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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.2018 of 2000**

Judgment Reserved on : 9.8.2017

Judgment Delivered on : 29.8.2017

Niranjan Kolta, son of Shyam Sunder Kolta, aged 41 years, resident of Village Tengnapali, Thana Saraipali, District Mahasamund (MP) (now Chhattisgarh)

**---- Appellant**

**versus**

The State of Madhya Pradesh (now Chhattisgarh) through the District Magistrate, Raipur (MP) (now Chhattisgarh)

**--- Respondent**

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|----------------------|---|--------------------------------------|
| For Appellant        | : | Shri Vivek Tripathi, Advocate        |
| For Respondent/State | : | Shri Rajendra Tripathi, Panel Lawyer |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. JUDGMENT**

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.5.2000 passed in Special Sessions Trial No.134 of 1998 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Raipur convicting the accused/Appellant under Sections 376 and 450 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 7 years and rigorous imprisonment for 5 years, respectively.
2. Case of the prosecution, in brief, is that on 15.10.1998 at about 11:15 a.m. First Information Report (Ex.P-9) was lodged by the prosecutrix (PW-1), a married lady aged about 30 years, alleging that on 13.10.1998 at about 10:30 p.m., her husband had gone

outside the village for his treatment, her two children had also gone out to attend the “*Keertan*” function going on in the village, she had closed the door of her house from inside and slept. At about 10:30 p.m., the accused/Appellant opened the door, entered her house and made her wake up by shaking her hand. Thereafter, he sat over her after lifting up her petticoat. When she threatened him that she will shout and thereafter she abused him, the accused/Appellant saying her that her husband was unable to do anything, therefore, he had come to do and she should not shout. Thereafter, he penetrated his male organ into the female organ of the prosecutrix and committed forcible sexual intercourse with her. When she shouted, Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) came there and stood up near the door. After having committed sexual intercourse, the accused/Appellant fled from there. At that time, Kuntala (PW-2) also saw him running away. Due to the time being of night and her husband not being available at home, she did not go anywhere. Next day, when her husband returned home from the hospital, she narrated him everything about the incident. Thereafter, her husband called a meeting in the village where he was advised by the Panchas to lodge a report. Thereafter, she went to police station and lodged the First Information Report (Ex.P-9), based on which offence under Sections 376, 456 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989 was registered against the accused/Appellant. Thereafter, the prosecutrix was medically examined by Dr. (Smt.) Alka Pardal (PW-10), who gave her report (Ex.P-7). After completion of investigation, a charge-sheet was filed by the police against the accused/Appellant for the offence punishable under Sections 376, 456 of the Indian Penal Code and Sections 3(2)(v)

and 3(1)(xii) of the Act of 1989 followed by framing of charges by the Trial Court under Sections 450 and 376 of the Indian Penal Code read with Section 3(2)(v) of the Act of 1989.

3. To hold the accused/Appellant guilty, the prosecution examined 11 witnesses in support of its case. Statement of accused/Appellant was also recorded under Section 313 Cr.P.C. in which he denied the charges framed against him and pleaded innocence and false implication in the case.
4. After hearing the parties and appreciation of the evidence on record, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment.
5. Learned Counsel appearing for the accused/Appellant submitted that—
  - (i) The prosecutrix (PW-1) and eyewitnesses, namely, Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) have categorically stated about tutoring for their deposition, but the Court below summarily dismissed that fact.
  - (ii) The prosecution has failed to adduce any clinching, cogent and convincing evidence to record a finding about guilt of the Appellant, therefore, the conviction of the Appellant deserves to be set aside.
  - (iii) The evidence of the prosecution is not corroborated by the medical evidence. The FIR was also lodged belatedly. Therefore, the version of the prosecutrix is not reliable.

6. On the other hand, Learned Counsel appearing for the State/Respondent supported the impugned judgment and submitted that the finding of conviction recorded by the Court below is strictly in accordance with law and there is no infirmity in the judgment impugned.
7. I have heard Learned Counsel appearing for the parties and perused the entire record minutely.
8. The prosecutrix (PW-1) has stated in her statement in the Court that at the time of incident she was sleeping inside her house. The door of verandah of her house was closed, her two children had gone to attend the "*Keertan*" function going in the village and her husband had also gone out for his treatment. She further stated that while she was sleeping inside her house, the accused, after lifting up the door of her house and detaching it from its fixtures, entered her house, mounted over her and penetrated his male organ into her female organ. On this, she woke up and pushed him away. In spite of that, the accused completed sexual intercourse with her and he also discharged. Thereafter, when the accused came out of her house, on the door, Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) came there. They along with Yashodabai (not examined by the prosecution) caught the accused. A scuffle took place between them. Thereafter, the accused fled from there. Thereafter, they peeped inside her house and asked her why the accused had come to her. Then she told them that the accused committed rape with her.
9. Kuntala (PW-2) and Amikabai (PW-3) have deposed that at about

10:00 p.m. when the prosecutrix (PW-1) shouted “दौड़ो दौड़ो बचाओ बचाओ मेरे घर में कोई है”, they went to her house. Kuntala (PW-2) has further deposed that the accused ran away from her beside. Thereafter, the prosecutrix told her that the accused had committed rape with her. Amikabai (PW-3) has further deposed that when she went to the house of the prosecutrix, the door of her house was open and the accused had run away from there. The prosecutrix came out of her house behind her and told that the accused fled after committing rape with her.

10. Sanatan alias Sunartan (PW-4) has deposed that at about 9:00 – 10:00 p.m. the prosecutrix and Amikabai (PW-3) shouted that somebody had entered their home. Soon thereafter, he saw the accused in the lane of the village.
11. Shoukhal (PW-5), Nityanand (PW-6), Purandar Gada (PW-7) and Vibhishan Kolta (PW-8) are the witnesses of the fact of the village meeting convened on 14.10.1998. They have deposed that on 14.10.1998, husband of the prosecutrix, namely, Samaru had called a meeting of villagers. In that meeting, he had told about the incident.
12. The prosecutrix was examined by Dr. (Smt.) Alka Pardal (PW-10). As per her statement, no external injury was found on any part of the body of the prosecutrix and no definite opinion could be given about the rape committed with her.
13. According to the FIR (Ex.P-9) lodged by the prosecutrix, at the time of incident, the prosecutrix was sleeping inside her house. The accused entered her house and by catching her made her wake

up. Thereafter, he lifted up her petticoat and sat over her. She, saying that she will shout, abused him. On this, the accused, saying that her husband is unable to do anything and he has come to do, asked her not to shout. Thereafter, he penetrated his male organ into her female organ. On this, she pushed him away and shouted. At that time, Sanatan alias Sunartan (PW-4) and Amikabai (PW-3) came there. In the meanwhile, the accused after completing sexual intercourse with her got up and ran away. At that time, Kuntala (PW-2) also saw the accused running away. In her Court statement, the prosecutrix (PW-1) has deposed that when the accused penetrated his male organ into her female organ, she woke up and pushed him away, but still he completed sexual intercourse with her and discharged. Thereafter, when the accused went out of her house, Kuntala (PW-2), Amikabai (PW-3), Sanatan alias Sunartan (PW-4) and Yashodabai came there and caught the accused. The accused succeeded to come out of their clutches and flee. Thereafter, they asked her why the accused had come to her. Then she narrated them about the incident.

14. Kuntala (PW-2) and Amikabai (PW-3) have not corroborated the above statement of the prosecutrix, but they have stated that when the prosecutrix shouted “दौड़ो दौड़ो बचाओ बचाओ मेरे घर में कोई है”, they went to her house and they saw the accused fleeing from there. But, there is nothing in the Court statement of the prosecutrix (PW-1) that on her shout of “दौड़ो दौड़ो बचाओ बचाओ मेरे घर में कोई है”, Kuntala (PW-2) and Amikabai (PW-3) came to her house. Per contra, the prosecutrix (PW-1) deposed that after completing the sexual intercourse, when the accused went out of her house, Kuntala (PW-2), Amikabai (PW-3), Sanatan alias Sunartan (PW-4) and

Yashodabai came to her house and caught the accused, but the accused succeeded to come out of their clutches and flee. Thereafter, they asked her why the accused had come to her. Then she narrated them about the incident. It is also evident from the statement of Sanatan alias Sunartan (PW-4) that he only saw that the accused was going from the lane of the village at about 10:00 p.m.

- 15.** As per the statement of the prosecutrix (PW-1), at the time of incident, she was sleeping inside her house and the door of the house was closed. The accused, after lifting up the door and detaching it from its fixtures, entered her house. But, Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) have not stated that when they reached at the place of occurrence, they saw that the door of the house of the prosecutrix was detached from its fixtures. It is also evident from appreciation of the evidence adduced by the prosecution that the time of occurrence was about 10:00 p.m. As per the statement of the prosecutrix (PW-1), there was a lane in front of her house which remained busy as the villagers used to go and come through that lane. Had the accused entered the house of the prosecutrix after detaching the door of her house from its fixtures, any one of the villagers visiting through the lane would have seen the accused detaching the door of her house from its fixtures.
- 16.** In paragraph 10 of her cross-examination, the prosecutrix (PW-1) has admitted that for leading evidence she had gone to the Court at Raipur along with one police official. She has further admitted that she had been tutored by the said police official about the

deposition she has made in the Court. She has further admitted that the said police official had kept a paper in his hand and he had read over to her the contents written therein tutoring about the deposition she was to make in the Court. She has further admitted that she had also met with higher police officials of Police Station Saraipali. There also, she was tutored by the higher police officials about the deposition she was to make in the Court.

17. Kuntala (PW-2) also admitted in paragraph 4 of her statement that she came with police official at Raipur and at Raipur and Saraipali also police officials tutored her about the deposition she was to make in the Court. Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) have also admitted in their cross-examination that they came to Raipur along with one police official.
18. On minute examination of the evidence on record and the conduct of the prosecutrix, it is clear that the time of the incident was about 10:00 p.m.. At that time, the prosecutrix was alone in her house and the lane situated in front of her house was a busy lane. Therefore, it does not seem to be possible that the accused would have entered her house by detaching the door of her house from its fixtures and hiding himself from the villagers visiting through the lane. The prosecutrix herself has deposed that when the accused penetrated his male organ into her female organ, she woke up and thereafter the accused completed the sexual intercourse with her and discharged. Thereafter, when after completing the sexual intercourse, the accused went out of the house of the prosecutrix, Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) came there and saw the accused. Thereafter, when they

asked the prosecutrix about the accused, she told them about the incident. She never deposed that at the time of incident the accused had given her any kind of threat. In the circumstance, if the accused had really committed sexual intercourse with the prosecutrix without her will and consent, she would have shouted at the time of penetration itself. According to the prosecutrix herself, she told about the incident to Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) at the point of time when they, from whose clutches the accused had succeeded to come out and flee after his coming out of the house of the prosecutrix, asked her why the accused had come to her. From the evidence on record, it seems that the prosecutrix was a consenting party. It is also clear that the prosecutrix (PW-1), Kuntala (PW-2), Amikabai (PW-3) and Sanatan alias Sunartan (PW-4) were tutored by the police officials about making of their deposition.

- 19.** Considering the above evidence, particularly, the conduct of the prosecutrix, I am of the considered view that the prosecutrix was a consenting party with the accused/Appellant in commission of the sexual intercourse with her. In view of the above, the offence under Sections 376 and 450 of the Indian Penal Code is not sustainable against the accused/Appellant.
- 20.** For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the Appellant under Sections 376 and 450 of the Indian Penal Code are set aside. The Appellant is acquitted of the charges framed against him.
- 21.** It is reported that the Appellant is on bail. His bail bonds shall

continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.

- 22.** 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**