

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 568 of 2010

1. Bhalchand Tiwari @ Bhola, S/o Late Bhanuprasad Tiwari, aged about 44 years, R/o village Jhumka, PS Badedongar, District Bastar, CG

---- Appellant

Versus

1. State Of Chhattisgarh through District Magistrate, Jagdalpur, District Bastar,CG

---- Respondent

For Appellant	-	Mrs. Smriti Shrivastava, Advocate
For Respondent	-	Shri Ravindra Agrawal PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

12/04/2016

This appeal is directed against the judgment and order dated 04.06.2010 passed by Sessions Judge (Atrocities) Bastar at Jagdalpur, in Sessions Trial No. 131/2008 convicting the accused/appellant under Sections 376 (1) IPC and 3 (1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs. 1000/- u/s 376 (1) IPC and rigorous imprisonment for five years with fine of Rs. 1000/- u/s 3 (1) (xii) of the Special Act, plus default stipulations.

2. Case of the prosecution in brief is that on 15.7.2008 FIR (Ex. P-13) was lodged by the prosecutrix (PW-8) alleging that on 11.7.2008 (Friday) she had gone to the house of her father to attend a wedding ceremony and some days thereafter i.e. on

Sunday her husband Jagat Ram Mandavi and the accused/appellant also came there to take her back. When she along with her husband was going on the motorcycle of the accused/appellant, he stopped the motorcycle near his house at village Bhumka and after taking her husband inside told him that if they (prosecutrix and her husband) wanted to give up liquor, observance of some rituals (*Pooja path*) was to be done that very day. Accused/appellant also asked her husband to get his father for the said ritual and after his arrival he made both of them sit in a room and got the said ritual done at about 7 in the evening and thereafter he gave them a piece of red cloth, vermilion and coal pieces to be dropped at a triangular path and move ahead without looking back. After her husband and father-in-law got away, the accused/appellant asked her to stay in his house for four days to light the lamp and clean the place of ritual and saying that he took her to the *Pooja* room, gave her coal pieces and vermilion to be thrown into the jungle. When she refused to accompany him to jungle, maid servants of the accused/appellant forced her to do so. Thereafter, at 8 PM she went to the jungle along with the accused/appellant where under a tree he made her lie and after removing her clothes committed forcible sexual intercourse with her on the point of knife and threatened her saying that if she disclosed the same to anyone, entire observance of ritual would be futile and for that she kept quiet. Second day also he took her to the jungle and did the same act. On 14.7.2008 her husband came and took her back and on the way she narrated the entire incident to him and after reaching home to her mother-in-law also and then the report was lodged.

Based on the said report, offences under Section 376/34 IPC and 3 (1) (xii) of the Special Act were registered against the accused/appellant. She was medically examined on 16.7.2008 by Dr. B.P. Ekka (PW-1) who gave her report Ex. P-1 stating that she did not notice any external or internal injury on her body and no definite opinion regarding forcible sexual intercourse could be given. After completion of investigation, charge sheet was filed against the present appellant and others for the offence punishable under Sections 376/34 IPC and 3 (1) (xii) of the Special Act. Court below however discharged the other accused persons and framed the charges against the accused/appellant as mentioned above.

3. So as to hold the accused/appellant guilty, prosecution has examined 08 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that she is not pressing this appeal as far as conviction of the accused/appellant is concerned and confines her argument to the sentence part thereof only. She submits that as the appellant is in jail since 21.7.2008 and thereby completed the imprisonment of about 7 years and 6 months, taking a lenient view his jail sentence may be reduced to the period already undergone.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as has been mentioned above are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-2) has stated that when she had gone to her father's house to attend the marriage of her younger brother, accused/appellant also came there and asked her to accompany him as her parents-in-law were not well but she refused to do so. Thereafter, he again came there in the evening and on the same pretext he took her with him to his house at village Palli on motorcycle. The accused/appellant then is stated to have told her husband that his wife (prosecutrix) and father were overpowered by some evil spirit, and therefore asked him to go and get his father. After her husband got back with his father, the accused/appellant performed some ritual and after it was over he sent her husband and father-in-law to go for immersing the remnants of the ritual. According to her, when she asked the accused to let her go, he told him to stay there for further four days and clean the floor as it is for her the entire rituals were arranged. The accused/appellant again made her sit for the *pooja* and then he gave some rice, flower and coal pieces to be immersed. After immersion when she got back, the other accused persons namely Devchand and Pala confined her to a room for *pooja* saying that the accused/appellant had come under the

influence of divine power. Thereafter, accused/appellant gave her rice to eat and then took her near a tree, removed her clothes and committed forcible sexual intercourse with her and threatened her saying that if she disclosed the incident to her husband and parents-in-law, she would die naked. Accused/appellant then took her to his house and offered food. Thereafter, he again took her to a Mahua tree and committed forcible sexual intercourse with her and then after leaving her there he got back. On the next day, she went to her house and narrated the incident to her husband and mother-in-law and then the report was lodged. In cross-examination also this witness has stated the same thing as in the examination-in-chief. Jagat Ram Mandavi (PW-3) - the husband of the prosecutrix has stated that he along with his wife had gone to the house of the accused/appellant for the observance of certain rituals and as asked by the accused/appellant his father was also brought there. After the ritual was over, the accused/appellant gave him a piece of black cloth and asked him to immerse the same and then move ahead whereas his wife (prosecutrix) was asked to stay there for further four days. According to this witness, he again went to the house of the accused in the next morning as was asked by him and after *pooja* he took her with him and then she told him that after taking her to a jungle the accused/appellant removed her clothes and committed forcible sexual intercourse with her twice. In cross-examination also this witness has stated the same thing as in the examination-in-chief. Astari (PW-4) - the father-in-law of the prosecutrix has stated the same thing as Jagat Ram Mandavi (PW-3). According to him, his son told him that the

accused/appellant committed forcible sexual intercourse with the prosecutrix in his house. Dr. B.P. Ekka (PW-1) is the witness who medically examined the prosecutrix and gave her report Ex. P-1 stating that she did not notice any external or internal injury on her body and no opinion regarding forcible sexual intercourse with her could be given. Dr. Lekhan Juri (PW-6) is the witness who medically examined the accused/appellant and gave his report Ex. P-2 stating that he was capable of performing sexual intercourse. Rajesh Agrawal (PW-7) is the investigating officer who has duly supported the case of the prosecution. Sandip Chandrakar (PW-8) is the witness who assisted in the investigation.

9. Examination of the material available on record including the evidence of the prosecutrix goes to show that the accused/appellant allured the prosecutrix to his house on the pretext of some rituals and then after taking her to the nearby jungle in the night house committed forcible sexual intercourse with her twice. Though there are some variations in the version of the prosecutrix yet on material particulars such as commission of forcible sexual intercourse with her, she remained absolutely consistent. Evidence of the prosecutrix is corroborated by her husband and father-in-law who had also been to the house of the accused but got back in the evening as per the instructions of the accused/appellant. There is no reason for this Court to disbelieve the evidence of the prosecutrix as it appears to be consistent and trustworthy. Court below has not committed any illegality in convicting the accused/appellant under Section 376 IPC and the same is hereby affirmed.

10. As regards conviction under Section 3 (1) (xii) of the Special Act, the prosecution has not filed and proved any document to show that the prosecutrix belongs to scheduled tribe category. In his 313 Cr.P.C. statement the accused/appellant has denied that he had the knowledge that the prosecutrix was a member of scheduled tribe community. Furthermore, the prosecution has not been able to prove that the accused/appellant had dominated the will of the prosecutrix and used his position to exploit her sexually simply because she belonged to the scheduled tribe community. Being this, conviction under Section 3 (1) (xii) of the Special Act is not in accordance with law and the appellant is entitled for acquittal of the same.

11. Thus conviction of the accused/appellant under Section 376 IPC is hereby maintained whereas he is acquitted of the charge u/s 3 (1) (xii) of the Special Act.

12. As regards sentence, keeping in mind the fact that the minimum sentence provided for the offence u/s 376 IPC is RI for seven years and as the appellant has already remained in jail for about seven years and six months, this Court deems it just and proper to reduce the same to the period already undergone by him. Order accordingly.

13. As the appellant is in jail, he be set free forthwith if not required in any other case.

14. Appeal allowed in part.

Sd/-
(Pritinker Diwaker)
Judge