

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.462 of 2001**

- Samlu Ram S/o. Hari Singh, aged about 20 years, Student R/o. Chapka, Police Station Bhanpuri, distt. Bastar Jagdalpur (CG)

---- Appellant

Versus

- The State of Chhattisgarh

---- Respondent

For Appellant : Shri RN Jha, Advocate.
For respondent/State : Shri Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****16.11.2017**

1. This appeal is directed against the judgment of conviction and order of sentence dated 18.5.2001 passed by Special Judge [under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989]/Additional Sessions Judge, Jagdalpur in Sessions Trial No.497/2000 wherein the said Court convicted the accused/appellant under Section 376(2)(g) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.3,000/- with default stipulations.

2. As per the prosecution case, on 02.10.2000, prosecutrix and other girls have gone to watch some dance at village Chapka and when they were returning at night, 7-8 boys reached there, they compelled the prosecutrix to go with them and thereafter they committed rape on her. The matter was reported at Police Station Bhanpuri. After registration of FIR, certain articles were seized,

the accused/appellant and the prosecutrix were medically examined. Statements of the witnesses were recorded and after completion of investigation, charge sheet was filed. The accused did not plead guilty to the charge, therefore, the trial was conducted and after completion of trial, the said Court convicted the accused/appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

(1) that the appellant was not known to any of the witnesses adduced by the prosecution and test identification parade conducted in presence of the police officers is of no consequences and as the offence is alleged to have been committed in dark, it was not possible for anyone to identify the accused/appellant.

(2) that it has come in evidence that the accused and other persons have covered their face with cloth and there was no occasion to see the faces of the persons and therefore, identification in the court is of no help to the prosecution.

(3) that there are material contradictions and omissions in the statements of the prosecution witnesses, and it is not established that the accused/appellant committed crime against the prosecutrix.

4. On the other hand, learned counsel for the State submits that the finding of the trial Court is strictly in accordance with law which is on the basis of factual matrix of the case and the same is not to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. Prosecutrix (PW-1) deposed in the first instant that she could not identify the accused, but subsequently she deposed that the accused/appellant committed intercourse with her. In her cross-examination she deposed that the person who committed wrong with her was not identified by her because he covered his face with cloth.

7. Malti (PW-2) has not deposed anything against the accused/appellant. Leading questions were put to her by the prosecution, but she deposed that she has seen the accused/appellant for the first time in Court.

8. Taluram (PW-3) deposed that some boys were standing on the way and their faces were covered with some cloth like handkerchief. He deposed that the accused/appellant was present with knife, but in cross-examination he further deposed that faces of the boys were covered with cloths, hence he could not identify any of them.

9. Ramesh (PW-4) deposed that boys who had committed mischief were different from the persons present in the Court. He further deposed that boys have covered their faces with handkerchief that is why he was unable to identify them.

10. Rameshwari (PW-5) has not deposed anything against the accused/appellant and she further deposed that as it was dark on the date of incident she could not identify any of them.

11. Lakshman (PW-6) has not deposed anything against the accused/appellant. Dr.(Smt.) S. Kachh examined the prosecutrix. Sub Inspector Naresh Dubey (PW-9) was posted at Police Station Bhanupuri at the relevant time and he deposed regarding investigation.

12. Minute scrutiny of the entire evidence adduced before the trial Court goes to show that no witness was in a position to identify the accused/appellant. FIR was recorded on 05.10.2000 i.e. after three days of the incident. From the evidence it is clear that the police officers were present at the time of test identification parade and therefore, the said parade loses its legal value against the accused persons. Again when the appellants and others were not known to the witnesses prior to the incident and from the evidence it is established that the persons who committed the offence were covered their face, it was difficult for her to identify the accused/appellant. A number of persons were present there when the incident took place. But no one was named in the FIR and also witnesses were not sure about identity of any of the persons. Upon totality of the facts, it is difficult to come to a conclusion that it is the accused/appellant who participated in the commission of crime. It is settled principle of law that graver the offence stricter the proof. The offence is grave in nature and therefore the evidence must be clinching. The accused can be convicted only when the facts established that what is stated by the witnesses must be true and that is not a

case here. Evidence adduced by the prosecution is destructive to this case and therefore, commission of offence of rape is not established against the accused/appellant.

13. Accordingly, the appeal is allowed. Conviction and sentence passed by the Special Court is hereby set aside. The accused/appellant is acquitted of the charges framed against him. The fine amount, if deposited by the appellant, be returned to him. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Ram Prasanna Sharma)
JUDGE