

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1180 of 2001

Gangaram, S/o. Chanduram, Aged about 35 years, R/o. Village Sabalpur, Police Station Kondagaon, District Jagdalpur (Bastar), Presently R/o. Telibandha, Police Station Civil Lines, Raipur, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Lohandiguda, District Jagdalpur (Bastar) Chhattisgarh

---- Respondent

For Appellant	:	Mr. Akhil Kumar Agrawal, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/11/2017

1. The appellant in the instant case stands convicted for the offence under Sections 363, 366, 376(I) of I.P.C. and Section 3(I)(12) of the SC/ST Atrocities/Prevention Act, 1989 and sentenced to undergo rigorous imprisonment for 3 years and a fine for Rs.300/-, 3 years and a fine for Rs.300/-, 7 years and a fine of Rs.500/- and 2 years and a fine of Rs.500/- respectively with defaults stipulated vide judgment dated 02.11.2001, passed by the Special Judge (S.C. S.T. Act) Bastar, Jagdalpur, in Sessions Trial No. 158/2001.
2. The case of the prosecution is that the prosecution who is the minor aged about 14 years and 7 months was abducted by the appellant about 4-5 days prior to 27.01.1994 and the appellant had forcefully taken the prosecutrix to his home, where he kept her for 3-4 days and in between he is said to have sexually ravished the prosecutrix on the repeated occasions. The father of the prosecutrix PW-3 is

said to have lodged a missing report, thereafter in the course of investigation, it was found that the deceased was at the house of the present appellant and from where the police authorities could recover the prosecutrix. Subsequently, a case was registered against the present appellant for the offence punishable under Sections 363, 366 & 376(I) of the I.P.C. and also Section 3(I)(12) of the SC/ST Atrocities/Prevention Act, 1989.

3. The prosecution examined six witnesses and completed the trial and after the conclusion of the trial the Court below reached to the conclusion that the charges leveled against the appellant stands proved and he is guilty of having committed the offence punishable under Sections 363, 366 & 376(I) of the I.P.C. and also Section 3(I)(12) of the SC/ST Atrocities/Prevention Act, 1989 and sentenced to undergo imprisonment as mentioned in the preceding paragraphs.
4. The counsel for the appellant submits that it is a case where the case of the prosecution has not been established in as much as the police officer who has written down the FIR was himself not examined before the Court below, so also the Doctor who had examined the prosecutrix immediately after she was recovered so as to establish whether she had been subjected to sexual intercourse or not, was not examined and therefore the allegation of rape could not have been established and for these two lacuna the judgment of conviction stands vitiated and the appellant is entitled for being acquitted of the charges leveled.
5. The State counsel however opposing the appeal submits that it is a case where the stand of the prosecution has been duly proved by

the witnesses, who have been examined before the trial Court, more particularly the statement of the prosecutrix herself and thus prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of record, undisputed fact is that a missing report was lodged initially by PW-3 father of the prosecutrix. On which an investigation was conducted and the prosecutrix was recovered from the house of present appellant. The age of the prosecutrix has been proved and established on the statement of PW-6 Yogeshwar Mishra, the School Principal, where the prosecutrix had undertaken her initial education. The date of birth mentioned in the school records is 08.06.1979. Thus, the fact that the prosecutrix was a minor stands fully proved and established. It has also been established from the statement of the father of the prosecutrix PW-3, so also the statement of the prosecutrix that they belong to the reserved category.
7. At this juncture, it would be relevant to refer to the statement of the prosecutrix. In the statement of prosecutrix, the fact that the appellant had forcefully taken the prosecutrix to his house has been stated in her examination in chief itself. This aspect further corroborated from the statement of the independent witness Mangal Dei PW-2, the friend of the prosecutrix, who was accompanying her on the date of incident, who too had clearly stated before the Court regarding the prosecutrix being forcefully taken to the house of the appellant. This evidence is good enough proof on behalf of the prosecution so far as establishing the offence under Sections 363 & 366 of the I.P.C., so also the offence under Section 3(I)(12) of the

SC/ST Atrocities/Prevention Act, 1989 since the victim in the instant case undisputedly belonged to the reserved category.

8. So far as the offence under Section 376(I) is concerned, it is the evidence of the prosecutrix which would be paramount. Though initially in the examination in chief the prosecutrix has not delved anything in respect of being sexually exploited by the appellant, but after declaring her hostile when the prosecution cross examined the prosecutrix, she had turned around and clearly stated that after having forcefully taken the prosecutrix to his house, the appellant is said to have on repeated occasions sexually exploited the prosecutrix for about a week's time and ultimately the prosecutrix could be rescued only on the intervention of the police authority, who had reached the spot on the missing report lodged by the father.
9. This statement of the prosecutrix of being sexually ravished by the appellant is not further controverted or rebutted by the defence in her cross examination, thus the act of the appellant having repeated sexual intercourse with the minor, the prosecutrix PW-1 in the instant case stands fully proved and established.
10. In the given factual matrix of the case, even if there is no evidence of police authorities to prove the F.I.R. or the Doctor medically proving the sexual intercourse having occurred or not, may not be much relevance. In the given facts and circumstances of the case, this Court does not find any good ground made out by the appellant for interfering with the judgment of conviction passed by the trial Court vide the impugned award on 2nd of November, 2001. The appeal of

appellant, thus being devoid of merit, the same deserves to be and is accordingly rejected.

11. The report which has been furnished by the State Counsel shows that the appellant in the instant case has been released from jail on 02.08.2006 on completion of sentence by remission. The fine amount also has been paid. Hence, no further steps have to be taken in the appeal.
12. In the aforesaid light, the appeal being dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved