

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2973 of 1998

Judgment Reserved on : 4.1.2018

Judgment Delivered on : 27.3.2018

Jugnu alias Premlal, son of Brijlal Mehra, aged about 22 years, resident of Shiv Nagar, P.S. Tikrapara, District Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Tikrapara, District Raipur

--- Respondent

For Appellant	:	Shri Arun Kochar, Advocate
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 23.11.1998 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Raipur in Sessions Trial No.91 of 1998 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Case of the prosecution, in brief, is that on 19.11.1997 at about 8:30 p.m., the prosecutrix (PW1), aged about 15 years, was alone at her house and was watching programme on television. The

Appellant came to her house. He allured her to accompany him out. On being refused, he threatened her of life and he took her behind her house and committed forcible sexual intercourse with her. Thereafter, he leaving her there, ran away. She returned home. When her elder brother Hemlal (PW2) returned home, she told him about the incident. Thereafter, on the same day, at about 11:10 p.m., she lodged First Information Report (Ex.P1) in Police Station Tikrapara. She was medically examined by Dr. Pratibha Chouhan (PW9). She gave her report (Ex.P18) in which she opined that the prosecutrix was habitual to sexual intercourse and she did not find any internal or external injury on her body. She also reported that no definite opinion could be given regarding recent sexual intercourse with the prosecutrix. Clothes of the prosecutrix and the Appellant were seized in which stains of sperm were found. Regarding date of birth of the prosecutrix, mark-sheet (Ex.P14) of the prosecutrix was seized vide Ex.P7. In the said mark-sheet, the date of birth of the prosecutrix is mentioned as 7.10.1982. Dakhil-Kharij (Admission-Transfer) Register was seized vide Ex.P10 in which also the date of birth of the prosecutrix is mentioned as 7.10.1982. 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. Charge was framed against him under Section 376 of the Indian Penal Code.

3. To rope in the accused/Appellant, the prosecution examined as many as 9 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in

which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.

4. 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 argued that the Trial Court has found the age of the prosecutrix to be 16 years and 7 months on the relevant date. As per the evidence adduced by the prosecution, it is proved that the prosecutrix was a consenting party because when the Appellant had taken her along with him, she did not raise any alarm nor did anybody see them going together. Even after the incident, she did not disclose about the incident to anybody. After the alleged incident, she sat keeping mum at her house and she herself did not disclose about the incident to her brother Hemlal (PW2). When Hemlal, getting annoyed, slapped and asked her about where had she gone, then she disclosed him about the incident. Since she was a consenting party and was aged more than 16 years, therefore, no case is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. The prosecutrix (PW1) has stated that on the date of incident at

about 8:00 p.m., she was at home and her younger sister Lata and younger brothers Vinod and Virendra were also present at home. She has further stated that on being knocked from outside, she opened the door of the house. The Appellant was standing at the door. He straightway gagged her mouth and took her behind her house. After causing her to lay down, he committed sexual intercourse with her. On being shouted, he threatened her that he will kill her there itself. She has further stated that the Appellant thereafter ran away from there and she also returned home. Thereafter, when her elder brother Hemlal (PW2) returned home, she disclosed him about the incident and thereafter she lodged the FIR (Ex.P1). She denied the fact that the Appellant had called her and after alluring her that he will marry her, had taken her away with him. As per her Court statement, the Appellant had taken her away by gagging her mouth. But, this fact is not mentioned in her police statement. In paragraph 11, she has stated that the Appellant had caused her to fall down and the place where he had caused her to fall down was rocky, but no internal or external injury was found on her body on her examination by Dr. Pratibha Chouhan (PW9). In paragraph 12, she has stated that before her, her brother Hemlal (PW2) had reached home and when he, scolding, asked her about where had she gone and also slapped her, then she disclosed him about the incident.

9. Hemlal (PW2), elder brother of the prosecutrix has also stated that he returned home at about 9:00 p.m. At that time, the prosecutrix was not present at home. She returned home after $\frac{1}{2} - \frac{3}{4}$ hour of his return at home. At that time, she was weeping. On being asked, she did not disclose about the incident. But, on being

scolded and beaten, she disclosed him about the incident that the Appellant had taken her behind their house and committed forcible sexual intercourse with her by threatening her. This witness has admitted that behind his house, houses of Gomti and Jhadi Sahu are also situated. Main road false in front of his house. Many houses and shops are situated adjacent to his house which remain open till about 10:00 p.m.

10. Dr. Pratibha Chouhan (PW9) has stated that she examined the prosecutrix. She gave her report (Ex.P18) in which she found that the prosecutrix was habitual to sexual intercourse. No internal or external injury was found on the body of the prosecutrix. No definite opinion could be given regarding recent sexual intercourse with the prosecutrix.
11. Inspector D.S. Parihar (PW7) is the witness who investigated the offence in question. Assistant Sub-Inspector J.N.Tiwari (PW8) has stated that he partly investigated the offence in question. Vimla Agrawal (PW5) is the witness who relates to Dakhil-Kharij Register, which was seized vide Ex.P10. Since the Trial Court has already found the age of the prosecutrix to be 16 years and 7 months and this point has not been challenged by the State, no further discussion is required regarding the age of the prosecutrix.
12. On minute examination of the above evidence, it is clear that the prosecutrix was a consenting party because as per her Court statement, she had been taken behind her house by the Appellant by gagging her mouth, but this fact is not mentioned in her case diary statement. Her house is surrounded by many other houses and shops which remain open till about 10:00 p.m. But, nobody

saw them, which is not possible. From the statements of the prosecutrix and her brother Hemlal, it is also clear that the prosecutrix had returned home after $\frac{1}{2}$ – $\frac{3}{4}$ hour of the return of her brother Hemlal and she herself had not disclosed him about the incident. When he got annoyed and slapped and beaten her, then she disclosed him about the incident. Had the incident taken place with her forcefully, she would have immediately disclosed the same at her house at her own at the time of her return but she did not do so. From the evidence on record, it is also clear that she stayed with the Appellant for about 1 – 1½ hours and after the incident when the Appellant went away, she did not raise any alarm about the incident nor did she disclose the incident to anybody and keeping mum, returned home. Even after returning home, she herself did not disclose about the incident to her brother Hemlal. When Hemlal got annoyed and beat her, then she disclosed him about the incident. Therefore, it is clear that she was a consenting party and since she was on the date of incident more than 16 years of age, no case is made out against the Appellant.

13. In the result, the appeal is allowed. The conviction and sentence imposed upon the Appellant is set aside. The Appellant is acquitted of the charge framed against him.
14. 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