

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.578 of 2001

Judgment Reserved on : 1.9.2017

Judgment Delivered on : 8.9.2017

Mannuram Verma, S/o Dayaram Verma, aged 22 years, R/o Kesala, P.S. Palari, District Raipur

---- Appellant

versus

State of Chhattisgarh through the S.H.O., P.S. Palari, District Raipur

--- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

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 11.5.2001 passed in Special Sessions Trial No.39 of 2000 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 Section 376 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.10,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 2.7.2000 at about 10:30 a.m. First Information Report (Ex.P1) was lodged by the prosecutrix (PW1), a married lady aged about 27 years, alleging that on 1.7.2000 at about 5:00–6:00 p.m., she along with her friend Ku. Khelanbai (PW2) had gone towards the *Na/a* (drain) for latrine.

When they were sitting there for latrine, the accused/Appellant along with other person, namely, Gautram came there. Gautram forcibly raped Khelanbai (PW2) and the accused forcefully caught the prosecutrix and took her away to some distance and caused her to fall down in the *Nala* (drain) and forcibly raped her. During the commission of rape, the prosecutrix screamed and asked why the accused was committing wrong with her. Having heard the shout, Jagatram (PW3), Sadanand (not examined by the prosecution) and Manoj (PW4) came there. Then the accused left the prosecutrix and ran away from there. Thereafter, a report was lodged, based on which offence under Section 376 of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989 was registered against the accused. The prosecutrix was medically examined by Dr. Sarla Jaiswal (PW11), who gave her report (Ex.P9A). After completion of investigation, a charge-sheet was filed against the accused for the offence punishable under Section 376 of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989 followed by framing of charges under Section 376 of the Indian Penal Code and Section 3(2)(v) of the Act of 1989.

3. So as to hold the accused guilty, the prosecution examined as many as 11 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the charges levelled against him, pleaded his innocence and false implication in the case.
4. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the accused/Appellant submitted as under—

(i) That the Court below has overlooked the fact that the prosecutrix did not shout when the accused/Appellant alleged to have forcefully caught hold of her. This became possible only because the prosecutrix was a consenting party to the alleged intercourse. The prosecutrix has omitted the fact as regards the use of force or violence to compel her to the alleged intercourse.

(ii) That the eyewitnesses have not supported the case of the prosecution. Eyewitness Khelanbai (PW2) has stated that she could not tell as to whether the prosecutrix was going with the Appellant with her consent.

(iii) That neither there was any sign of violence on the body of the prosecutrix nor was there any injury on her private part. This also goes to suggest that the prosecutrix had consented to the said intercourse.

(iv) In these circumstances, the deposition of the prosecutrix (PW1) is not reliable.

6. On the other hand, Learned Counsel appearing for the State submitted that the impugned judgment is in accordance with law and there is no infirmity in the same.

7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.

8. The prosecutrix (PW1) deposed that on the date of incident at about 5:00 p.m., she along with Khelanbai (PW2) had gone towards the *Nala* (drain) for latrine. After discharge of latrine, when she was standing up, the accused along with one barber boy came there. The accused caught her and the barber boy caught Khelanbai (PW2). Khelanbai (PW2) shouted for help saying “दौड़ो दौड़ो बचाओ बचाओ” and the accused caused her (the prosecutrix) to fall down, removed her underwear and forcibly committed sexual intercourse with her. She further deposed that on shouting of Khelanbai (PW2), her brother Jagatram (PW3) reached there and beat the barber boy with a *Lathi*. At that time, Sadanand (not examined) also came there. Thereafter, the accused and the barber boy ran away from there. Thereafter, the prosecutrix along with Khelanbai (PW2) and Jagatram (PW3) returned home. She informed the incident to her parents. Thereafter, she lodged the FIR (Ex.P1).
9. Khelanbai (PW2) deposed that at the time of incident, she and the prosecutrix had gone towards the *Nala* (drain) for latrine. They had sat there at a distance of 20–25 feet from each other. When she (the witness) was standing up after discharge of latrine, the accused and Barber Gautram came there. Gautram caused her (this witness) to fall down and the accused took the prosecutrix away to some distance. This witness further deposed that she does not know that what did the accused do with the prosecutrix after taking her away to some distance. She further deposed that on her shouting, her brother Jagatram (PW3) reached there and he saw Gautram committing sexual intercourse with her. Her brother assaulted Gautram with a *Lathi* 1-2 times. Thereafter, Gautram

and the accused fled from there.

10. Jagatram (PW3) deposed that at the time of incident, he had gone towards the pond for latrine. At that time, he heard shouting. Then he went towards the *Nala* (drain). He saw that Gautram was committing sexual intercourse with her sister Khelanbai (PW2). He assaulted Gautram with a *Danda*. At that time itself, he also saw that the accused was committing sexual intercourse with the prosecutrix.
11. Manoj (PW4) deposed that he along with Jagatram (PW3) had gone for latrine. At that time, he heard the shout for help. They, running, went towards the direction from where the shout for help was coming. They saw that Gautram was committing sexual intercourse with Khelanbai (PW2). Jagatram (PW3) assaulted Gautram with a *Danda*. The witness further deposed that thereafter when he was picking up the underwear of Khelanbai (PW2) which was lying nearby, he saw that the accused was committing sexual intercourse with the prosecutrix at some distance. Thereafter, the accused and Gautram fled from there.
12. Though Khelanbai (PW2) has not supported the fact of committing sexual intercourse with the prosecutrix by the accused yet Jagatram (PW3) and Manoj (PW4) have categorically stated that they had witnessed the accused committing sexual intercourse with the prosecutrix, which has not been rebutted in their cross-examination. Therefore, now, the only thing that is to be examined is whether the sexual intercourse committed with the prosecutrix by the accused was with or without her consent.

- 13.** It is undisputed that at the time of incident, the prosecutrix (PW1) was a married lady aged about 27 years. She was medically examined by Dr. Sarla Jaiswal (PW11). Dr. Sarla Jaiswal (PW11) deposed that on examination of the prosecutrix, she did not find any injury on her body. No internal injury was also present. Her hymen was old torn. Two fingers were easily inserting into her vagina. She was habitual to sexual intercourse.
- 14.** The prosecutrix (PW1) has admitted that she was married with a man of Village Rampur. She further admitted that she was expelled by her husband because of there being no issue from her. She further admitted that thereafter she was again married with a person of Village Gadahi and she lived with him for about a year. As per her statement, her second husband also expelled her from his house. She did not disclose any reason of her expulsion by the second husband.
- 15.** The prosecutrix (PW1), in cross-examination, at paragraph 7, deposed that darkness had not taken place at the time of incident. In paragraph 8, in the cross-examination, she further admitted that at the time of incident, she did not shout.
- 16.** Khelanbai (PW2) also deposed that when Gautram caused her to fall down, the accused had taken the prosecutrix away to some distance. Khelanbai (PW2) also admitted in cross-examination at paragraph 5 that when the accused was taking the prosecutrix away to some distance, the prosecutrix did not shout.
- 17.** Jagatram (PW3), in cross-examination, at paragraph 6, has admitted that he had gone to the place of occurrence on hearing

the shout of Khelanbai (PW2). At that time, the prosecutrix had not shouted.

- 18.** The prosecutrix (PW1), in cross-examination, at paragraph 9, has deposed that when the accused had caused her to fall down, she had suffered an injury on her waist. As per the statements of the prosecutrix (PW1) and other witnesses, the place of occurrence was the land near the dry drain of the village. As per the medical report (Ex.P9A), there was no injury on the body of the prosecutrix. Had the accused committed sexual intercourse with the prosecutrix without her consent by causing her to fall down, an injury would have caused to the lower back part of the body of the prosecutrix.
- 19.** On perusal of the evidence of the material prosecution witnesses, i.e., the prosecutrix (PW1), Khelanbai (PW2), Jagatram (PW3), Manoj (PW4) and Dr. Sarla Jaiswal (PW11), it can safely be inferred that the prosecutrix was a consenting party to the sexual intercourse by the accused because she did not raise any alarm while she was being taken away by the accused from her friend Khelanbai (PW2). She did not even shout during the commission of sexual intercourse with her in the field. No bodily injury was found on her any part of the body either internal or external.
- 20.** Thus, the evidence on record clearly establishes that the prosecutrix was a consenting party to the commission of sexual intercourse with her by the accused. Therefore, the offence under Section 376 of the Indian Penal Code is not made out against the accused/Appellant.
- 21.** In the result, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. The amount of fine, if paid, shall be refunded to him within two months from today.

- 22.** 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.
- 23.** 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