

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 267 of 2009**

1. Smt. Sunita Pradhan W/o Shri Radheshyam, aged about 30 years, resident of village Champa, Police Station Champa, District Janjgir Champa, CG

**---- Appellant****Versus**

1. State of Chhattisgarh through Police Station Baradwar, District Janjgir Champa, Chhattisgarh.

**---- Respondent****AND****CRA No. 946 of 2005**

1. Chhote Lal S/o Shri Rudra Prasad Thawait, aged about 25 years
2. Rudra Prasad S/o Narmada Prasad Thawait, aged about 48 years
3. Nem Chand S/o Rudra Prasad Thawait, aged about 26 years

All residents of village Jarve, PS Baradwar, District Janjgir Champa

**---- Appellants****Versus**

1. State of Chhattisgarh through Police Station Baradwar, District Janjgir Champa, Chhattisgarh.

**---- Respondent**


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| For Appellant    | : | Shri Shrawan Chandel, Advocate |
| For Respondents: |   | Shri Avinash K. Mishra, PL     |

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**Hon'ble Shri Justice Pritinker Diwaker****Hon'ble Shri Justice R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****07/07/2017**

As these two Criminal Appeals arise out of the same judgment and order dated 01.12.2005 rendered by Special Judge (Atrocities), Bilaspur in Special Criminal Case No. 141/2004, they are disposed of by this common judgment.

2. The accused/appellants have been convicted and sentenced by the judgment impugned as under:

| <b>Accused</b>            | <b>Conviction</b>                                                                                                                                 | <b>Sentence</b>                                                                                                                                       |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chhote Lal</b>         | U/s 376, 313 IPC and 3 (2) (v) of the Scheduled caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as Special Act) | Life imprisonment u/s 376, RI for 10 years u/s 313 IPC and Life imprisonment with fine of Rs. 1,000/- under the Special Act plus default stipulation. |
| <b>Rudra Prasad</b>       | U/s 313 IPC and 3 (2) (5) of the Special Act                                                                                                      | RI for 10 years u/s 313 IPC and Life imprisonment with fine of Rs. 1,000/- under the Special Act plus default stipulation.                            |
| <b>Nem Chand</b>          | U/s 313 IPC and 3 (2) (5) of the Special Act                                                                                                      | RI for 10 years u/s 313 IPC and Life imprisonment with fine of Rs. 1,000/- under the Special Act plus default stipulation.                            |
| <b>Smt.Sunita Pradhan</b> | U/s 313 IPC                                                                                                                                       | RI for 10 years with fine of Rs. 1,000/- plus default stipulation.                                                                                    |

3. As per the case of prosecution, on 13.7.2004 FIR Ex. P-1 was lodged by prosecutrix (PW-1) aged about 15 years at the relevant time alleging that a year prior thereto when she was in her house, accused Chhote Lal came there and after bolting the door from inside removed his and her clothes and committed forcible sexual intercourse with her. It is alleged that after commission of the offence he asked her not to disclose the incident to anyone and also assured of marrying her. This act between the two is alleged to have taken place on 8-10 occasions as a result of which she became pregnant. It is alleged that on 3.7.2004 accused Rudra Prasad came to her and asked for her medical check-up to ascertain as to what was there in her stomach. Her mother however refused to let her go along with him. Thereafter, she along with her mother accompanied accused Chhote Lal, Rudra Prasad and Nem Chand to the house of some woman at Champa where her mother was made to sit outside. It is further alleged that at about 2

AM said woman administered an injection to her as a result of which she became unconscious and after regaining consciousness at about 4 AM she felt her stomach empty and noticed stitches in her private part. In the FIR the prosecutrix has stated that if shown, she would identify the woman who injected her and also her assistant. She, however, was not aware of the name of said woman. Based on this FIR, offences under Sections 376, 313 IPC and 3 (1) (xii) and 3 (2) (v) of the Special Act were registered against accused Chhote Lal, Rudra Prasad and Nem Chand. Prosecutrix was medically examined on 14.7.2004 by Dr. (Smt.) R. Lalita Rajnata (PW-8) who vide report Ex. P-9 confirming the abortion. On charge-sheet being filed by the police, the trial Court framed the charge against accused Chhote Lal u/s 376 IPC and 3 (2) (v) of the Special Act; against accused Rudra Prasad and Nem Chand u/s 313, 313/149 IPC and 3 (2) (v) of the Special Act; against accused; against accused Moharmati, Shukwara Singh and Sunita u/s 313, 313/149 IPC.

4. In order to prove its case the prosecution has examined 14 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied their guilt and pleaded innocence and false implication in the case.

5. After hearing the parties and going through the record the Court below acquitted accused Sukwara Singh of all the charges levelled against him but has convicted and sentenced the accused/appellants herein as mentioned above in paragraph No. 1 of this judgment.

As accused/appellant Moharmati in (Criminal Appeal No. 905/2005) has expired on 21.11.2014, her appeal abated and has been dismissed as such on 6.7.2017. Now the present appeals are in respect of accused/appellants Chhote Lal, Rudra Prasad, Nem Chand and Sunita.

6. Counsel for the accused/appellants submit as under:

(i) That even if the entire case of the prosecution is taken as it is, the offence under Section 376 IPC is not made out against accused/appellant Chhote Lal because as per the ossification test the prosecutrix was more than 16 years of age, and there was an inordinate delay of seven months in making FIR and further that during this long period she had physical relations with him on number of occasions, which makes it clear that she was a consenting party.

(iii) That conviction of accused Chhote Lal under Section 313 IPC is not in accordance with law as he was not charged for that offence.

(iv) That conviction of accused Rudra Prasad and Nem Chand under Section 313, 313/149 IPC and 3 (2) (v) of the Special Act is not in accordance with law as there is no evidence to show that they took the prosecutrix to accused Moharmati (since deceased) and Sunita for abortion having the knowledge that she belonged to a scheduled caste community.

(v) As regards accused Sunita, it is argued that since she has already remained in jail for about six years and four months, the sentence imposed on her may be reduced to the period already undergone, if her conviction under Section 313 IPC is not going to be dislodged.

7. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no infirmity in the same.

8. Heard counsel for the parties and perused the evidence of the witnesses available on record.

9. Prosecutrix (PW-1) has stated that she knew all the accused persons

including their caste. Two-two and a half year prior to recording of her evidence, accused Chhote Lal is stated to have come to her house and after asking whether she was cooking vegetable, he got back. This he did for 2-3 days. However, on the fourth day he again came to her, asked for water and after she went to get water for him, he shut the door and when she raised an alarm he gagged her mouth putting her under the threat of life in case she did not stop crying. Prosecutrix has stated that thereafter he removed her and his own clothes and committed forcible sexual intercourse with her and then left her house. When he again came to her house on the second day, she held him responsible for the consequences of the incident, on which he assured of marrying her. According to the prosecutrix, seven months after conception through accused Chhote Lal, she narrated the incident to her mother who in turn disclosed the same to accused Rudra Prasad, on which he insisted upon her medical check-up to make sure whether she was suffering from some ailment or was there a child in her stomach. Thereupon, she along with her mother accompanied accused Chhote Lal, Rudra Prasad and Nem Chand to Champa where her mother was made to sit outside. Accused Sunita and Moharmati are said to be present in the room where an injection was given to her by accused Moharmati which made her unconscious and when she regained consciousness about two hour thereafter, her stomach was empty and stitches were there in her private part where blood was also present. On this, she asked accused Sunita and Moharmati as to where the child inside her stomach had gone but there was no answer from them, and that she was feeling pain in her private part where stitches were applied. Thereafter, her mother was brought in and when she asked accused Moharmati and Sunita as to why the child inside the stomach of the prosecutrix has been removed, they told her that it was done at the behest of accused Rudra Prasad. Thereafter, Panchayat meeting was called but the accused persons did not attend the same and then a decision to lodge the report was taken. According to this witness, her date of birth was

got recorded in the school by her father. She has stated in her evidence that till 6-7 months after the first incident she did not disclose the same to anyone and when her belly started bulging her mother asked about the same and only then she disclosed it to her for the first time. She has clarified that had accused Chhote Lal married her, she would not have lodged the report against him. She is also stated to have received Rs. 25,000/- from the Government. Pitar Bai (PW-2) – the mother of the prosecutrix has stated that she was informed by her daughter about her subjection to forcible sexual intercourse by accused Chhote Lal and resultant conception. Thereupon, she took the prosecutrix to the house of accused Chhote Lal where accused Rudra Prasad and Nem Chand were also present and when she disclosed the conception of her daughter through accused Chhote Lal and also asked to keep her, they told her of medical check-up. Thereafter, her daughter was taken to Champa where in the house of accused Moharmati the child inside her stomach was removed by way of abortion after administering injection. Ajay Kumar Uraon (PW-3) is the witness who has proved the caste certificate of the prosecutrix Ex. P-3. Jagirathi Patel (PW-4) has been examined to prove the date of birth of the prosecutrix and according to him in the admission register, her date of birth has been recorded as 20.5.1989. He however has stated that such entry was not made under his own hands. Khiri Ram (PW-5) – the father of the prosecutrix has stated that age of the prosecutrix at the relevant time as per the *Kotwari* register was 15 years. He however admits that he did not inform the police that the date of birth of the prosecutrix was recorded in the Kotwari register nor has he requested it to seize the same. Dr. Ram Kirshna Jitpure (PW-7) is the radiologist who gave his report Ex. P-8 stating that the prosecutrix was aged in between 17 and 18 years. Dr. (Smt.) R. Lalita Rajnala (PW-8) is the witness who medically examined the prosecutrix and gave her report Ex. P-9 stating that the prosecutrix was subjected to abortion. Jagjit Singh Rakhra (PW-9) is the investigating officer who has duly supported the case of the prosecution.

Ghanshyam Bharadwaj (PW-10) is the Patwari who prepared spot map Ex. P-19. Dr. (Smt.) Chandra Kiran Singh (PW-13) has proved the seizure of articles allegedly used for abortion. Dr. Krishna Bhan Singh (PW-14) is the witness who medically examined accused Chhote Lal and gave his report Ex. P-10A opining that he was capable of performing sexual intercourse. Haridayal Singh Patel (DW-1) and Ganga Ram (DW-2) are the witnesses examined by the defence who have stated that in bus stand when they met the prosecutrix and her mother, her mother informed them that she was taking the prosecutrix to Champa for treatment. .

10. Close scrutiny of the material available on record thus goes to show that the prosecutrix was above 16 years of age on the date of incident and this fact gets complete corroboration from the ossification test report Ex. P-8 which categorically states her age in between 17 and 18 years at the relevant time. Though the prosecution has made an attempt to prove the date of birth of the prosecutrix as 20.5.1989, it has failed to do so as the author of the said document has not been examined and the Kotwari register has not been proved as required under the law. Thus the prosecutrix was above 16 on the date of incident, has no confusion and it is held so accordingly. Now the next question to be decided is whether conviction of accused Chhote Lal under Section 376 IPC is in accordance with law? Prosecutrix herself has stated in her Court statement that she allowed accused Chhote Lal to have physical relations with her for seven long months without any protest and that fact was disclosed to her mother only after she was carrying pregnancy of seven months and that too on being asked after seeing her bulging belly. According to the prosecutrix, when he came to her to have sex for the second time, she just asked him whether he would be responsible for the consequences of his act, on which he said 'yes' and assured of marrying her also, and thenceforth the sex play between the two went on as per their wishes. Court statement of the prosecutrix further makes it clear that had accused Chhote Lal married

her, she would not have lodged the report. Thus her overall conduct shows that she was a consenting party to the act of accused Chhote Lal and being so his conviction under Section 376 IPC is not in accordance with law and it is therefore liable to be set aside. Likewise, his conviction under Section 313 IPC is also not sustainable in the eye of law as he was not even charged for that offence.

11. As regards conviction of accused Rudra Prasad and Nem Chand under Section 313 IPC, the only evidence led by the prosecution is that they took the prosecutrix for medical check up along with her mother and the evidence does not speak that they were aware that she was being taken for abortion purposes. Considering the statements of prosecutrix (PW-1) and her mother (PW-2) we are of the considered opinion that the basic ingredients of Section 313 or 313/149 IPC have not been proved by the prosecution as required under the law and being so they are entitled to receive the benefit of doubt. However, conviction of accused Sunita under Section 313 IPC, appears to be in accordance with law as she assisted deceased/accused Moharmati in carrying out abortion of the prosecutrix which is evident from the Court statement of prosecutrix herself as also her mother. Evidence of prosecutrix to this effect appears to be fully reliable and trustworthy.

12. So far as conviction of accused Chhote Lal, Rudra Prasad, Nem Chand under Section 3 (2) (v) of the Special Act is concerned, the prosecution has not established its case beyond reasonable doubt that they committed the offence alleged against them on the ground that she belonged to the scheduled caste community as there is no evidence to show that they had any knowledge of her caste. Thus the findings so recorded by the Court below convicting accused Chhote Lal, Rudra Prasad, Nem Chand under the Special Act are not sustainable in the eye of law and are liable to be set aside.

13. In the aforesaid view of the matter Criminal Appeal No. 946/2005

preferred by accused Chhote Lal, Rudra Prasad and Nem Chand is hereby allowed and they are acquitted of all the charges levelled against them. Criminal Appeal No. 267/2009 preferred by accused Sunita Pradhan is allowed in part to the extent of affirmation of her conviction under Section 313 IPC. However, keeping in mind the fact that the incident had taken place about 13 years back and she has already remained in jail for about 6 years and 4 months, this Court is of the opinion that it would be in the interest of justice if the sentence imposed on her is reduced to the period already undergone. Order accordingly. As all the accused/appellants in both the appeals are already on bail, no order to set them free etc. is necessary.

14. Criminal Appeal No. 946/2005 is thus allowed as a whole. Criminal Appeal No. 267/2009 is however allowed in part to the extent indicated above.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(RP Sharma)

Judge