

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1432 of 1999

Judgment Reserved on : 18.4.2018

Judgment Delivered on : 16.7.2018

Khelan Singh, aged 30 years, S/o Ubheram Sahu, R/o Bhawanipur, P.S. Palari, District Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Smt. Smriti Shrivastava, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 4.5.1999 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 Special Sessions Trial No.136 of 1997 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 and fine of Rs.150/- with default stipulation

2. The prosecution case, in brief, is that the prosecutrix (PW1), a widow lady, who had 4 children, on 12.10.1997, lodged First Information Report (Ex.P1) alleging that on 11.10.1997 at about 8:30 p.m., she, along with her 3 children, was sleeping in her room. At that time, the Appellant came to her house, knocked the door of

the house and asked her to open the door. When she opened the door and came out, the Appellant caught her hand. When she tried to shout, he gagged her mouth. He dragged her towards the verandah situated behind her house and committed forcible sexual intercourse with her. Thereafter, he fled from the spot on his bicycle. She told about the incident to her mother Ghasninbai (PW2), sister Rukhambai (PW3) and other witness Mantram (PW4). A Village meeting was also called by her. Thereafter, she lodged the FIR (Ex.P1). She was medically examined by Dr. (Smt.) N. Bajpai (PW8). Her report is Ex.P10A in which she found slight swelling and redness on the private part of the prosecutrix, which, according to her, could come only after commission of sexual intercourse with her. She also found one abrasion below the right shoulder of the prosecutrix. The Appellant was also medically examined in which he was found to be capable of committing sexual intercourse. Report in this regard is Ex.P17. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. Petticoat of the prosecutrix was seized vide Ex.P3. Vaginal slide of the prosecutrix was prepared and seized vide Ex.P14. The said petticoat and vaginal slide of the prosecutrix were sent for chemical examination. On completion of the investigation, a charge-sheet was filed against the Appellant for an offence punishable under Section 376 of the Indian Penal Code and Sections 3(1)(xii) and 3(2)(v) of the Act of 1989. Charges were framed against him under Section 376 of the Indian Penal Code read with Section 3(2)(v) of the Act of 1989.

3. To rope in the 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 guilt and pleaded innocence. No witness has been examined in his defence.

4. After trial, the Trial Court acquitted the Appellant of the charge framed under Section 3(2)(v) of the Act of 1989, but convicted him under Section 376 of the Indian Penal Code and sentenced as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the incident took place at about 8:30 p.m. 3 children of the prosecutrix were present at the house. Hence, probability of rape with the prosecutrix in such a situation is rare and, therefore, her statement is not reliable. From her statement, it is also clear that at the time of incident, she did not physically resist the Appellant. Therefore, even if the alleged act was done with her, she was a consenting party. Thus, the offence under Section 376 of the Indian Penal Code is not proved.
6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence and submitted that the prosecutrix and other witnesses have duly supported the case of the prosecution. The medical evidence also suggests that the prosecutrix was raped by the Appellant. Therefore, the Appellant has rightly been convicted and sentenced by the Trial Court.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. The prosecutrix (PW1), a widow lady, aged about 35 years, has stated that on the date of incident at about 8:00 p.m., she was sleeping along with her children. At that time, the Appellant came there and asked her to open the door. When she opened the door and asked him why had she come there, the Appellant caught her hand. Thereafter, he took her towards the courtyard, caused her to fall down and committed forcible sexual intercourse with her. Thereafter, he fled from there on his bicycle. She has further stated that she, weeping, went to the house of her mother and told her about the incident. Thereafter, she went to Mantram (PW4) along with her mother and informed him about the incident. Thereafter, a village meeting was called in which the Appellant was also present. The Appellant denied the guilt. Thereafter, she lodged the report. In paragraph 7, she has admitted that she had shouted "Bachao Bachao", but nobody had come to rescue her. She has explained about this that at that time a loudspeaker was blowing in her village, therefore, her shout remained unheard. She has also admitted that while the Appellant was committing rape with her, he did not inflict her any abrasive injury nor did he give her any push.
9. Ghasninbai (PW2), mother of the prosecutrix has stated that the prosecutrix, weeping, came to her and told her about the incident. Thereafter, they went to Mantram (PW4) and informed him about the incident. A village meeting was called in which the Appellant

was present, but he denied the guilt.

10. Rukhambai (PW3), sister of the prosecutrix has also stated that at about 8:00 p.m., the prosecutrix, weeping, had come to her and told her that the Appellant had forcibly done a wrong act with her.
11. Mantram (PW4), Motiram (PW5) and Thannu Sahu (PW7) are the witnesses who were present in the said village meeting. All the above witnesses have stated that during the meeting, the prosecutrix had told that the Appellant had committed wrong act with her, but the Appellant had denied the guilt.
12. Dr. (Smt.) N. Bajpai (PW8), who examined the prosecutrix on 12.10.1997 and gave her report (Ex.P10A), has stated that she found one abrasion over right lateral chest wall region of 6 cms.x $\frac{1}{2}$ cm. directing from position above to down forwards and anteriorly. She has opined that the abrasion could be caused by a hard and sharp object like finger nail. She also found that there was slight swelling in the vagina and redness was also present over the whole vagina, which, according to her, could take place after sexual intercourse. In paragraph 2, this witness has stated that 3 $\frac{1}{2}$ years prior to the date of medical examination, the prosecutrix had become widow. In paragraph 8 also, she has categorically stated that the swelling and redness over the vagina could take place only after sexual intercourse.
13. S.D.O. (P.) P.K. Singh (PW9) investigated the matter. He has stated that during investigation, he recorded the statements of

witnesses under Section 161 of the Code of Criminal Procedure. He prepared spot-map (Ex.P5). He seized vaginal slide of the prosecutrix vide Ex.P14. He also seized underwear and one old bicycle from the Appellant vide Ex.P4. He has further stated that the seized articles were sent to the Forensic Science Laboratory for chemical examination vide Ex.P16, but no FSL report is available on record.

14. On a minute examination of the above evidence, I find that the prosecutrix (PW1) has categorically stated that when she was present at her house, the Appellant came there, knocked the door of her house and when she opened the door, he caught her hand. When she tried to come out of his clutches, he dragged her to the courtyard of her house situated behind her house and there he committed rape with her. She has admitted that he did not inflict her any abrasive injury, therefore, on the basis of this admission, it was argued on behalf of the Appellant that she was a consenting party. This contention is not acceptable because if she was a consenting party, why did she, immediately after the incident, go to her mother, sister and other villagers and informed them about the incident and called a village meeting. From the medical evidence also, it is clear that a sexual intercourse was done with her. Swelling and redness were found over her vagina. Though present is not a case in which any person witnessed the incident, had she been a consenting party, she would not have raised any complaint nor did the matter reach to the police. From the evidence on record, it is clear that forcible sexual intercourse was done with the prosecutrix by the Appellant. Thus, the Trial Court has rightly convicted the Appellant. The sentence imposed upon him is also

just and proper.

15. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
16. It is reported that the Appellant is on bail. He shall immediately surrender before the concerned Trial Court or he shall be taken into custody forthwith by the police for his undergoing the remaining sentence, if any.
17. 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