of forcible sexual intercourse. In absence of medical corroboration, conviction solely on shaky ocular evidence is impermissible. He would further submit that the victim was a contesting party and the prosecution is unable to prove her age as witness (PW-13) was not the writer of the *dakhil Kharij* register and on this count alone, the appellant is entitled to be acquitted by setting aside the conviction and sentence. In support of his contention, he has relied upon the judgment rendered by Hon'ble the Division Bench of this Court in case of **Yogesh Badge @ Kalu Vs. State of Chhattisgarh [CRA No. 338/2021 (decided on 24.02.2025)]**.

14. On the other hand, learned State counsel would submit that the prosecution has proved the case beyond reasonable doubt. He would further submit that the learned trial Court after appreciating the evidence and material available on record has rightly convicted the

appellant in the crime in question. He would further submit that the finding arrived at by the trial Court convicting the appellant for commission of offence as aforesaid is legal, justified and does not warrant any interference by this Court and would pray for dismissal of the appeal.

15. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.
16. From evidence of the victim (PW-1), it is quite vivid that the victim in one part of her evidence has stated about penetration and on subsequent line, she has stated that the appellant had kept his private part above her private part for about 10 minutes and the appellant had not penetrated the same. This version of victim's evidence is corroborated with the medical report Ex. P/12 wherein the doctor (PW-11) has given her opinion that hymen is not ruptured and only tip of 1 finger could be introduced in vagina, therefore, there is possibility of partial penetration. The doctor in her evidence has also stated that the victim has complained about pain in her private part. There was redness in the vulva and having white liquid in it which clearly proved beyond reasonable doubt that the victim was subjected to commission of offence of rape by the appellant.
17. Hon'ble the Supreme Court in case of **State of U.P. Vs. Babul Nath [(1994) 6 SCC 29]** has examined the basic ingredients of offence of rape and has held in paragraph 8 as under:-

"8. It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:
"Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."
From the Explanation reproduced above it is distinctly clear that ingredients .Which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To

constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her.”

18. From the above position of law, it is quite vivid that in order to constitute rape as per Section 375 of IPC as stood prior to amendment on 03.02.2013, Section 375 of IPC requires medical evidence of penetration and this may occur and hymen remain intact and in view of the explanation to Section 375, mere penetration of penis in vagina is an offence of rape. Even slight penetration is sufficient for conviction under Section 376 of IPC. Thus, it is quite vivid that penetration is *sine qua non* for an offence of rape and in order to constitute penetration, there must be clear and cogent evidence to prove that some part of the virile member of the accused was within labia of the pudendum of the woman, no matter to what extent which is sufficient to hold accused guilty for the offence punishable under Section 376 of IPC.
19. In order to find out an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, and only desire to gratify his passion upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assault is often magnified into

attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of the determination to gratify his passion at all events, and in spite of all resistance, materials must exist. As already discussed above, the *sine qua non* of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established as the victim's own statement creates doubt as in one stage of her evidence, she has stated that the appellant has penetrated his private part in her vagina and in her further evidence, she has stated that the appellant had kept his private part above her vagina for about 10 minutes. She again affirmed that the appellant has kept his private part above her private part but he has not penetrated it. This statement is corroborated with the evidence of doctor (PW-11) has stated that hymen was not ruptured and no definite opinion can be given with respect to commission of offence of rape and also stated about partial penetration. In the cross-examination, she has reiterated that there is possibility of partial penetration. However, this evidence is sufficient to prove that attempt to commit rape was made out but not rape.

20. Hon'ble the Supreme Court in case of **Madan Lal Vs. State of Jammu and Kashmir [1998 (Cr.L.J.) 667 SC]** has examined in paragraph 12 about attempt to rape in following words:-

"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her flat on the ground undresses himself and then forcibly rubs his erected

penis on the private part of the girl but fails to penetrate the same into vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 I.P.C. and not an attempt to commit rape under Section 376 read with 511 I.P.C. In the facts and circumstances of the present case the offence of an attempt to commit rape by accused has been clearly established and the High Court rightly convicted him under Section 376 read with 511 I.P.C.”

21. Again Hon'ble the Supreme Court in case of **State of M.P. Vs. Mahendra alias Golu [(2022) 12 SCC 442]** has analyzed distinction between preparation and attempting to commit offence of rape and has held in paragraphs 19, 21 & 22 as under:-

“19. The difference between ‘attempt’ and ‘preparation’ in a rape case was again elicited by this Court in Koppula Venkat Rao vs. State of A.P.3, laying down that:-

“10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more (2004) 3 SCC 602 than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/ completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.[Emphasis applied]”

21. We may at the outset explain that what constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

22. There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of 'Rape' as it stood conservatively defined under Section 375 IPC"

22. From evidence of the victim which inspires full confidence established her innocence and evince a natural version within remote possibility of tutoring. The evidence of the victim is corroborated with the medical evidence brought on record by the prosecution and law on the subject, it is quite vivid that an offence of attempt to commit rape is made out against the appellant as there is partial penetration by the appellant. As such, the act of the appellant forcibly taking the victim inside the room, closing the doors with motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the victim and himself, and rubbing his genitals against those of the victims and partial penetration which was indeed an endeavour to commit sexual intercourse. These acts of the appellant were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the appellant exceeded the stage beyond preparation and preceded the actual partial penetration but without ejaculation, the

appellant is guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence.

23. Further submission of learned counsel for the appellant regarding not proving the age of the victim as per the judgment passed by Hon'ble Division Bench of this Court in case of **Yogesh Badge @ Kalu** (supra), it is not applicable to the present facts of this case as the appellant has nowhere taken plea of consent and has also not raised dispute about victim's age before the trial Court as evident from statement recorded under Section 313 of the Cr.P.C. The evidentiary value of school record is also subject matter of examination before the Court and Hon'ble the Supreme Court in case of **Bhupram Vs. State of U.P. [(1989) 3 SCC 1]** has examined the correctness of school record which is maintained in the regular course of official duty. As per Section 35 of the Indian Evidence Act, an entry in any public or official record made by a public servant in the discharge of official duty is relevant. Further, such a register falls within the ambit of public documents under Section 74 of the Evidence Act and in absence of any material to raise doubt about truthiness and correctness of the entries made in *dakhil Kharij* register, it cannot be ignored merely on the surmise that it is not unusual for parents to understate the age of their children by one or two years at the time of their admission in the school for securing benefits to the children in their future years. Thus, the submission made by learned counsel for the appellant that the victim was 18 years old at time of incident and she was a consenting party in absence of any clinching evidence material brought on record, deserves to be rejected and accordingly, it is rejected.

24. From the evidence and considering the law, it is quite vivid that the appellant cannot be convicted under Section 376 (1) of the IPC but he can be convicted under Section 376/511 of IPC. Accordingly, the appellant is convicted for the offence punishable under Section 376/511 of IPC instead of Section 376 (1) of IPC and is awarded sentence of R.I. for 3 years and 6 months and fine of Rs. 200/-. So far of sentence awarded by the learned trial Court for offence under Section 342 of IPC is concerned, the sentence awarded by the trial Court for 6 months, is just and proper which deserves to be affirmed. Accordingly, it is affirmed. It is directed that both the sentences have to be run concurrently. It has been reported that the appellant remained in jail during trial from 03.06.2004 to 06.04.2005 i.e. 10 months 4 days and he has been released on bail by this Court on 06.07.2005, therefore, he remained in jail for 3 months thus, he remained in jail for about 1 year and 1 month & 4 days. The appellant is entitled to get set off as per Section 428 of the Cr.P.C. or Section 468 of Bharatiya Nagarik Suraksha Sanhita 2023.
25. It is reported that the appellant is on bail, his bail bonds stand cancelled, he is directed to surrender before the trial Court within two months from the date of judgment passed by this Court to serve out the remaining part of sentence as awarded by this Court. In case, the appellant fails to surrender, the learned trial Court is directed to take steps to arrest him and send compliance report to this Court forthwith.
26. The appeal stands partly allowed in the above terms.

Sd/-
(Narendra Kumar Vyas)
Judge