

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3403 of 1999

Prakash Narayan, son of Balkrishna Agrawal (wrongly mentioned as Agrawal), aged 28 years, resident of Dipka, Quarter No.MQ-1285, Police Chowki Dipka, Police Station Kusmunda, District Bilaspur (Now District Korba), M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Ms. Sharmila Singhai, Advocate
For Respondent	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

18.7.2018

1. This appeal is directed against the judgment dated 16.12.1999 passed by the Additional Sessions Judge and Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Bilaspur in Sessions Trial No.535 of 1998 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation

2. Prosecution case, in brief, is that the prosecutrix (PW1), a woman of 35 years of age, was doing domestic works in the house of the Appellant and was also living in his house. One day, prior to 23.7.1998, wife and children of the AppelaInt went to the maternal

house of the wife of the Appellant. Only the Appellant and the prosecutrix were present at the house. It is alleged that on 23.7.1998, at about 9:30 p.m., the Appellant committed forcible sexual intercourse with the prosecutrix. The prosecutrix started bleeding then the Appellant called Urmila (PW3), sister of the prosecutrix and Shyam Kujur (PW2), brother-in-law of the prosecutrix. The Appellant told them that bleeding took place because the prosecutrix had fallen down. Thereafter, they took the prosecutrix to hospital in an ambulance. On 24.7.1998 at about 3:30 p.m., Dehati Nalishi (Ex.P1) was recorded in the hospital as told by the prosecutrix. After return to the police station, numbered First Information Report (Ex.P6) was registered. The prosecutrix was medically examined by Dr. Veena Agrawal (PW8). Her report is Ex.P9 in which she found that 2 fingers were easily being inserted into the vagina of the prosecutrix. Her hymen was old ruptured. There was a tear over the posterior wall of the vagina. She opined that the said tear had taken place due to forcible sexual intercourse which was within 24 hours. The Appellant was examined by Dr. H.D. Dahire (PW9). His report is Ex.P11 in which he found that the Appellant was capable to perform sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 376 of the Indian Penal Code followed by framing of charge against him under Section 376 of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statement of the Appellant was recorded under

Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. 1 witness has been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been falsely implicated by the prosecutrix and her sister and brother-in-law. The statements of the prosecutrix and her sister and brother-in-law are not reliable. From their statements, it is clear that the prosecutrix was a consenting party. She further submits that the prosecutrix was first examined and treated at Gevra hospital and was thereafter referred to a hospital at Korba. But, the doctor, who first examined the prosecutrix at Gevra hospital, has not been examined to disclose in which condition the prosecutrix was admitted in the hospital nor has any document been produced by the prosecution in this regard. She further submits that the prosecutrix has stated that when bleeding took place, a doctor was called by the Appellant and she was examined and treated by that doctor. But, that doctor has not been examined by the prosecution. Therefore, the Appellant is entitled to get benefit of doubt as the offence alleged against him is not proved beyond reasonable doubt.
6. Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned

judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1) has stated that on the date of incident at about 9:00 p.m., the Appellant asked her to give him a massage. When she denied, he caught her hand. She told him that she will go out of his house and will not work there. But, he did not stop and removed her all clothes and caused her to fall down on a sofa. Thereafter, he took her from there and caused her to fall down on a *diwan* and committed forcible sexual intercourse with her due to which excessive bleeding started from her private part. She requested him to call her sister and brother-in-law. He brought her sister and brother-in-law, but till that time, she had got unconscious. Her sister and brother-in-law took her to hospital. She became conscious in the hospital in the night then she told her sister and brother-in-law about the incident. Thereafter, the police officials reached there. She lodged Dehati Nalishi (Ex.P1). During her cross-examination, she has further stated that the Appellant had switched off the light of the room before committing the sexual intercourse. When she had asked him why did he switch off the light, he replied her that insects were entering the room and thereafter he had closed the door. In paragraph 14, she has further stated that as soon as the Appellant inserted his penis, bleeding started, then he took out his penis. Thereafter, the Appellant gave her cloth of his wife to stop the bleeding. Thereafter, he called a doctor. The doctor gave her an injection to stop the bleeding. When the bleeding did not stop, she asked the

Appellant to call her sister and brother-in-law. In paragraph 16 also, she has admitted that before committing sexual intercourse with her, the Appellant had removed her all clothes and thereafter he had started committing sexual intercourse with her.

9. Shyam Kujur (PW2), brother-in-law of the prosecutrix has stated that the Appellant came to him at about 11:00 p.m. and told him that the prosecutrix was bleeding. He went to the house of the Appellant along with his wife Urmila (PW3). There he saw that the prosecutrix was lying unconscious and blood was spread in the room. He has further stated that he did not ask the Appellant anything, but he understood that what would have happened. He has further stated that in the hospital, on recovery of conscious of the prosecutrix, he asked her how the incident had happened. She told him that the Appellant had committed rape with her. Urmila (PW3), sister of the prosecutrix and wife of Shyam Kujur (PW2) has also stated in similar fashion.
10. Dr. Veena Agrawal (PW8), who medically examined the prosecutrix, has stated that on 24.7.1998 at about 2:00 p.m., the prosecutrix was brought to her for treatment. She had sent an intimation (Ex.P10) to Police Chowki, Rampur. She has further stated that same day, she examined the prosecutrix in which she found that no injury was present on the body of the prosecutrix. Her hymen was old ruptured. 2 fingers were easily being inserted into her vagina. She also found one tear over posterior wall of the vagina of the prosecutrix which had taken place due to forcible sexual intercourse. Her report is Ex.P9.

11. Dr. H.D. Dahire (PW9) examined the Appellant. He has stated that his report is Ex.P11 in which he found that the Appellant was capable to perform sexual intercourse.
12. Head Constable Krishna Kumar (PW10) is the witness who recorded Dehati Nalishi (Ex.P1) on the basis of the memo (Ex.P10) of the hospital. Inspector Subhash Singh (PW5) registered the FIR (Ex.P6) on the basis of Dehati Nalishi. Patwari Dilip Kumar (PW11) prepared spot-map (Ex.P4).
13. A minute examination of the entire evidence adduced by the prosecution makes it clear that the prosecutrix was working at the house of the Appellant. She was doing domestic works there. She was also living there. On the date of incident, wife and children of the Appellant were not present at the house. The Appellant and his domestic worker (the prosecutrix) were only present at the house. As alleged, the sexual intercourse was done by the Appellant with the prosecutrix forcibly. From the statement of the prosecutrix (PW1), it is clear that after the alleged incident, she was bleeding and on bleeding not being stopped, the Appellant called a doctor. The doctor gave her an injection to prevent the bleeding. When the bleeding did not stop, on her being requested, the Appellant called her sister Urmila (PW3) and brother-in-law Shyam Kujur (PW2) and thereafter the Appellant, Urmila and Shyam Kujur took her to Gevra hospital. From the statement of the prosecutrix, it is also clear that at the time of incident, before committing sexual intercourse with her, the Appellant had removed her all clothes. At that time, she did not resist the Appellant. At that time, the Appellant threatened her in any way has not been stated by her.

From the evidence on record, it is clear that the sexual intercourse was done with the prosecutrix with her consent. Since she started bleeding excessively and the bleeding did not stop even after giving her an injection by the doctor, she called her sister Urmila (PW3) and brother-in-law Shyam Kujur (PW2) and thereafter she levelled the allegation of forcible sexual intercourse. From the above discussion, it is established that the prosecutrix was a consenting party to the sexual intercourse done with her. Therefore, the offence alleged against the Appellant under Section 376(1) of the Indian Penal Code is not proved beyond reasonable doubt. The Appellant is entitled to get benefit of doubt.

14. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
15. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
16. 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