

THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SB:- Hon'ble Shri Justice G. S. Ahluwalia

Criminal Appeal 306/2012

Kallu alias Narendra

Vs.

State of MP

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Shri D. K. Pathak, counsel for the appellant.

Shri Devendra Chaubey, Public Prosecutor for the respondent/ State.

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JUDGMENT

(Delivered on 26/07/2018)

This Criminal Appeal under Section 374 of CrPC has been filed against the judgment and sentence dated 02/04/2012 passed by Second Additional Sessions Judge, Dabra, District Gwalior in Sessions Trial No.162/2011, by which the appellant has been convicted under Section 384 of IPC and has been sentenced to undergo the rigorous imprisonment of two years and fine of Rs.1,000/-with default imprisonment.

(2) The necessary facts for the disposal of the present appeal in short are that the complainant lodged a report at Police Station Dabra, District Gwalior on 12/11/2010 at about 16:00, on the allegation that the appellant is her neighbor and the appellant has continuously committed rape on her and had extended a threat that he has prepared a film in his mobile, which he will disclose to her husband and under this threat, he had taken an amount of Rs.2,34,000/- in cash, as well as the gold ornaments including two chains, one earring, one necklace, eight bangles, one "*mangalsutra*"

and one ladies ring. The prosecutrix had given these articles to the appellant without disclosing it to her husband. Later on, when the prosecutrix informed her husband about it, then the husband of the prosecutrix demanded his money and articles back, but the appellant did not return the same, however, he had given in writing. The husband of the prosecutrix managed to arrange an amount of Rs.1,30,000/- after selling his property and got some of the articles released from mortgage, however, the remaining articles and an amount of Rs.2,34,000/- were not returned. Whenever the amount and the articles were demanded, the appellant had extended a threat to kill and had also extended a threat that the complainant should leave the locality. On the report of the complainant, police registered Crime No.913/2010 for offence under Sections 376, 384/34 of IPC against the appellant and one Ramkumar Gupta. The articles were seized. The appellant and the co-accused Ramkumar Gupta as well as the prosecutrix were sent for medical examination and after completing the investigation, the police filed the charge sheet. The trial Court framed charges under Sections 376, 384, 506(II) of IPC against the appellant and under Section 506(II) of IPC against the co-accused Ramkumar Gupta.

(3) The appellant and the co-accused Ramkumar Gupta abjured their guilt and pleaded not guilty.

(4) The prosecution, in order to prove its case, examined prosecutrix (PW1), Dr. Smt.P. Saxena (PW2), Komal Jain (PW3), Hasan Khan (PW4), Hottam Singh (PW5), Balveer Singh Jat (PW6), D.C.Arya (PW7), Narendra Singh (PW8), Dr. Harish Arya (PW9), Ripudaman Singh Rajawat (PW10), Munish Rajoriya (PW11) and RP Tiwari

(PW12). The accused persons did not examine any witness in their defence.

(5) The trial Court by judgment dated 02/04/2012 passed in Sessions Trial No.162/2011, acquitted the appellant of charges under Sections 376, 506(II) of IPC and convicted him for offence under Section 384 of IPC and sentenced him to undergo the rigorous imprisonment of two years and fine of Rs.1,000/- with default imprisonment. The co-accused Ramkumar Gupta was acquitted *in toto*.

(6) The acquittal of the appellant for offence under Sections 376, 506(II) of IPC and acquittal of the co-accused Ramkumar Gupta *in toto*, has not been challenged, either by the prosecution or by the complainant. Therefore, any reference to the remaining allegations made against the appellant as well as any reference to the co-accused Ramkumar Gupta, would be for the purpose of disposal of the present appeal without effecting their acquittal.

(7) The prosecutrix (PW1) has stated that the appellant was residing behind her house. On 12/11/2011 at about 6 -7 pm she had gone to the Kalimata Temple. On the said day, she went to the house of one Meera Sahu as she was invited by her in her house for prescribing certain *Puja* articles. When she went to the room, as instructed by Meera Sahu, she found that it was completely dark and the appellant and co-accused Ramkumar Gupta were already sitting in the said room. Meera Sahu left the prosecutrix in the room with the instruction that she should sit there. When Meera Sahu left the room, the appellant caught hold of the prosecutrix and the co-accused Ramkumar Gupta locked the door. The co-accused Ramkumar Gupta

tied her hands and gagged her mouth and the appellant committed rape on her, without her consent. After throwing the prosecutrix on the cot, when the appellant was committing rape on her, at that time, the co-accused Ramkumar Gupta prepared a mobile film and thereafter, the co-accused Ramkumar Gupta also committed rape on her. At about 07:00 pm, the prosecutrix came back to her house and the accused persons had threatened her, that in case if she narrates the incident to anybody, then she would be defamed as they have taken the photographs. After four- five days of the incident, the appellant called the prosecutrix on the roof and asked that he is need of certain money and when the prosecutrix replied that she does not have money, then the appellant threatened that he would defame the prosecutrix and would get her photographs printed in the newspapers. An amount of Rs.1,04,000/- was kept in the house for the purpose of plot and the said amount was given to the appellant by the prosecutrix. Thereafter, the appellant had taken certain ornaments on the pretext that he would return the same. One pair of earring, one necklace, two chains, one *mangalsutra*, eight bangles of gold, etc. were given. However, the atrocities of the appellant continued to increase. Thereafter, the prosecutrix informed the incident to her husband and the husband of the prosecutrix went to the house of the appellant and demanded his money back, at that time, the appellant informed that he has already mortgaged all the articles. The husband of the prosecutrix sold his land for a consideration amount of Rs.1,30,000/- and got certain ornaments released from mortgage. When the husband of the prosecutrix went to the house of the appellant for demanding his remaining ornaments as well as the cash,

then the appellant as well as the co-accused Ramkumar Gupta refused to return the same and accordingly, they went to the police station. At the instance of a police personnel, the appellant gave in writing to the husband of the prosecutrix and the appellant also admitted in front of the police personnel that he has taken the ornaments from the prosecutrix. The prosecutrix, thereafter, approached the higher authorities, but no action was taken and the written document, which was executed by the appellant, was thrown. The prosecutrix made a complaint in *Jansunwai* to IG (Police), who instructed the SP to take action and accordingly, the FIR was lodged which is Ex.P1. She was sent for medical examination. On the next day, the police came on the spot. Spot map Ex.P2 was prepared and the statement of the prosecutrix was recorded. She further stated that, the appellant had committed rape on her twice, whereas the co-accused Ramkumar Gupta had committed rape on her once.

(8) The prosecutrix (PW1) was cross-examined in detail. In cross-examination, she admitted that in the FIR Ex. P.1 there is no reference of Meera Sahu. There was also no reference in the FIR Ex.P1 that the prosecutrix went to the house of Meera Sahu on the invitation of Meera Sahu. She further admitted that the appellant and the co-accused were sitting in the room of the house of Meera Sahu, was not mentioned in the FIR Ex.P1. However, she could not explain the reason. She further stated that she had informed the police that after Meera Sahu came out of the room, the appellant caught hold of the prosecutrix from behind and her hands were tied by the co-accused Ramkumar Gupta and her mouth was gagged and the appellant committed rape on her without her consent, but could not explain the

omission in the F.I.R., Ex. P.1. It was further admitted by her that, in the FIR Ex.P1, the fact that the co-accused had prepared mobile clip, is also not mentioned. She further admitted that the allegation of committing rape by the co-accused Ramkumar Gupta is also not mentioned in the FIR Ex.P1. She also admitted that there is an omission in the FIR ExP1 that any threat was given by the appellant as well as the co-accused Ramkumar Gupta. She further admitted that there is an omission in her FIR ExP1 to the effect that the appellant had called the prosecutrix on the roof after four- five days of the incident and had asked for the money, with a promise that he would return the same. She further admitted that there is an omission in the FIR ExP1 that when she told the appellant that she is not in possession of cash amount, then the appellant had extended a threat to defame her. She further admitted that there is an omission in F.I.R., Ex.P.1, with regard to the fact that an amount of Rs.1,04,000/- which was kept in the room for the purpose of plot, was given to the appellant. She further admitted that there is an omission in her FIR ExP1 to the effect that the appellant used to block her way in the market. She further admitted that there is an omission in her FIR ExP1 that the her husband had got certain ornaments released from mortgage by selling of his land for consideration of Rs.1,30,000/-. She further admitted in her cross-examination that on 24/05/2010, she had filed a criminal complaint Ex.D.2 before the Court of JMFC, Dabra against Meera Sahu, the appellant as well as co-accused Ramkumar Gupta. She further admitted that in the complaint, Ex.D.2, she did not make any allegation with regard to commission of rape. She also explained that because of apprehension of defamation in the society,

the said allegation was not mentioned in the complaint Ex.D.2. She further expressed her ignorance about the outcome of the said criminal complaint Ex.D.2. She further denied that after registration of FIR, she got the criminal complaint dismissed for want of prosecution. She further admitted that the copy of the complaint is Ex.D2. She further stated that the appellant had admitted in writing before the police personnel that he had taken money as well as the ornaments from the prosecutrix, however, she further stated that she has not brought the said document. She also could not tell the name of police personnel before whom the said written admission was made by the appellant. She further stated that it is incorrect to say that the appellant had committed rape on her frequently for a period of one year and could not explain as to why such allegation was made in the FIR ExP1. She further denied that the incorrect allegations have been made because of civil transaction with the appellant. She further denied that the co-accused Ramkumar Gupta had resolved their civil dispute, by acting as a mediator.

(9) Dr.Smt.P.Saxena (PW2) had medically examined the prosecutrix. As the appellant has already been acquitted of the charge under Section 376 of IPC, therefore, the evidence of Dr. Smt. P. Saxaena (PW2) is not to be considered in detail.

(10) Komal Jain (PW3) has stated that there was some civil transaction between the husband of the prosecutrix and the appellant and both were not relying each other and accordingly, the husband of the prosecutrix Balveer Singh Jat (P.W.6) and Hottam (P.W.5) had given an amount of Rs.1,30,000/- to this witness. Certain articles were brought by the appellant as well as by the co-accused

Ramkumar Gupta which were checked by Balveer Singh Jat (P.W.6), husband of the prosecutrix and Hottam (P.W.5). The husband of the prosecutrix Balveer Singh Jat (P.W. 6) and Hottam (P.W.5) took away their ornaments and the said amount of Rs.1,30,000/- was returned to the appellant as well as to the co-accused Ramkumar Gupta in the presence of this witness. In cross-examination, this witness has stated that Balveer Singh Jat (P.W.6) had informed him that there is some civil dispute with the appellant and had also informed that certain articles were with the appellant and an amount of Rs.1,30,000/- was given by the husband of the prosecutrix Balveer Singh Jat (P.W.6) and Hottam (P.W.5) to the appellant and the appellant had returned the gold ornaments to the husband of the prosecutrix Balveer Singh Jat (P.W.6) and Hottam (P.W.5) and thereafter, the matter came to an end.

(11) Hasan Khan (PW4) was posted as Head Constable in DRP Line, Gwalior. Constable Kamta Prasad had brought a sealed packet from CHC, Dabra which was seized by this witness by seizure memo Ex.P4. Thereafter, Constable Pramod Sharma had also brought certain articles from CHC, Dabra concerning co-accused Ramkumar Gupta, which were seized by this witness, vide seizure memo Ex.P5.

(12) Hottam Singh (PW5) has stated that the husband of prosecutrix Balveer Singh Jat (P.W.6) had called him at Dabra, where he was told by the husband of the prosecutrix (P.W.6) as well as by the prosecutrix (P.W.1), that the house of the appellant is situated behind their house and the prosecutrix (P.W.1) used to visit the temple and the appellant had committed rape on her and the co-accused Ramkumar Gupta had taken the photographs and by threatening to

make the photographs public, both of them had committed rape on her and they used to threaten that in case if she does not give money, then they would defame her and an amount of Rs.2,34,000/- as well as some silver and gold ornaments were taken by the appellant and the co-accused and when such articles were demanded back, then the appellant and the co-accused informed that those articles have been mortgaged by them. They also demanded money for return of amount and demanded Rs.1,30,000/- and alleged that the ornaments will be returned thereafter. This witness expressed his disbelief and said that he has no faith on the appellant and the co-accused, therefore, an amount of Rs.1,30,000/- was given in front of Komal Jain (P.W.3) for getting the ornaments released. Some ornaments were returned back by Komal Jain (P.W.3) and he promised to return the remaining ornaments and amount within 8-10 days. Thereafter, the appellant and co-accused demanded further amount of Rs.70,000/- for returning the remaining ornaments. In cross-examination, he admitted that he has no relations with the husband of the prosecutrix. He further stated that although he had told the police that the co-accused Ramkumar Gupta had taken the photographs but could not explain as to why the said fact is not mentioned in case diary statement Ex.D3. He also could not explain the omission of threat given by the appellant and the co-accused in his case diary statement Ex.D.3. He also admitted that there is an omission in his case diary statement to the effect that he was told by the prosecutrix that the appellant and the co-accused had taken an amount of Rs.2,34,000/- and could not explain the reason for the said omission in his case diary statement Ex.D3. He also admitted that he does not know that

who had mortgaged the ornaments. He stated that he was informed by the prosecutrix that the appellant and the co-accused have taken the money from her. He further stated that the amount was given to Komal Jain (PW3) for getting the ornaments released.

(13) Balveer Singh Jat (PW6) is the husband of the prosecutrix. He has reiterated the allegation of rape, which was told to him by the prosecutrix. He further stated that he was informed by the prosecutrix that under the threat of making the photographs public, the appellant and the co-accused have taken an amount of Rs.2,34,000/- as well as the ornaments. He further stated that when he was informed by the appellant and the co-accused that the ornaments have been mortgaged, then he informed the appellant and the co-accused that either they should get the ornaments released, otherwise he would get the same released. The appellant and the co-accused when refused to get the ornaments released and demanded money, then this witness expressed that he does not believe the appellant and the co-accused, therefore, through Hottam Singh (PW5) he got certain articles released from Komal Jain (P.W.3) after giving some amount and the appellant and the co-accused had informed that the remaining amount will be returned after sometime and thereafter, they refused to return the same. This witness was cross-examined in detail and he also admitted certain omissions in his case diary statement Ex.D4 with regard to preparation of MMS of his wife as well as the rape by the appellant and co-accused Ramkumar Gupta.

(14) D.C.Arya (PW7) had medically examined the appellant and had found that the appellant is capable of committing sexual intercourse. The MLC report is Ex.P6.

(15) Narendra Singh (PW8) had seized the clothes, which were brought by Lady Constable from CHC, Dabra, vide seizure memo Ex.P7.

(16) Dr. Harish Arya (PW9) had medically examined the co-accused Ramkumar Gupta. Since the co-accused Ramkumar Gupta has already been acquitted, therefore, there is no need to consider the evidence of Dr. Harish Arya (PW9).

(17) Ripudaman Singh Rajawat (PW10) has stated that Balveer Singh Jat (PW6) along with wife (prosecutrix) had come to the police station and had informed that the appellant had taken the ornaments and Rs.2,34,000/- from his wife, but in order to protect their family pride, they do not want to lodge the report. Then the appellant was called and an affidavit was given by the appellant admitting the fact that he would return the amount in instalments. Although this witness has stated that the said affidavit has been filed in the case but it was not marked as exhibit. This witness was cross-examined and in cross-examination, he has specifically stated that the prosecutrix (P.W.1) and her husband Balveer Singh Jat (P.W.6) had informed him about some transactions but no allegation of rape was made against the appellant.

(18) Munish Rajoriya (PW11) and RP Tiwari (PW12) are the Investigating Officers.

(19) Thus, it would appear that in the FIR, it was mentioned by the prosecutrix that she was sexually violated by the appellant and the co-accused Ramkumar Gupta and the co-accused Ramkumar Gupta had prepared an MMS and under the threat of making the said MMS viral, the appellant had forced the prosecutrix to give an amount of

Rs.2,34,000/- and certain gold ornaments. However, in the criminal complaint which was filed by the prosecutrix, there is no mention of rape or preparation of MMS. She has also stated that she went to the police station and had requested a police personnel to resolve the dispute. In the complaint, she had alleged that Meera Sahu as well as the appellant and the co-accused Ramkumar Gupta had convinced her that in case if the prosecutrix visits a temple in the night all alone, then her family would be benefited. Then, on 10/03/2010 some "Vibhuti" (masculine) was given by Smt. Meera Sahu with an instruction that one packet of "Vibhuti" (masculine) should be consumed by her and second packet should be put by her on her head at the time of sleeping, then her wishes would be fulfilled. In case, if the prosecutrix brings a cash amount and ornaments in the night and put it in the temple, then the cash amount would get doubled and accordingly, the cash amount of Rs.2,34,000/- and the ornaments were kept in the temple but because of witchcraft played by the accused persons, the mind of the prosecutrix stopped working and they took away the ornaments as well as cash from the temple. Thus, it is clear that that there is a serious dispute with regard to very genesis of the incident and it is not clear that under what circumstances the prosecutrix and her husband gave an amount of Rs.2,34,000/- and ornaments to the appellant or to the co-accused. It has also come on record that the husband of the prosecutrix, namely, Balveer Singh Jat (PW6) had given an amount of Rs.1,30,000/- for getting his ornaments released from mortgage. If the appellant had forcibly taken away the ornaments and the amount from the prosecutrix, then under no circumstance, the husband of the

prosecutrix would have given an amount of Rs.1,30,000/- to Hottam Singh for getting it released from mortgage. Hottam Singh (PW5) has stated that there was some civil dispute between the appellant and the husband of the prosecutrix and, therefore, he had acted as a mediator and since he did not have belief over the appellant, therefore, they were required to do the transaction in the presence of Komal Jain. Komal Jain (PW3) has also stated that Hottam Singh (PW5) and Balveer Singh Jat (PW6) had come to his house and the appellant as well as the co-accused Ramkumar Gupta had also come to his house. The appellant and the co-accused Ramkumar Gupta had brought certain ornaments which were identified by husband of the prosecutrix Balveer Singh Jat (PW6) and Hottam Singh (PW5) and an amount of Rs.1,30,000/- was given to the appellant and the co-accused Ramkumar Gupta. Thus, it appears that there might be a civil dispute between the appellant and the husband of prosecutrix. Some ornaments might have been given to the appellant by the husband of the prosecutrix or by the prosecutrix herself and when such dispute could not be resolved amicably between the husband of the prosecutrix or the prosecutrix and the appellant, it appears that the exaggerated allegation of commission of rape and thereafter, compelling the prosecutrix to give an amount of Rs.2,34,000/- along with gold ornaments was made. The prosecutrix (PW1) and Balveer Singh Jat (PW6) have specifically stated that before lodging a FIR they had gone to the police station and had requested a police personnel to intervene in the matter and accordingly, the appellant had executed a document. Ripudaman Singh Rajawat (PW10) who was posted as ASI at Police Station Dabra, has been examined by the prosecution itself.

He has stated that the prosecutrix and her husband had come to the police station and had informed that an amount of Rs.2,34,000/- and the ornaments were with the appellant and, therefore, the matter may be resolved. He also admitted that the allegation of rape was not disclosed either by the husband of the prosecutrix Balveer Singh Jat (PW6) or the prosecutrix (PW1). Even the trial Court has disbelieved the version of the prosecutrix so far as it relates to commission of rape. It is the case of the prosecutrix that initially she was sexually violated by the appellant and the co-accused Ramkumar Gupta and the co-accused Ramkumar Gupta had prepared the MMS of the prosecutrix and under the threat of making it viral, the appellant and the co-accused Ramkumar Gupta had forced the prosecutrix to give an amount of Rs.2,34,000/- as well as the ornaments. When the basic allegation of commission of rape, preparation of MMS is disbelieved, then it is clear that there was no pressure on the prosecutrix to give away an amount of Rs.2,34,000/- and gold ornaments. Thus, it is clear that the prosecutrix (PW1) and her husband Balveer Singh Jat (PW6) had suppressed the basic genesis of transaction. Under these circumstances, this Court is of the considered opinion that in the light of the evidence of prosecutrix (PW1), Komal Jain (PW3), Hottam Singh (PW5), Balveer (PW6) and Ripudaman Singh Rajawat (PW10), it appears that there was some civil transaction between Balveer Singh Jat (PW6) as well as the prosecutrix (PW1) and the appellant and it appears that the appellant had refused to return the cash and the ornaments to the prosecutrix (PW1) and to her husband Balveer Singh Jat (PW6). There are material omissions and contradictions in the criminal complaint Ex.D2 which was filed by the prosecutrix as

well as the FIR ExP1, which was lodged by the prosecutrix. Once the allegation of commission of rape, preparation of MMS and pressurizing the prosecutrix is disbelieved, then the very basis for taking away an amount of Rs.2,34,000/- as well as the ornaments forcibly under the pressure, from the prosecutrix also goes away, then only conclusion which can be drawn is that because of some reason, the prosecutrix (PW1) and her husband Balveer Singh Jat (PW6) might have given an amount of Rs.2,34,000/- and the ornaments to the appellant and the appellant might have refused to return the same. The question would arise that whether it can be said that the appellant has committed an offence under Section 384 of IPC or not ?

(20) Extortion has been defined in Section 383 of IPC which reads as under:-

383.Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Section 384 of IPC reads as under:-

"384.Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

(21) Thus, it is clear that when the allegation of commission of rape and preparation of MMS has been disbelieved by the trial Court itself, then there was no opportunity for the appellant to extract an amount of Rs.2,34,000/- and the ornaments from the prosecutrix. If the prosecutrix (PW1) or her husband Balveer Singh Jat (PW6) had given the said articles either voluntarily or under any promise, then it cannot be said that the appellant had, in any manner, extorted the

amount as well as the ornaments from the prosecutrix (PW1). Even in the complaint, Ex.D.2, there is no allegation, that the appellant had extorted the amount of Rs.2,34,000 and the gold ornaments. The only allegation made by her in the complaint, Ex.D.2 was that She was allured by the appellant, the co-accused and Meera Sahu, that in case, the prosecutrix brings the amount and cash to the temple and keep it there, then the amount would get doubled, however, because of witchcraft played by the appellant, the prosecutrix lost her mind and thereafter, the amount and the articles were taken away by the appellant from the temple. Thus, there is no allegation of extortion of money and ornaments in the complaint Ex.D.2. Thus, it appears that there might a civil dispute between the appellant and the prosecutrix, and a colour of criminal case was given by the prosecutrix and her husband.

(22) The Supreme Court in the case of **Dhananjay Vs. State of Bihar**, reported in **(2007) 14 SCC 768** has held as under :-

"5. Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Penal Code in the following terms:

"383. *Extortion*.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."

6.A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence:

1. The accused must put any person in fear of injury to that person or any other person.
2. The putting of a person in such fear must be intentional.
3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.
4. Such inducement must be done dishonestly.

7. A first information report as is well known, must be read in its entirety. It is not in dispute that the parties entered into transactions relating to supply of bags. The fact that some amount was due to the appellant from the first informant, is not in dispute. The first information report itself disclosed that accounts were settled a year prior to the date of incident and the appellant owed a sum of about Rs 400-500 from (*sic*) Gautam Dubey (*sic*).

8. According to the said Gautam Dubey, however, a sum of Rs 1500 only was due to him.

9. It is in the aforementioned premise the allegations that Gautam Dubey and the appellant slapped the first informant and took out Rs 1580 from his upper pocket must be viewed.

10. No allegation was made that the money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional.

11. The first informant, admittedly, has also not delivered any property or valuable security to the appellant.

12. A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by overpowering the will of the owner; in commission of an offence of theft the offender's intention is always to take without that person's consent.

13. We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case under Section 384 of the Penal Code was made out in the first information report.

(23) The Supreme Court in the case of **R.S. Nayak Vs. A.R. Antulay**

reported in **(1986) 2 SCC 716** has held as under :-

60. "Extortion" is thus defined in Section 383, IPC:

"Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits *extortion*."

The main ingredients of the offence are:

- (i) the accused must put any person in fear of injury to that person or any other person;
- (ii) the putting of a person in such fear must be intentional;
- (iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and
- (iv) such inducement must be done dishonestly.

Before a person can be said to put any person in fear of any

injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. "

(24) Thus, this Court is of the considered opinion, that the prosecution has failed to prove that the appellant had intentionally put the prosecutrix (P.W.1) in fear of injury and thus, dishonestly, induced her to deliver the cash amount and ornaments to the appellant.

(25) Under these circumstances, this Court is of the considered view that the prosecution has miserably failed in establishing the guilt of the appellant for the offence under Section 384 of IPC. Accordingly, he is acquitted of the charge under Section 384 of IPC.

(26) Resultantly, the judgment and sentence dated 02/04/2012 passed by Second Additional Sessions Judge, Dabra, District Gwalior in Sessions Trial No.162/2011, is hereby set aside.

(27) The appellant is on bail. His bail bonds and surety bonds are discharged.

(28) The appeal succeeds and is hereby **allowed**.

(G.S.Ahluwalia)
Judge

MKB