

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.164 of 2013**

Chaitu @ Chaitram Kalaar, S/o. Korri @ Narottam Kalaar, aged about 29 years, R/o. Village Gadaghat, PS Takhatpur, District Bilaspur (CG)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Takhatpur, District Bilaspur (CG)

---- Respondent

For appellant	: Shri Aditya Khare, Advocate.
For respondent/State	: Shri Sumit Jhavar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****20.02.2017**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 31.7.2010 passed by Session Judge, Bilaspur (CG) in Special Case No.23/09 whereby and whereunder the learned trial Judge after holding the appellant guilty for committing rape with prosecutrix (PW-1) (name not mentioned) convicted him under Section 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/-, in default of payment of fine, to further undergo simple imprisonment for three months with a direction that period of detention from 19.02.2009 till the date of judgment be set off.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned.

3. As per the case of prosecution, on 17.02.2009 prosecutrix (PW-1) was present in the field for guarding the vegetables. The accused/appellant came there, taken the prosecutrix in a room situated at the field and thereafter after removing her clothes committed sexual intercourse with her. After the incident, the accused/appellant run away from the spot. The prosecutrix sustained injuries in her private parts of the body, she returned her home and informed her mother regarding the incident, thereafter her father lodged First Information Report (Ex-P/11) which was registered before Police Station Takhatpur as Crime No.62/09 under Section 376 IPC and under Section 3(1)(12) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Act 1989. After taking necessary consent, the police sent the prosecutrix for medical examination. Dr. (Mrs.) K. Patnaik (PW-6) examined the prosecutrix and noticed recent rupture of hymen and connected injuries and also bleeding. She also noticed external and internal injuries over the private parts of the prosecutrix. The prosecutrix was admitted in the Community Health Centre, Takhatpur for three days. The doctor (PW-6) gave her report (Ex-P/8). During investigation, as the prosecutrix belongs to Scheduled Tribe category, certificate regarding caste was also collected. The accused was arrested on 18.02.2009. He was also sent for medial examination. Dr. Nikhilesh Kumar (PW-7) after necessary examination found him to capable of sexual intercourse and also notice swelling in the left testicles. He

gave his report (Ex-P/10) and also referred his undergarments for chemical analysis.

4. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1908 (for short 'the Code'). Towel with blood stains were also seized at the instance of the accused/appellant vide memorandum (Ex-P/6). During investigation, spot map (Ex-P/12) was prepared. After completion of investigation, charge sheet was filed by the police before Judicial Magistrate First Class, Takhatpur, who registered the same as Criminal Case No.752/09, committed the same for trial as per committal order dated 04.5.2009. The learned Special Judge received the case on transfer and conducted the trial.

5. The accused/appellant was charged for the offence under Section 376 of the IPC and under Section 3(2)(5) of the Act 1989. In order to prove the guilt of the appellant, the prosecution has examined as many as 12 witnesses. Statement of the accused was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned Sessions Judge acquitted the appellant under Section 3(2)(5) of the Act and convicted him under Section 376 of the IPC.

7. Heard learned counsel for the parties and perused the judgment impugned and the record of the Court below.

8. Learned counsel for the appellant submits that after perusal of the statement of the prosecutrix and other witnesses and medical corroboration, he is not assailing the instant criminal appeal for the conviction part. He has prayed that substantive jail sentence awarded to the accused/appellant may be considered as the accused/appellant was aged about 27 years at the time of incident, he is the resident of same village, he was arrested on 18.02.2009 and is in jail since then, with this, he has served the sentence for 8 years and 2 days. He has already served the minimum sentence prescribed. He was not having any criminal antecedent earlier to this incident. Even he was not in a position to file the criminal appeal before this Court and ultimately High Court Legal Aid Committee provided him a lawyer to file the instant criminal appeal, which was even barred by limitation of 868 days. This Court condoned the delay occurred and admitted the matter for final hearing. He further submits that the appellant will not commit any offence in future and the appellant may be sentenced for the period already in detention.

9. Per Contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant and would submit that the prosecutrix was aged about 14 years at the time of the incident, medical corroboration regarding recent rape was noticed by the doctor and looking to the entire facts, the trial Court rightly awarded rigorous imprisonment of ten years to the

appellant, which cannot be held as excessive. Hence, the appeal may be dismissed on both the counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during trial.

11. On close scrutiny of evidence adduced, including the statement of prosecutrix (PW-1) and Dr. (Smt.) K. Patnaik (PW-6) who examined the prosecutrix and corroboration regarding recent injuries and rupture in hymen and connected injuries, this Court is of the considered view that the prosecution has duly proved the offence under Section 376 of the IPC against the accused/appellant.

12. So far as the quantum of sentences are concerned, the accused/appellant served the sentence for 8 years and 2 days till date, he was an illiterate labour managing his livelihood anyhow. He was also not in a position to engage any lawyer to prefer appeal against his conviction by the Court below. With the help of High Court Legal Aid Committee, he has filed the instant criminal appeal after a considerable delay of 868 days, however the delay was further condoned by this Court and the appeal has been admitted for consideration. Even on behalf of the appellant no prayer for suspension of sentence and grant of bail was made. Looking to the entire facts and circumstances and also with the fact that the accused/appellant served the sentence for 8 years and 2 days till date, thereby completed the minimum sentence as

prescribed under Section 376(1) of the IPC, this Court is of the considered view that ends of justice would be served if the appellant be sentenced for the period already undergone by him.

13. Consequently, appeal filed by the accused/appellant is allowed in part. Conviction of the accused/appellant under Section 376 of the IPC is hereby affirmed. Fine sentence awarded to the accused/appellant is also hereby affirmed. For the substantive jail sentence, instead of RI for 10 years, the accused appellant is sentenced for the period already undergone by him. The accused/appellant is in jail. After depositing the fine amount he be released forthwith. If the fine amount is not deposited, he shall serve the default sentence as per para 33 of the judgment of the trial Court and release the appellant only after serving the default sentence.

14. Registrar (Judl.) is also directed to send a copy of judgment to the concerned trial Court for compliance and further action immediately.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE