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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.283 of 2007

Manrakhan, S/o Punba Marar, aged about 25 years, Occupation Labour, Resident of Chitawar, Police Station Kasdol, District Raipur (Chhattisgarh), Present Residence Shivpara, H.S.C.L. Colony, Station Maroda, Police Station Newai, District Durg, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through P.S. Newai, District Durg, Chhattisgarh

--- Respondent

For Appellant	:	Shri U.R. Koshaley, Advocate
For State/Respondent	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

4.11.2017

1. This appeal is directed against the judgment dated 30.8.2006 passed in Special Case No.72 of 2005 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') and the Additional Sessions Judge, Durg convicting the accused/Appellant under Sections 376(1) and 450 of the Indian Penal Code and sentencing him with rigorous imprisonment for 7 years and fine of Rs.3,000/- and rigorous imprisonment for 5 years and fine of Rs.2,000/-, respectively with default stipulation.
2. Case of the prosecution, in brief, is that the prosecutrix (PW1), a married lady lodged First Information Report (Ex.P1) in Police Station Newai on 26.7.2005 alleging that on 24.7.2005, the accused/Appellant came to her house and demanded some donation for a public work. Thereafter, the Appellant stayed and

sat there. After taking meals, when she went to sweep her house, the Appellant caught her and said that he will commit wrong act with her. She opposed, but he forcibly committed rape with her. He also threatened her that he will kill her on her shouting. On the fateful night, at about 2:00 a.m., the Appellant left her house. After the incident, in the morning, the prosecutrix told the incident to Sheetalabai (PW3), Jagotinbai (PW2) and Gouribai (PW4) and other villagers. The prosecutrix was medically examined by Dr. Alpana Agrawal (PW10). Caste certificate of the prosecutrix was seized and pieces of her broken bangles were also seized from the place of occurrence. After investigation, a charge-sheet was filed against the Appellant under Sections 376 and 450 IPC and Section 3(1)(xii) of the Act of 1989. Charges were framed against him under Sections 450 and 376 IPC and Sections 3(2)(v) and 3(1)(xii) of the Act of 1989.

3. In order to rope in the Appellant, the prosecution examined as many as 11 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him. He claimed to be innocent and false implication in the case. No defence witness was examined by him.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the prosecutrix is a grown up lady of 45 years and the incident took place in her house on 24.7.2005. The FIR was lodged on

26.7.2005. No proper explanation was offered for belated lodging of the FIR. It was further argued that the version of the prosecutrix is also not corroborated by the medical evidence. The Appellant has been falsely implicated in the case. Even if it is assumed for the sake of argument that any wrong act was done with the prosecutrix by the Appellant, she was a consenting party to the said act.

6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. In her Court statement, the prosecutrix (PW1) has deposed that in the fateful night, she was alone at her home and cooking food. At that time, the Appellant came to her house and demanded some donation. Thereafter, he stayed there. After cooking food, she asked the Appellant to go away from there, but he did not go away and said that what will he do after going back his house. Thereafter, when she went inside the room of her house, the Appellant came behind her and caused her to fall down and thereafter he committed forcible sexual intercourse with her. She has further deposed that after the incident, the Appellant kept on sleeping in her house till 4:00 a.m. and she also slept till 11:00 a.m. After waking up, she took bath. Thereafter, she told Jagotinbai (PW2) about the incident. Thereafter, she lodged the FIR (Ex.P1).
9. Sheetalabai (PW3) has deposed that at about 1:30 p.m., the

prosecutrix came to her and told her about the incident. Jagotinbai (PW2) has also deposed that Sheetalabai and the prosecutrix had come to her house and told her about the incident. Gouribai (PW4) has also deposed in similar fashion.

10. Gullu (PW8), a Ward Councillor (*Parshad*) has also supported the above version of the prosecutrix and deposed that the prosecutrix had told him about the incident. Thereafter, he had advised her to lodge a report.
11. Inspector Jagdish Uike (PW11) has recorded the FIR and some part of the investigation has been done by him. M.L. Kotwani (PW9) has also investigated some part of the offence. Dr. M.K. Singh (PW7) has medically examined the Appellant and submitted his report (Ex.P12) stating that the Appellant was capable of performing the sexual act. Dr. Alpana Agrawal (PW10) has medically examined the prosecutrix and given her report (Ex.P13) stating that the prosecutrix was habitual to intercourse. Dr. Alpana Agrawal was unable to give any opinion regarding recent intercourse with the prosecutrix. No staining was seen by the doctor on the clothes of the prosecutrix.
12. As per the Court statement of the prosecutrix (PW1), at the time of incident, she was alone at her home. The Appellant came there and forcibly committed sexual intercourse with her. The incident took place in her house in the night. The incident was told by her to Jagotinbai (PW2), Sheetalabai (PW3), Gouribai (PW4) and Gullu (PW8) on the next day of the incident at about 12:00 noon and thereafter. But, the FIR (Ex.P1) was lodged by her on 26.7.2005 at about 2:30 p.m. Even if it is assumed for the sake of argument that

the prosecutrix woke up after the incident at about 11:00 a.m. and thereafter told about the incident to the witnesses then why did she not lodge the FIR on the same day, i.e., on 25.7.2005. The FIR was lodged by her on 26.7.2005 and belated lodging of the FIR is not properly explained by her.

13. As per the statement of the prosecutrix (PW1), the Appellant committed forcible sexual intercourse with her. In the FIR, it is mentioned that at the time of incident, the Appellant had caused her to fall down on the cot and had gagged her mouth. He had also threatened her of life. But, in the Court statement, she has not deposed about this fact.
14. Dr. Alpana Agrawal (PW10) has also admitted in paragraph 3 of her cross-examination that at the time of medical examination of the prosecutrix, she had not complained of any swelling or pain.
15. As per the Court statement of the prosecutrix (PW1), the incident took place in her house after her taking dinner in the night. She has categorically deposed that after the incident, the Appellant kept on sleeping in her house till 4:00 a.m. and it is further clear that after the incident, after her waking up in the morning, she first took bath and thereafter told the witnesses about the incident. This conduct of the prosecutrix is unnatural. Had the alleged forcible sexual intercourse been committed with her, she would have told this to her neighbours immediately thereafter. But, she did not do so and kept on sleeping with the Appellant after the incident till early morning, i.e., at about 4:00 a.m. Further, even when the Appellant, after waking up at about 4:00 a.m., went out and left her house, she did not wake up at that time and kept on sleeping and

she woke up in the morning at about 11:00 a.m. Thereafter, she first took bath and then told about the incident to the witnesses, but she did not lodge a report on that day itself, i.e., 25.7.2005 and lodged the FIR (Ex.P1) on 26.7.2005. In the above circumstances, the whole prosecution story seems to be doubtful.

16. Considering the above facts and circumstances of the case and the evidence available on record, I find that the prosecution has not been able to prove its case beyond doubt. In the circumstance, the Appellant is entitled to get benefit of doubt.
17. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
18. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE