

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 610 of 2001**

- Rawal Chand Jain S/o Ranulal Jain, aged about 45 yers, R/o Bhakhara, P.S. Kurud, District Dhamtari (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh.

---- Respondent

For Appellant.	-	Smt Renu Kochar, Advocate.
For Respondent	-	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board**Per Pritinker Diwaker, J****05/05/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 26.06.2001 passed by the Special Judge (constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raipur in Special Sessions Trial No.44/2000 convicting the accused/appellant under Sections 376 IPC read with Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') & sentencing him to undergo R.I. for ten years and to pay a fine of Rs.10,000/-, in default of payment of fine amount to further undergo R.I. for six months.

02. Brief facts of the case are that on 20.06.2000 FIR (Ex.P/1) was lodged by the Prosecutrix (PW/1), aged about 14 years, alleging in it

that she and her mother are beggar. On 18.06.2000 when she along with her friend Ku. Ranjeeta (PW/5) was going to Sahu Dharmshala, the accused/appellant called both of them alluring for sweet and by giving Rs.10/- asked Ku. Ranjeeta to go away. Thereafter, the accused/appellant took the prosecutrix inside his grocery shop and compelled her to have liquor. Appellant also consumed liquor and thereafter committed rape upon her. After commission of offence, she went back to Ranjeeta (PW/5), slept along with her and after two days of incident when her parents came back, she narrated the entire incident to her mother Sohadra Bai (PW/2) who lodged the report. Initially, this report was registered at Police Outpost Bhakhara, Kurud and on the next day numbered FIR Ex.P/1-A was registered against the accused/appellant at Police Station, Kurud under Sections 376 IPC and 3 (1) (xii) of the Act. The prosecutrix was medically examined on 21.06.2000 vide Ex.P/22 by Dr. (Mrs.) Asha Tripathi (PW/13) and she opined that the prosecutrix was subjected to forcible sexual intercourse. Appellant was also medically examined by Dr. H.C. Godheja (PW-9) on 22.06.2000 vide Ex.P/11 and he found him capable of performing sexual intercourse. During investigation, it was revealed by the prosecution that date of birth of prosecutrix was 31.06.1985 and thus on the date of commission of offence the prosecutrix was of 14 years and 13 days.

03. After investigation, charge sheet was filed against the accused/appellant under Section 376 IPC and Section 3 (2) (v) of the Act and accordingly the charges were framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution

examined as many as 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. During pendency of this appeal, it was noticed by this Court that the sentence awarded by the trial Court under Section 3 (2) (v) of the Act is not in accordance with the law and, therefore, an explanation of the concerned judge was called and the Registry was directed to list the case before the Division Bench. The learned Sessions Judge has submitted his explanation admitting mistake on his part and tendering apology. In view of the explanation submitted by the concerned judge, we are not inclined to take any further action and proceed to decide the appeal.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

07. Learned counsel for the appellant submits as under:

- That there is inordinate delay of two days in lodging the FIR (Ex.P/1-A) and the said delay has not been satisfactorily explained by the prosecution as required under the law, particularly when the mother of the prosecutrix returned home on the same day.
- That on the second day, PW/2- mother of the prosecutrix had gone to the appellant but she did not lodge the report;
- That the prosecutrix is inconsistent while deposing in the Court and there are material contradictions in her statement;

- That there is no definite evidence that it is the appellant who has committed the offence;
- That there is no legally admissible evidence on record showing the prosecutrix to be minor.
- That even if the entire prosecution case is taken as it is, the offence under Section 3 (2) (v) of the Act is not made out against the appellant. It has been argued that in the kotwari register (Ex.P/20-c) the name of the prosecutrix has not been mentioned and likewise name of father of the prosecutrix is also different. It has been argued that if the prosecutrix is major, the offence under Section 3 (2) (v) of the Act is not made out against the appellant.
- Lastly it has been argued that the sentence imposed upon the appellant is too excessive, therefore, the same may be reduced to the period of 7 years.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Prosecutrix (PW/1) has stated that she knew the appellant but does not know his caste, however, she belongs to scheduled caste. The incident is prior to about four months, at about 8-9.00 p.m. in the night, on being called by the accused/appellant alluring for sweet, she went to his shop, he took her inside the room by gagging her mouth, offered liquor to her and when she felt like intoxicated, the appellant tied her mouth by cloth & hands by rope and committed sexual intercourse with her after

removing her clothes. Next day she lodged the report in police station. She has further stated that when the appellant offered her sweet, at that time Ranjeeta (PW/5) was also with her to whom the appellant sent away by giving a ten rupee note. This witness has also stated that she was medically examined by the doctor at Dhamtari Hospital. In the cross-examination but for minor contradictions she remained firm and has reiterated as to the manner in which the offence was committed by the appellant. In para 10 of her cross-examination, she states that when the appellant caught hold of her hands, she screamed but nobody came for her rescue. She had also made an attempt to come out from the clutches of the appellant but failed. Here it is relevant to note that no question has been put to prosecutrix regarding her age.

11. Sohadra Bai (PW/2) is mother of the prosecutrix. She has stated that she knew the appellant but does not know his caste. The accused/appellant is having grocery shop. She has also stated that the age of the prosecutrix is about 14 years and after her birth the entry thereof was made in the kotwari register, however, she does not remember her date of birth. About 3-4 months ago she had gone to the field and in the night she returned. Next morning upon noticing number of stains on salwar of prosecutrix, she asked her as to how these stains came and then the prosecutrix had narrated the entire incident to her. This witness has further stated that after coming to know about the incident, at about 8-9 in the morning she had gone to the shop of appellant and inquired from about the incident but he has denied such allegation and therefor she lodged the report. In cross-examination, she has clarified that the prosecutrix is from her first husband whose name is Ustad Dewar. Here also no question in respect of the age of the

prosecutrix has been put to this witness by the defence.

12. Shiv Nandan Shrivastava (PW/3) is Up-sarpanch of the village who has proved the caste certificate (Ex.P/6) of the prosecutrix. Ku. Ranjeeta (PW/5), aged about 13 years, is friend of the prosecutrix who was with her at the relevant point of time. She too while supporting the prosecution case has stated that she and the prosecutrix were called by the appellant alluring for sweet; the accused/appellant by giving Rs.10 asked her to go away and thereafter he dragged the prosecutrix inside his shop and bolted the door from inside. This witness has further stated that she informed the incident to her mother Ramkali, who went to shop of the appellant, gave slaps to him and brought back the prosecutrix with her. The prosecutrix had informed that the appellant has committed sexual intercourse with her after administering liquor. Ramkali (PW/6) has stated that she was informed by her daughter Ranjeeta (PW/5) that while they were coming back from Sahu Dharmashala, the appellant by giving Rs.10/- asked her to go away and thereafter he took the prosecutrix inside his shop. She (this witness) went to appellant's shop and asked him as to why he had taken prosecutrix inside the shop, on which he replied that as he wanted to give sweet to her, therefore, he has brought her inside his shop. On this, she abused and slapped the appellant by objecting the manner in which he took the prosecutrix inside his shop. Punit Ram Kosre (PW/7) is Patwari who prepared spot map vide Ex.P/8. R.K. Sahu (PW/8) is Investigating Officer who has duly supported the prosecution case. Dr. H.C. Godheja (PW/9) medically examined the accused/appellant and gave his report Ex.P/11 opining that the accused/appellant is capable of performing sexual intercourse. The Doctor has further opined that there is no sign of sexual intercourse

and no external injury was noticed by him. Ramesh Kumar (PW/10) is Head Constable who helped in the investigation. C.P. Shukla (PW/11) is S.D.O.(P), Dhamtari who has also done investigation the matter and filed challan under Sections 376 IPC and 3 (2) (v) of the Act before Chief Judicial Magistrate First Class, Dhamtari. Azhar Das (PW/12) - village Kotwar has stated that the date of birth of prosecutrix is 31.06.1985 and has proved the kotwari panji made under Ex.P/20-C which was seized by the police from his possession. He states that he added the name of prosecutrix in kotwari panji but it does not reflect the same. Dr. (Mrs.) Asha Tripathi (PW/13) medically examined the prosecutrix vide Ex.P/22 and found following injuries/symptoms:-

- i. Breasts were not well developed. Axillary hairs present.
- ii. Pubic hairs seen, labia majora and minora were not well developed. Vulva was red and swollen, very tender on touch. White discharge was seen.
- iii. Hymen torn, red and inflamed, very tender on touch, vagina reddish.
- iv. Two fingers examination introduced in vagina which was painful and white discharge was seen.
- v. Slides were prepared from vagina, sealed and handed over the same to constable for its chemical analysis.

The doctor has opined that forceful sexual act has been committed on her, rupture of hymen was within 3-4 days and girl does not seem to be habituated for sexual act.

13. Close scrutiny of the evidence makes it clear that on 18.06.2000 it is the accused/appellant who called the prosecutrix (PW/1) and Ku. Ranjeeta (PW/5) alluring for sweet, by giving Rs.10/- asked PW/5 to go away and thereafter took the prosecutrix inside his shop and committed

forceful sexual intercourse with her after bolting the doors of shop from inside. The prosecutrix in the Court has duly supported the prosecution case and given a vivid account of the entire episode as to how the accused/appellant sexually assaulted her. Statement of the prosecutrix not only gets corroboration from the evidence of PW/2, PW/5, PW/6, Dr. (Smt.) Asha Tripathi (PW13) but also from medical report Ex.P/22, according to which forcible sexual act has been committed on her, rupture of hymen is recent (within 3-4 days).

True it is that there is delay of two days in lodgment of FIR, however, the prosecutrix (PW/1) in her testimony has categorically stated that at the time of incident her parents were not in house and only after their return, she disclosed the entire incident to them and thereafter the report (Ex.P/1-A) was lodged. It is not easy for the parents to lodge a complaint of this nature exposing prosecutrix to the risk of social stigma which unfortunately still prevails in our society. A decision to lodge FIR becomes more difficult and hard when minor of family subjected to rape and normally the parents remain in shock and only after due consultation, the reports are being lodged. Thus, in the facts and circumstances of the case and the plausible explanation offered by the prosecutrix, the delay of two days in lodging the report in no way be held fatal to the prosecution.

14. As regards the age of the prosecutrix, her mother PW/2 has stated in the Court that the prosecutrix was 14 years of age. The accused/appellant has not challenged the age of the prosecutrix in the cross-examination and no question whatsoever in this respect has been put to the PW/2 mother of the prosecutrix. As per kotwari register Ex.P/20, the date of birth of the prosecutrix is 31.06.1985 and thus on

the date of incident i.e. 18.06.2000, the age of the prosecutrix comes to 14 years and 13 days. In cross-examination of PW/12 there is no challenge to the date of birth but for putting certain questions like addition of name Madhu etc. Thus the cross-examination of PW/12 remain intact so far as age of the prosecutrix is concerned. Here it is further relevant to note that in the kotwari register Ex.P/20 name of mother of the prosecutrix has rightly been recorded as Sohadra Bai whereas name of father has been recorded as Ustad. PW/2-Mother of the prosecutrix has stated that the prosecutrix is from her first husband whose name is Ustad Dewar. Thus, this Court has no hesitation in holding that as per the kotwari register, the date of birth of the prosecutrix is 31.06.1985 and the age of the prosecutrix, on the date of incident, was 14 years and 13 days. Thus, the Court below was fully justified in holding the prosecutrix to be minor as also in convicting the accused/appellant under Section 376 IPC.

15. As regards the conviction of the accused/appellant under Section 3 (2) (v) of the act, there is not an iota of evidence on record showing that the offence has been committed with the prosecutrix knowing her to be the member of scheduled caste and therefore the conviction of the accused/appellant under Section 3 (2) (v) of the Act cannot be allowed to be stand.

16. As regards the submission regarding reduction of sentence, this Court does not find any good and adequate reason to do so because of the fact that the accused/appellant has physically exploited the prosecutrix, aged about 14 years, leaving an indelible scar in her mindset till her survival.

17. In the result, the appeal is partly allowed. Conviction of the accused/appellants under Section 3 (2) (v) of the Act is hereby set aside and he is acquitted of that charge. Conviction of the accused/appellant under Section 376 IPC is maintained. The accused/appellant is reported to be on bail. He be taken into custody forthwith to serve out the remaining part of sentence imposed upon him.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(R.C.S. Samant)
JUDGE