

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1495 of 1994****Judgment reserved on 16-05-2016****Judgment delivered on 22-08-2016**

1. Shivnath Ram Rajwar, aged about 25 years, S/o Dasrathram Rajwar, R/o village Bhakura, Navapara, PS Ambikapur, Dist. Sarguja (CG).

---- Appellant**Versus**

1. The State of M.P. (now State of Chhattisgarh)

---- Respondent

For Appellant	Ms. Renu Kochar, Advocate
For Respondent/State	Shri Om P. Sahu, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. This appeal is directed against the judgment of conviction and order of sentence dated 17-11-1994 passed by the Special Judge, Ambikapur, in Spl. Criminal Case No.40/94 whereby the learned Special Judge has convicted the appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and under Section 3 (1) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') and sentenced him to undergo RI for 7 years and RI for 6 months, respectively.

2. Prosecution case, in brief, is that at about 11.00 am on 7-9-1993 the prosecutrix, aged about 20 years, was going from village Navapara to some other village for earning livelihood. When she reached near Jarhigutra the appellant came out from behind the bushes; embraced the prosecutrix; took her behind the bushes; and when the prosecutrix tried to raise alarm she was gagged & threatened and, thereafter, the appellant committed forcible sexual intercourse. In course of performance of sexual intercourse, the husband of the prosecutrix came and shouted on the appellant on which the appellant tried to ran away and left the spot whereupon the husband of the prosecutrix tried to catch him, however, the appellant criminally intimidated him and succeeded in fleeing away. The incident was informed to the Sarpanch, however report could not be lodged on the same day. The First Information Report (FIR) was lodged at about 9.30 am on 8-9-1993, the distance of police station being only 10 kms.
3. After recording the statements of witnesses and obtaining medical opinion from the lady Doctor, the charge sheet was filed for the above stated offences and the appellant was sent for trial.
4. In course of trial, one Udai Ram was examined as PW-1, however, he has turned hostile and not supported the case of prosecution.
5. Prosecutrix (PW-2) admitted in her examination that other women labourers were working in the adjoining field at a distance of about 60-70 steps. She also admitted that her husband reached the place of

occurrence when the appellant was still performing the sexual intercourse. Raju (PW-3), husband of the prosecutrix, has stated in his evidence that when he reached the spot and witnessed the appellant performing sexual intercourse, he raised alarm and the other women labourers working in the adjoining field came over there.

6. The Medical Officer Dr. (Smt.) Sushma Sinha (PW-6), who examined the prosecutrix, has not found any injury over any part of the body of the prosecutrix. She opined that the prosecutrix was habitual to sexual intercourse and no definite opinion can be given about recent sexual intercourse.
7. The state of evidence on record would clearly demonstrate that about 60-70 steps away from the place of occurrence i.e. behind the bushes abutting the road, women labourers were working and they reached the spot soon after the husband of the prosecutrix raised the alarm after witnessing the incident. It is, thus, apparent that had the prosecutrix raised alarm prior to commission of sexual intercourse by the appellant, the women labourers working in the adjoining fields would have definitely rushed to the spot to save the prosecutrix. Moreover, in the FIR itself it is mentioned by the prosecutrix that the appellant embraced her and took her behind the bushes.
8. The entire act of the appellant by embracing the prosecutrix, taking her behind the bushes and committing sexual intercourse would have taken sufficient time so as to enable the prosecutrix to raise alarm and seek

help from the women labourers, but she has not done anything to save herself. It has also been admitted by the prosecutrix that the appellant was not aware that she belongs to Scheduled Caste community.

9. From the above discussion, it clearly appears that the prosecutrix was a consenting party and she being more than 16 years of age on the date of incident i.e. 7-9-1993, the prosecution has not been able to prove commission of offence by the appellant either under Section 376 of the IPC or under Section 3 (1) (xii) of the Act, 1989.
10. *Ex-consequenti*, the appeal is allowed. Conviction and sentence imposed upon the appellant under Section 376 of the IPC or under Section 3 (1) (xii) of the Act, 1989 are hereby set aside. He is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Gowri