

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2242 of 2000

Ratanlal, S/o Dakhalram, aged about 25 years, R/o Village Biniya, P.S. Lakhanpur, Tahsil Ambikapur, District Surguja, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through Police Station Lakhanpur, District Surguja, M.P. (now Chhattisgarh)

--- Respondent

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

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

9.1.2018

1. The instant is an appeal against the judgment dated 28.8.2000 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Ambikapur in Special Criminal Case No.46 of 2000 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. Facts of the case, in brief, are that on 6.2.2000, the prosecutrix (PW1) and her husband Sanjhuram (PW2) had gone to weekly market of Village Kedma for purchasing vegetables. While returning from the market, instead of directly going to their village, they went to Village Biniya for consuming liquor. When they were returning, it is alleged that the Appellant proposed them to stay at his house. They stayed at his house for sometime and thereafter proceeded for their village. The Appellant also followed them saying that he would accompany them till their reaching to their village. On the way, near the school of Village Raidand, the

Appellant assaulted the husband of the prosecutrix and dragged her away and committed rape with her. It is alleged that at that time, the Appellant committed rape with the prosecutrix twice. Due to fear, she went to her maternal house. Later on, she narrated the incident to one Ronha and Sarpanch Sukhram (PW3). On 5.3.2000, First Information Report (Ex.P1) was lodged by the prosecutrix. On 6.3.2000, she was medically examined by Dr. (Smt.) Shipra Shrivastava (PW4). Her report is Ex.P2 in which she has stated that she did not find any external injury on the body of the prosecutrix nor did she find any injury on her private part and she opined that as the prosecutrix was well habitual to sexual intercourse, any opinion could not be given regarding the intercourse committed with her about a month before. 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 under Section 376 of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989. Charges were framed against him under Section 376 of the Indian Penal Code and Section 3(2)(v) of the Act of 1989.

3. In support of its case, the prosecution examined as many as 6 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded that he has been falsely implicated in the case due to village politics. No witness has been examined in his defence.
4. Learned Counsel appearing for the Appellant argued that both the witnesses the prosecutrix (PW1) and her husband Sanjhuram (PW2) have narrated different facts in their statements making failure to the prosecution case. The statement of the prosecutrix is

not reliable. Conduct of the prosecutrix and her husband is not natural. The FIR was lodged after about 1 month of the alleged incident and no proper explanation has been offered for the delay. It was further argued that even if the prosecution story is taken as it is, the prosecutrix appears to be a consenting party. The offence alleged against the Appellant is not proved beyond doubt. Therefore, the Appellant deserves to be acquitted.

5. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. The prosecutrix (PW1), a married lady, has stated that on the date of incident, she along with her husband (PW2), while returning from Village Kedma, went to the house of the Appellant. She has further stated that the Appellant went to consume liquor. The Appellant returned after an hour. Thereafter, when they started to go, the Appellant followed them. She has further stated that on the way near Village Raidand, the Appellant slapped her husband twice and thereafter he, gagging her mouth and catching her hands, took her near a Mahua Tree in a school premises. When she tried to shout, he caught her hands, put them at her back and tightened them and thereafter he caused her to fall down and committed forcible sexual intercourse with her twice. She has further stated that while he was committing sexual intercourse with her second time, she asked him to leave her saying that her husband would come there and beat her. She has further stated that when the Appellant saw her husband coming back, he left her and ran away from there. Her husband tried to chase the

Appellant, but he could not succeed to catch the Appellant. She has further stated that thereafter she went to the house of her sister and brother-in-law along with her husband. She told them about the incident and next day she went to her paternal house and told about the incident to her parents and other family members. Thereafter, she lodged the FIR (Ex.P1). In paragraph 14, she has admitted that when the Appellant had completed committing sexual intercourse with her, at that time, her husband reached there and beat the Appellant.

8. Sanjhuram (PW2), husband of the prosecutrix has stated that he and the prosecutrix had gone to the house of the Appellant. When they were returning their home, the Appellant followed them. He has further stated that near Village Raidand, the Appellant beat him, therefore, he ran away from there. After some time, he returned there and saw that the Appellant had caught her wife and mounted over her. Having seen him, the Appellant fled from there. He has further stated that the prosecutrix thereafter went to the house of her brother-in-law and he went to the house of his brother.
9. Village Sarpanch Sukhram (PW3) has stated that Sanjhuram (PW2) had called a village meeting. In that meeting, the prosecutrix had told that one boy of Village Biniya had committed rape with her in the fateful night. He has further stated that the Appellant was also present in the said meeting and had stated that he had not done any wrong act. While cross-examination, this witness has admitted that the prosecutrix had not told name of the culprit/rapist in the said meeting.
10. Dr. (Smt.) Shipra Shrivastava (PW4) is the witness who examined

the prosecutrix. Her report is Ex.P2 in which she has stated that she did not find any external injury on the body of the prosecutrix nor did she find any injury on her private part and she opined that as the prosecutrix was well habitual to sexual intercourse, any opinion could not be given regarding the intercourse committed with her about a month before.

11. Deputy Superintendent of Police Kishore Ram Kamre (PW6) is the Investigating Officer who investigated the offence in question. Sub-Inspector Ranjeet Ekka (PW5) partly investigated the offence. In paragraph 8, Kishore Ram Kamre (PW6) has admitted that the incident took place on 7.2.2000. The FIR was lodged on 5.3.2000. He has further stated that after the incident the prosecutrix had gone to her maternal house and lodged the FIR after return from there.
12. On minute examination of the evidence on record, it is clear that the testimony of the prosecutrix (PW1) and her husband Sanjhuram (PW2) is not natural. There are so many contradictions and omissions in their statements on material points. Their conduct is also not natural. There is 1 month delay in lodging the FIR and the delay has not been properly explained. From the evidence on record, it is also clear that either no such incident took place or had it taken place the prosecutrix was a consenting party. In the premises of aforestated, I find that the offence alleged against the Appellant is not proved beyond reasonable doubt. Therefore, he is entitled to get benefit of doubt.
13. 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.

- 14.** It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in view of the provisions contained in Section 437A of the Code of Criminal Procedure.
- 15.** 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