

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 688 of 2010

1. Thakur Bahadur S/o Nanda Bahadur, aged about 47 years, R/o Quarter No.M/362, Dipka Colony, District - Korba, C.G.

---- Appellant

Versus

1. State Of Chhattisgarh through P.S. Bhilai-Bhatti, District - Durg, C.G.

---- Respondent

For Appellant - Mr. R.K.Pali, Advocate.
For Respondent - Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment (on Board)

05/05/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20-08-2010 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989'), Durg, C.G. in Special Case No.05/2007 whereby and whereunder the learned trial Court after holding the appellant guilty for illicit intercourse and committing rape against will and consent of the prosecutrix (PW-1)(name not mentioned) and also for giving her threat to cause bodily injury/threat to kill and thereby committed criminal intimidation convicted him for offence under Section 376(1) and 506 of the Indian Penal Code (in short 'the IPC') and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.2000/-, in default of payment of fine, to further undergo rigorous imprisonment for two years, and rigorous imprisonment for 1 year with a direction to run both the substantive jail sentences concurrently.

2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, in brief, that on 06-08-2006, at about 12.00 in the night, in the BTI hostel, Bhilai, Sector No.3, the prosecutrix along with other team members was in the hostel, the appellant was coach of the team of Korba. At midnight, the appellant took the prosecutrix (PW-1) in an empty room in upper floor and by removing her cloth committed forcible sexual intercourse without consent and will and also gave her threat to kill thereby committed criminal intimidation. The prosecutrix (PW-1) gave written complaint (Ex.-P/2), the same was registered at Police Station Bhilai Bhatti. On 07-08-2006 at 11.00 a.m., police registered crime No.95/06 and registered the case under Sections 376, 506 of the IPC and Sections 3(1)(xii) and 3(2)(v) of the Act, 1989 and started investigation. Police during investigation, seized the undergarment of the prosecutrix vide seizure memo Ex.-P/3 and also seized the birth certificate vide Ex.-P/4, prepared the spot map vide Ex.-P/5. The prosecutrix (PW-1) was sent for ossification test. As per report Ex.-P/6, the doctor assessed the age of the prosecutrix (PW-1) as between 14 to 15 years. Police also collected the entries of the register regarding the age of the prosecutrix (PW-1), seized the same (Ex.-P/7) vide seizure memo Ex.-P/8. The caste certificate is seized vide seizure memo Ex.-P/9. The appellant was taken into custody and his undergarment was seized vide Ex.-P/10. The prosecutrix (PW-1) was sent for medical examination. Doctor Ujjwala Dewangan (PW-11), after examination, noticed abrasion in the labia minora and also oozing of blood, hymen torn with swelling in 1 to 6 position, blood coming out by touching the hymen, tenderness and pain noticed. The doctor prepared

slide from the vaginal swab, vagina admits two fingers with difficulty. The doctor opined presence of sign of recent sexual intercourse and injuries are caused by hard and blunt object, she gave her report Ex.-P/17A and also examined the cloth and advised for chemical analysis. The appellant was also examined by Doctor P.Balkishore (PW-6) who gave report after examination that the appellant was able to commit intercourse, no injury over the genital was noticed. He gave his report Ex.-P/13 and also examined the undergarment and advised for chemical analysis. The appellant was arrested vide Ex.-P/19. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Durg, who, in turn, committed the case to the Court of Special Judge, Durg, C.G., who framed the charges against he appellant for offence under Sections 376, 506 of the IPC and Section 3(2)(v) of the Act, 1989. The appellant denied the charges and prayed for trial.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 11 witnesses. The accused/appellant was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. The appellant not gave any answer before the Court for all 50 questions put before him for answer. In the answer of question No.51, he offered to give his blood sample in the Hyderabad and voluntarily agreed to afford charge of the same. Even the appellant refused to sign on any of the page of the statement under Section 313 of the Code. He only signed in the order sheet, chosen to remain silent when asked for defence witness. The Court made remark in the order sheet

dated 10-08-2010. Before the trial he himself submitted some written paper, refused to plead through his counsel and further submitted that he himself will defend himself; for this also the trial Court written the above facts in the order sheet dated 13-08-2010.

6. After providing opportunity of hearing to the parties, the learned Court below convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the record of the trial Court.

8. Learned counsel for the appellant submitted that there are omission and contradiction in the statement of the prosecutrix (PW-1). The witness for the seizure of the undergarment are not examined. As such, the appellant cannot be convicted for the offence as the prosecution failed to prove its case. As per report Ex.-P/23, though in the undergarment of the prosecutrix (PW-1) and slide, stain of semen and human spermatozoa was found positive, but in the pubic hair collected from the prosecutrix (PW-1) and in the undergarment of the appellant, no stain of semen and human spermatozoa was noticed. Ex.-D/6, the DNA test report, submitted on 07-07-2010, though for the same there was no order of the Court, the same is taken for corroborative evidence by the trial Court, but the appellant in his written submission in the instant appeal submitted that on the basis of circumstantial evidence and DNA evidence, the prosecution not proved its case against the appellant as there is no injury over the private part of the appellant, there is no evidence for rupture of hymen, there was no requirement for the primary aid to the prosecutrix. The counsel for the appellant submitted that on the basis of the DNA report, the prosecution failed to prove its case against the appellant hence the appellant may be acquitted and the appeal may be allowed.

9. Per contra, learned counsel for the respondent/State duly supported the judgment of conviction and order of sentence passed by the trial Court and submitted that the judgment of the trial Court is well founded which requires no interference, hence, the appeal may be dismissed and the judgment of conviction and order of sentence may be affirmed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the legally admitted evidence adduced by the prosecution.

11. As above mentioned, there was no order but for the order dated 20-08-2009. The repeat prayer for the DNA test is dismissed by the trial Court by order dated 07-08-2010 against which no any revision is preferred in higher forum. Hence, the repeat prayer for the DNA test is dismissed by the trial Court on 07-08-2010 attains finality. With this, Ex.-D/6 is taken into consideration by the trial Court in para 16 of the judgment whereby the learned trial Court noticed that in the stain of semen found in the undergarment of the prosecutrix (PW-1) and in blood sample of the appellant, the DNA is same, hence, the Ex.-D/6 is corroborative evidence for the prosecution. The present case, based on the statement of the prosecutrix (PW-1) (name not mentioned) wherein she gave in detail description that in the midnight of the night of the date of incident, the appellant forcibly took her in upper empty room and after removal of her cloth committed forcible intercourse and when she shouted for help, he gave her threat to kill. Thereafter, she informed the story to Chitravali Mishra Madam. Then the matter was reported. A few persons came, they made search. Next day, she lodged the First Information Report. This witness was cross-examined at length but remained very firm and nothing could be elicited as to discredit the prosecutrix (PW-1). As per the medical

evidence, it finds corroboration. There is no reason for false implication. All the facts appeared during examination of the witnesses was put before the appellant, but the appellant refused to answer all the 50 questions. No other defence witness was examined or any substantive suggestion was given to the prosecutrix as to through suspicion. The other witnesses also duly corroborated regarding the post part of the incident. The appellant was also examined medically and as per the report of the doctor, he was capable of doing intercourse. Ms. Chitravati Mishra (PW-7), sports teacher, also supported the statement of the prosecutrix (PW-1) and thereby it goes to show that there is no reason to disbelieve the oral evidence of the prosecutrix (PW-1) which is well corroborated by the medical evidence and other witnesses' statements. Whatever submitted in the written argument by the appellant regarding the D/6, it cannot be said that the same is in any way against the prosecution. Even otherwise, what is stated by the prosecutrix and other witnesses are having its own admissibility, Ex.-D/6 does not prove the innocence of the appellant rather it is as a corroborative evidence for the prosecution story. So far as the non-examination of witness regarding the seizure of undergarment is concerned, the other witnesses are examined and even otherwise, the case of the prosecution is not based on the seizure of the undergarment, but it is substantially based on the evidence of the prosecutrix (PW-1) and other medical and other witnesses' evidence.

12. On due consideration, I do not find any reason to accept the contentions made on behalf of the appellant either orally or in writing. The prosecution duly proved its case that on the date of incident, the appellant committed rape against will and consent of the prosecutrix (PW-1) and also gave her threat to kill. There is no scope for any interference in the judgment of conviction and order of sentence passed by the trial Court



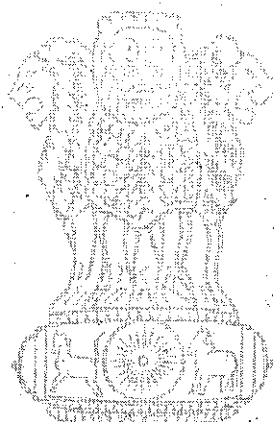
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against the appellant, hence, the appeal deserves to be and is hereby dismissed.

Sd/-
Chandra Bhushan Bajpai
Judge

Aadil

CHHATTISGARH HIGH COURT



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