

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 72 of 2011**

- Bhuleshwar @ Bhule Yadav S/o Khaituram Yadav, aged about 31 years, occupation Agriculture, R/o Village Gaylunga, P.S.-Narayanpur, Tahsil Kunkuri, Distt.-Jashpur, C.G.

---- Appellant

Versus

- State Of Chhattisgarh through PS Narayanpur, Distt. Jashpur

---- Respondent

For appellant : Shri Parasmani Srivas, Advocate.
For Respondent/State : Ku. Sangita Mishra, PL

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****11/05/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24-11-2010 passed by the Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (in brevity 'SCST Act'), Jashpur (CG) in Special Case No. 15/2009 whereby and whereunder learned trial Judge after holding the appellant guilty for committing rape against will and consent of the prosecutrix P.W. 1 (name not mentioned) convicted him under sub-section (1) of Section 376 of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo R.I. for 7 years with fine of Rs. 100/- in default of payment of fine to further undergo S.I. for 1 month.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned trial Court convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 18-4-2009 when the prosecutrix P.W. 1 was returning to her village Gailunga on bicycle at about 7.30 pm, the appellant stopped her bicycle and forcibly took the prosecutrix towards lower side of pond and threatened that if she cries, he will kill her and

pressed her mouth and then committed intercourse against her will and consent and after committing rape ran away from the spot. Prosecutrix informed her family members. Next day at PS Narayanpur she lodged FIR Ex. P-1. Police registered the offence at Crime No. 26/09 against the applicant and started investigation. During investigation, clothes of the prosecutrix were seized vide Ex. P-3. Prosecutrix was sent for medical examination. After obtaining due consent and permission, P.W. 6 Dr. Smt. V. Bakhla examined her and noticed swelling in the vulva, abrasion and reddish, vagina admits two fingers with difficulty, hymen torn, labia minora under cover by labia majora, perineum swollen, tender and noticed pain. Doctor gave her report Ex. P-11. The prosecutrix was subjected to intercourse within 48 hours of her examination. Investigating Officer prepared spot map vide Ex. P-17. Patwari map is Ex. P-15. Caste certificate is also collected during investigation as she belongs to scheduled caste category. Appellant was also medically examined by P.W. 9 Dr. S. Toppo who after examination opined that the appellant was able to commit intercourse. He gave his report Ex. P-14. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure (in brevity 'Cr.P.C.'). After completion of investigation charge sheet was filed before the Special Judge, SCST Act, Jashpur on 20th June, 2009. Learned Special Judge framed charges against the appellant for the offence under Section 3(2)(5) of the SCST Act, in alternate under Section 376(1), IPC and Section 506-II, IPC. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution examined 10 witnesses in all. Statement of the appellant was recorded under Section 313 of the Cr.P.C. wherein he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. He also examined one defence witness as D.W. 1 Jyoti Lakra. As per D.W. 1 prosecutrix informed her that there was love between appellant and the

prosecutrix and the appellant has not committed rape with her and whatever happened was with consent.

5. After affording opportunity of hearing to the parties, learned trial Court acquitted the appellant for the offence under Section 3(2)(5) of the SCST Act and 506-II of the IPC and convicted and sentenced him as aforementioned.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. Learned counsel for the appellant submitted that he is not contesting this appeal against judgment of conviction under Section 376(1) of the IPC. He is confining his argument only on the point of quantum of sentence. As submitted, the appellant is in jail since 20-4-2009 till date thereby he has served sentence of 6 years and 21 days out of 7 years and almost completed the sentence. He was first offender. Therefore, he may be sentenced to the period already undergone. He will not commit any offence in future.
8. Per contra, learned counsel for the State submitted that as the statement of the prosecutrix is well corroborated by medical evidence and looking to the facts and circumstances of the case, the trial Court has rightly sentenced RI for seven years which requires no interference. Hence the appeal filed by the appellant may be dismissed on the point of sentence also.
9. In order to appreciate the argument of learned counsel for respective parties, I have perused the evidence adduced by the parties.
10. The appellant is not contesting his conviction under Section 376(1) of IPC, even otherwise, on perusal of entire evidence adduced by the prosecution including prosecutrix and the medical evidence, further in view of the fact that the FIR was lodged without any inordinate delay and the prosecutrix was cross-examined at length but nothing could elicited as to discredit her statement, her statement is trustworthy and of sterling character duly

supported by medical evidence, in the opinion of this Court, there is no illegality or impropriety in the judgment of conviction against the appellant. Consequently, the conviction passed against the appellant requires no interference.

11. So far as fine sentence is concerned, learned trial Court imposed fine of Rs. 100/-. Looking to the small amount, fine sentence is also maintained.

12. So far as substantive jail sentence is concerned, appellant was sentenced for 7 years' R.I. Incident is dated 18-4-2009 prior to the amendment of Section 376 by the Criminal Law Amendment Act, 2013 with effect from 3-2-2013. As per proviso to the Amendment Act, court may for adequate and special reason to be mentioned in the judgment impose sentence of imprisonment for a term lesser than 7 years.

13. In the present case, the appellant is first offender, no criminal history of the appellant is shown in the charge sheet. Both belongs to same village. Though difference of age between the appellant and prosecutrix is 10 years but as the appellant has already remained 6 years and 21 days in jail till date, in the opinion of this Court, it would be just and proper to sentence the appellant for the period already undergone by him.

14. Consequently, the appeal filed by the appellant is allowed in part. Conviction of the appellant under Section 376(1) of IPC is affirmed. Fine sentence of Rs. 100/- is also maintained. However instead of the R.I. for 7 years, the appellant is sentenced to the period already undergone by him.

15. The appellant is in jail. He he released forthwith if not required in any other case.

Sd
Chandra Bhushan Bajpai,
Judge