

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1608 of 2015

- Goutam S/o Tiharu Nishad Aged About 23 Years R/o Village - Korgaon, P.S. - Keshkal, Bastar, District - (Revenue) - Bastar, District (Civil) - Jagdalpur Chhattisgarh

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through District Magistrate, Bastar, District - Bastar Chhattisgarh

---- Respondent

For Appellant : Shri Yogesh Pandey, Advocate.

For Respondent/State : Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board by Justice Pritinker Diwaker

05/05/2016

This appeal arises out of the judgment of conviction and order of sentence dated 28.8.2004 passed by the Special Judge {Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act}, Jagdalpur in ST No.113/2004, conviction the accused/appellant under Sections 376(1), 323 of IPC and sentencing him to undergo RI for life, fine of Rs.1000/- and RI for one year, fine of Rs.500/- with default stipulations respectively.

02. Brief facts of the case are that on 16.12.2003 a written report (Ex.P/1) was lodged by the prosecutrix, aged about 15 years, alleging in it that she is a student of Class-8th, on 15.12.2003 while she was

returning from school, on the way at about 2 pm one person came from Dongri forest, caught hold of her, gagged her mouth, dragged her towards jungle, threw her on the ground, removed her underwear, inserted his hand in her private part, as a result of which she started bleeding and became unconscious. Thereafter, she went to her house crying and narrated the entire incident to her parents. She has stated that she does not know the man who did the said act, however, he was wearing a black full pant and shawl. Based on this complaint, FIR (Ex.P/2) was lodged against unknown person under Section 341, 506 & 377 of IPC. The prosecutrix was medically examined on 17.12.2003 vide Ex.P/10 & P/11 by PW-8 Dr. Anjana Bhaskar, who noticed swelling on her right shoulder joint, scratches on both sides of neck, swelling and pain below right elbow joint, all these injuries were simple in nature. On genital examination, she found swelling with inflammation in vulva, redness with swelling in vagina, hymen previously ruptured, muco purulent secretion present in fourchette, clinically NAD in perineum and cervix. As per query report Ex.P/11 dated 22.12.2003, the doctor opined that there is no any wound on or into the genital organs, only redness, swelling, inflammation and muco purulent discharge present, all these symptoms are simple in nature and may be caused by disease or rape or by injury also and the doctor advised for medical investigation (forensic report) for further information. After completing investigation, charge sheet was filed against the appellant under Sections 341, 506, 376(1), 323 of IPC and Section 3(1)(xii) & 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short "the SC/ST Act"). However, the trial Court framed charges under Sections 376(1), 323 and 3(1)(xii) of SC/ST Act.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellant of the charge under Section 3(1)(xii) of SC/ST Act, convicted and sentenced him as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that as per FIR lodged by the prosecutrix, she was sexually assaulted by an unknown person and the appellant has been falsely implicated in this case. He submits that the trial Court has rightly disbelieved the test identification parade (Ex.P/7) on the ground that before TIP, the appellant was shown to the prosecutrix. He further submits that the alleged extrajudicial confession of the appellant before PW-9 & PW-10 is also not reliable because it was not made voluntarily and in fact, was not made by the appellant and that there is contradictions in the statements of PW-9 & PW-10 as well. Alternatively, it has been argued that if this Court finally comes to the conclusion that the appellant is guilty under Section 376(1) of IPC, considering the facts and circumstances of the case, the quantum of sentence awarded under this section i.e. imprisonment for life being on the higher side, may be reduced to the period already undergone by the appellant as the appellant has already suffered jail sentence of about more than 12 years till date.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 prosecutrix has stated that she is 15 years of age but does not know her date of birth. On the date of incident while she was returning from her school, she met the accused/appellant near the forest, who beat her, threatened her for life, threw her on the ground, as a result of which she fell unconscious and thereafter, she is not aware as to what had transpired. When she regained consciousness, she noticed that blood was oozing from her private part and she felt pain. She has stated that somehow she reached her house and then narrated the incident to her elder brother and thereafter, again fell unconscious. Her brother informed her parents and then after regaining consciousness, she also informed her parents. On the next day, she lodged a written complaint (Ex.P/1), based on which FIR (Ex.P/2) was registered. She was thereafter sent for medical examination to Keshkal hospital where she was medically examined. She has stated that she identified the accused/appellant vide Ex.P/7 in the office opposite to the police station. In cross-examination she states that as she became unconscious after being assaulted by the appellant, she did not know as to what had happened thereafter, the appellant was not known to her since before; in the identification parade she duly identified the appellant and at that time police was not there.

09. PW-2 Smt. Tiharin, mother of the prosecutrix has stated that when the prosecutrix returned from school, she informed about the incident to her and that blood was oozing from her private parts. PW-3 Tamakaram, father of the prosecutrix has made almost similar statement as has been made by PW-2. PW-7 F.R. Thakur who conducted TIP (Ex.P/7) has stated that in the TIP, proper mixing of persons was done and the prosecutrix duly identified the accused/appellant as perpetrator of the offence. PW-8 Dr. Anjana Bhaskar medically examined the prosecutrix vide Ex.P/10 & P/12 and noticed swelling on her right shoulder joint, scratches on both sides of neck, swelling and pain below right elbow joint, all these injuries were simple in nature. On genital examination, she found swelling with inflammation in vulva, redness with swelling in vagina, hymen previously ruptured, muco purulent secretion present in fourchette, clinically NAD in perineum and cervix. As per query report Ex.P/11 dated 22.12.2003, she opined that there is no any wound on or into the genital organs, only redness, swelling, inflammation and muco purulent discharge present, all these symptoms are simple in nature and may be caused by disease or rape or by injury also and the doctor advised for medical investigation (forensic report) for further information. She had also examined the clothes including underwear of the prosecutrix and noticed blood like stains on them and advised for chemical examination of the same vide Ex.P/13.

PW-9 Anand Das and PW-10 Dhannuram are witnesses of extrajudicial confession made by the appellant. However, from perusal of their statements, it appears that the so-called extrajudicial

confession was made in presence of the police and further, it does not appear to have been made by the appellant voluntarily and it is also not clear as to with whom the appellant said to have committed rape. PW-12 KK Mishra, Assistant Sub Inspector, did part of the investigation whereas PW-13 Goverdhan Thakur, SDOP, is the investigating officer and they have duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 15.12.2003 while the prosecutrix was returning from her school at about 2 pm all alone, the accused/appellant taking advantage of her loneliness caught hold of her, dragged her, gagged her mouth and thereafter, committed rape with her. After the incident, she went home crying and first narrated the incident to her elder brother and thereafter, to her parents. Since the appellant was not known to her, she made a written complaint against unknown person, based on which FIR was registered. However, during investigation the appellant was arrested and in the test identification parade conducted by PW-7 FR Thakur, Tehsildar, vide Ex.P/7 she duly identified the appellant as the person who committed rape with her. From the overall statement of the prosecutrix and PW-7, there is no reason for us to disbelieve the evidence of identification parade. This apart, in the Court also the prosecutrix identified the appellant, which has not been challenged by the defence in her cross-examination. Evidence of the prosecutrix further gets corroboration from the evidence of her mother PW-2 Smt. Tiharinbai as also the medical evidence, according to which corresponding injuries were noticed on her body as well as private parts. Even if the evidence of PW-9 and PW-10, which relate to alleged

extrajudicial confession of the appellant, is ignored for the reasons stated above, considering the evidence of the prosecutrix coupled with the evidence of her mother (PW-2) and the medical evidence, it stands proved that it is the accused/appellant who first assaulted the prosecutrix, a minor girl of about 15 years, caused her injuries and then committed rape with her. Being so, his conviction under Sections 376(1) and 323 of IPC deserves to be affirmed.

11. As regards the quantum of sentence, considering the fact that the appellant is in jail since 3.2.2004 i.e. for the last more than 12 years and that life sentence is not mandatory for the offence committed, we are of the view that ends of justice would be served if the appellant is sentenced to the period already suffered by him.

12. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Sections 376(1) and 323 of IPC and the sentence imposed under Section 323 of IPC, his sentence under Section 376(1) of IPC is reduced from life imprisonment to the term already undergone by him. As the appellant is in jail, he is directed to be set free forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge