

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 653 of 2013

1. Komal Dhobi (Nirmalkar) S/o Bahal Dhobi, aged about 26 years, R/o Village Limtara, Bhathapara, Police Station Kumhari, District Durg C.G.

---- Appellant

Versus

1. State of Chhattisgarh through - Police Station Kumhari, District Durg (C.G.)

---- Respondent

For Appellant – Shri T.K.Jha, Advocate.

For Respondent – Shri Satish Gupta, Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

15/11/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 19-08-2011 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.01/2011 whereby and whereunder the learned trial Judge after holding the appellant guilty for committing house trespass in order to commission of rape and also guilty for committing rape with the prosecutrix (PW-4) (name not mentioned), convicted the appellant under Sections 450, 376(1) of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced him to undergo rigorous imprisonment for five years and also to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo rigorous imprisonment for 3 months, rigorous imprisonment for 10 years and to pay fine of Rs.5000/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months with a direction that both the substantive jail sentences shall run concurrently. By the impugned judgment the trial Court acquitted the appellant for the offence under Section 506 of the IPC and also from the offence under Section 3(2)(v) of the Act, 1989.

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. Case of the prosecution, in brief, is that on 13-08-2010 the prosecutrix was all alone in her house preparing for school, the accused/appellant entered in the house and thereafter forcibly committed sexual intercourse and when the prosecutrix attempted to shout the accused/appellant gave threat to take life. As the prosecutrix was a member of scheduled castes category after lodging the FIR, Kumhari police registered Crime No.231/2010 under Sections 450, 506, 376 of the IPC and under Section 3(1)(x) of the Act, 1989. After taking necessary consent, the prosecutrix was examined by Doctor Alpana Nand (PW-9) who gave report Ex.-P/4 after conducting MLC and noticed no tenderness, hymen ruptured, vagina slightly loose admit one finger easily and menstrual cycle started on 13-08-2010 itself. During investigation, evidence regarding proof of age were collected. The accused/appellant was arrested, he was also examined, concerned Doctor B.P.Tiwari (PW-3) gave his report Ex.-P/6 and noticed no any symptom so as to hold that accused was not capable of committing intercourse. After investigation, charge sheet was filed before the Judicial Magistrate First Class Durg, C.G., who, in turn, registered the matter under the head of Criminal Case No.778/10 and vide committal order dated 04-01-2011 committed the matter for trial. The learned Special Judge Durg received the case for trial. The accused/appellant were charged for the offence under Sections 450, 506, 376(1) of the IPC and Section 3(2)(v) of the Act, 1989. The appellant denied the charges.

4. In order to prove guilt of the accused/appellant, prosecution examined 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him, pleaded innocence and false

implication in crime in question. The accused examined one Bharati Sharma, Secretary Panchayat. As per the defence witness, under the head of one residential scheme father of the prosecutrix was granted Rs.10,000/- total.

5. After affording opportunity of hearing to the parties, learned Special Judge acquitted the accused/appellant for the offence under Section 506 of the IPC and Section 3(2)(v) of the Act, 1989 and convicted and sentenced the appellant as aforementioned.

6. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

7 At the outset, learned counsel for the appellant submits that he is not contesting this appeal against the conviction under Sections 450 and 376(1) of the IPC for the appellant, he is only confining himself to the quantum of substantive jail sentence. As submitted, the accused was aged about 26 years, resident of same village, marginal farmer and was earning his bread anyhow. He is in jail since 6 years 3 months till today. He is the first offender with no any criminal antecedent, even he was not having reputation for committing any offence earlier to the incident. Even he could not arrange funds to file criminal appeal, the instant criminal appeal has been filed after 631 days of its limitation which was condoned by this Court. He never prayed before this Court for suspension of sentence and grant of bail. He will not commit any offence in future. Therefore, he be given opportunity by sentencing him for the period already undergone. It is further prayed that the incident is of 13-08-2010 and of before substitution of provision of Section 376 Sub-section 1 of the IPC vide Criminal Law (Amendment) Act, 2013 which came into force from 03-02-2013, as per provision earlier applicable in the matter in hand, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Looking to the entire facts and circumstances, the matter may be considered sympathetically and the sentence

may be reduced to the period already undergone by the appellant.

8. On the other hand, learned counsel for the State/respondent submits that the accused/appellant by pressing mouth of the prosecutrix committed rape and looking to the entire facts regarding age, the Court below convicted and sentenced the appellant which is proper, hence, the criminal appeal may be dismissed on both the counts.

9. In order to appreciate the argument advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

10. The appellant is not contesting the instant criminal appeal on conviction under Sections 450 and 376(1) of the IPC and also after perusal of the entire evidence of the prosecutrix (PW-4), medical evidence and the evidence of her father (PW-5)—Aasha Ram, this Court is of the considered view that the trial Court after considering the entire material convicted the accused/appellant under Sections 450 and 376(1) of the IPC and said conviction do not require any interference. Consequently, conviction of the appellant as aforementioned is hereby affirmed.

11. So far as fine sentence awarded to the appellant of Rs.1000/- and Rs.5000/-, is concerned, on perusal of the quantum of fine, it cannot be held as excessive. Consequently, the fine sentence awarded by the trial Court is also hereby affirmed.

12. So far as quantum of substantive jail sentence are concerned, the appellant is sentenced to undergo rigorous imprisonment for 5 years and 10 years with a direction that both the substantive jail sentences shall run concurrently. The accused/appellant already remained in jail for 6 years 3 months, he was aged about 26 years, resident of same village and no any criminal antecedent or other facts regarding his over all character in the village was shown by the prosecution. Also after consideration of entire evidence, it would be appropriate and ends of justice would be served if the appellant be

sentenced to the period already undergone by him so far as it relates to jail sentence under Section 376(1) of the IPC.

13. Consequently, appeal filed by the appellant is allowed in part. Conviction awarded to the accused/appellant under Sections 450 and 376(1) of the IPC is hereby affirmed. Fine sentence awarded for both the offence is also hereby affirmed. The default sentence imposed by the trial Court in default of payment of fine amount is also affirmed. The jail sentence awarded to the accused/appellant under Section 450 of the IPC is also not excessive and as vide direction of the trial Court both the substantive jail sentences were to run concurrently, the accused/appellant served the entire jail sentence awarded under Section 450 of the IPC. So far as substantive jail sentence awarded under Section 376(1) of the IPC is concerned, instead of rigorous imprisonment for 10 years, the appellant is sentenced to the period already undergone by him. The accused/appellant is in jail. He be released forthwith if not required in any other case.

14. On behalf of the accused/appellant, copy of this judgment may be filed before the concerned authorities for compliance.

15. Registrar (Judicial) is also directed to send copy of the judgment to the concerned trial Court for compliance immediately preferably also through fax mode.

16. Appeal partly allowed.

17. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge