



22/09/16

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 760 of 2005

- Chandra Shekhar Verma, S/o Shri VN Verma, Aged about 27 years, Occupation Karate Trainer, R/o Kumharpara, Santoshi Ward, Jagdalpur, Bastar, P.S. Jagdalpur, Distt. Bastar (CG)

--- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Jagdalpur, Distt. Bastar (CG)

--- Respondent

For Appellant : Shri Govind Dewangan, Advocate.
For Respondent/State : Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

20/09/2016

This appeal arises out of the judgment of conviction and order of sentence dated 14.9.2005 passed by Special Judge (SC & ST Act), Bastar at Jagdalpur in ST No.162/2004 convicting the appellant under Sections 376(1), 323 of IPC and Section 3(1)(12) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentencing him to undergo imprisonment for life, pay a fine of Rs.1000/-; RI for one year and RI for five years, pay a fine of Rs.500/-, with default stipulations respectively.

02. Brief facts of the case are that on 16.4.2004 a written report (Ex.P/6) was lodged by the prosecutrix (PW-4), aged about 19 years,

alleging in it that in November, 2003 the accused/appellant joined her school as Karate teacher and in December, 2003 she had gone along with him on his motorcycle to attend one tournament at Sukuma. She has alleged that in the jungle the accused/appellant stopped his vehicle and committed sexual intercourse with her against her wishes on the pretext of marriage. Since then he continued to sexually exploit her and on 12.4.2004 he again took her along with him and she remained with him till 14.4.2004. When she asked him to marry her, he assaulted on her and after causing injuries, ousted her from his company. Based on this written report, FIR (Ex.P/5) was registered against the accused/appellant under Section 375(4), 493, 376, 323 of IPC and Section 3(1)(xii) and 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as "the Act"). The prosecutrix was medically examined vide Ex.P/3 on 16.4.2004 by PW-2 Dr. Shashikala Thakur who noticed contusion, healed abrasion, small abrasion on the person of the prosecutrix as also pain over her right scapular region. She also noticed that the hymen of the prosecutrix was old torn. In her opinion, there was no evidence of recent sexual intercourse, the prosecutrix was habituated to sexual intercourse and the injuries suffered by her were simple in nature. After investigation, charge sheet was filed against the appellant and while framing charge, the trial Judge framed charges under Sections 376(1), 323 of IPC and Section 3(1)(xii) of the Act.

03. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. 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 convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is inordinate delay in lodging the FIR and the said delay has not been satisfactorily explained by the prosecutrix.

(ii) that at the time of alleged offence, the prosecutrix was major; she allowed the appellant to have physical relation with her for more than five months; during this period she had ample opportunity to make complain of his act to her relatives, but she remained quiet and lodged the report after a considerable period. This apart, documents Ex.D/1 to D/16 go to show that the prosecutrix was having affair with the appellant. All this goes to show that she was a consenting party and being so, the appellant cannot be held guilty under Section 376 of IPC.

(iii) that in relation to offence under Section 3(1)(xii) of the Act, it has been argued that basic ingredients for attracting this section are completely missing in this case. It is not the case of the prosecutrix that on account of her caste, she was subjected to physical relation or beaten by the appellant.

(iv) even if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 323 of IPC and further considering his total detention period which comes to four months and fourteen days, he may be sentenced under the aforesaid section to the



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period already suffered by him.

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

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

08. PW-4 prosecutrix has stated that she knew the accused/appellant, however, she did not know his caste but she is Harijan by caste. She has stated that she along with her friends Jagitri Thakur, Hemant Thakur and Sandeep Nag used to learn Karate from the appellant, who used to come to her school. In the month of December, 2003 the accused/appellant took her on his motorcycle by saying that there is a tournament at Sukuma and on the way he threw her on the field and after removing her and his clothes had physical relations with her. She states that the accused/appellant assured her of marriage and then he dropped her at her house. In the month of January-February, the accused/appellant was removed from her school and thereafter, he started taking Karate classes privately and there also she used to attend Karate classes. On 12.4.2004 the accused/appellant again took her on his motorcycle to a hotel and there she remained with him till 14.4.2004 and during this time, the appellant had physical relation with her. According to her, at about 2 in the night when she asked the appellant as to when he is going to marry her, he refused to marry her and beat her with hands and fists as a result of which she suffered

injuries. She states that she reached her house and in the morning she narrated the entire incident to her family members and then the report was lodged.

From her cross-examination it appears that she had physical relations with the appellant for quite long time and during this period, she did not make any sincere effort to come out of his clutches or to lodge a prompt report.

09. PW-2 Dr. Shashikala Thakur medically examined the prosecutrix on 16.4.2004 vide Ex.P/3 and noticed following injuries:

- (i) contusion below left eye size 4 x 3 cm;
- (ii) healed abrasion over post surface of right elbow joint size 1.5 x 1.5 cm;
- (iii) small abrasion over right side of neck;
- (iv) complain of pain over right scapular region.

She noticed no internal injury on her private parts; her hymen was old torn, there was no evidence of recent sexual intercourse; she was habitual to sexual intercourse. In her opinion, the injuries suffered by the prosecutrix were simple in nature.

10. PW-1 Dr. Mahendra Kumar Mahilang medically examined the accused/appellant vide Ex.P/2 and stated that the appellant was capable of performing sexual intercourse. PW-5 Smt. Kanti Sena, mother of the prosecutrix, has stated that she was informed by the prosecutrix that she was subjected to rape by the appellant and thereafter, written report was lodged. PW-6 Ku. Jagitri Thakur, friend of the prosecutrix, who along with the prosecutrix was also attending

Karate classes of the appellant, has turned hostile. PW-8 D.R. Anchala, investigating officer, has supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that there is inordinate delay of about five months in lodging the FIR and this delay has not been properly explained by the prosecutrix as required under the law. From the evidence of the prosecutrix it appears that during this period she had physical relations with the appellant at different places and there was no protest on her behalf to this act at any point of time. From the documents Ex.D/1 to D/16 it is also apparent that there was affair between them. She herself has admitted that she was 19 years of age at the relevant time. Thus in the totality of facts and circumstances of the case, the quality of evidence, oral and medical, adduced by the prosecution, particularly the evidence of the prosecutrix and her entire conduct during the incident as well as subsequent thereto, the possibility can not be ruled out that the prosecutrix out of her own free will accompanied accused/appellant and if there was sexual intercourse between them, she was a consenting party to the said act. In these circumstances, the appellant is definitely entitled to be acquitted of the charge under Section 376(1) of IPC leveled against him by extending him benefit of doubt.

12. So far as charge under Section 3(1)(xii) of IPC is concerned, in view of evidence on record the same is also not sustainable because it is not the case of the prosecutrix that as she belongs to a particular caste she was subjected to physical relation by the appellant or was beaten on that count. As such, the basic ingredients required for attracting the provisions of the Act, 1989 are missing in this case.

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Therefore, the appellant is also entitled to be acquitted of charge under Section 3(1)(xii) of the Act.

13. As regards offence under Section 323 of IPC, according to the prosecutrix she was assaulted by the appellant with hands and fists as a result she suffered injuries. Her evidence finds due corroboration from her medical report. The doctor (PW-2) examining the prosecutrix has stated that the injuries suffered by the prosecutrix were simple in nature. Thus, conviction of the appellant under Section 323 of IPC cannot be faulted with. Further, considering the fact that he has already remained in jail for about four months and fourteen days, we are of the view that ends of justice would be served if he is sentenced under Section 323 of IPC to the period already undergone by him.

14. In the result, the appeal is allowed in part. While acquitting the appellant of the charges under Sections 376(1) of IPC and Section 3(1)(xii) of the Act, 1989, his conviction under Section 323 of IPC is maintained and he is sentenced to the period already suffered by him. He is reported to be on bail; therefore, his bail bonds stand discharged and he need not surrender.

Sd/-
(Pritinker Diwaker)

Judge

Sd/-
(C.B. Bajpai)

Judge