

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.238 of 2002

Judgment Reserved on : 4.1.2018

Judgment Delivered on : 27.3.2018

Mukesh, S/o Jhaduram Yadav, aged about 18 years, R/o Railway Colony,
Bortalab, P.S. Bortalab, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Bortalab, District Rajnandgaon,
Chhattisgarh

--- Respondent

For Appellant	:	Shri Adil Minhaj, 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 20.2.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Rajnandgaon in Special Case No.144 of 2000 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code (Two Counts)	On each count, Rigorous Imprisonment for 10 years and fine of Rs.5,000/- with default stipulation
Under Section 3(1)(xii) of the Act of 1989	Rigorous Imprisonment for 5 years and fine of Rs.5,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 15.12.1998, First

Information Report (Ex.P1) was lodged by the prosecutrix (PW2), aged about 15 years alleging that 1 year prior to lodging of the FIR, mother of the Appellant had taken mother of the prosecutrix to Nagpur for treatment. Sister of the Appellant was living in the house of the Appellant along with her children. She was calling the prosecutrix at the house of the Appellant for sleeping in the night. One night, when the prosecutrix was sleeping in the house of the Appellant, he came to her, gagged her mouth with a piece of cloth, dragged her to another room and thereafter committed rape with her. Due to fear, she did not disclose the incident to anyone. After few days, the Appellant again caught her at his house and committed rape with her. Thereafter, alluring her that he will marry her, again committed sexual intercourse with her 2-3 times. Due to this, she became pregnant. When she was carrying pregnancy of about 7 months, she disclosed about the incident to her parents. The family members of the prosecutrix asked the family members of the Appellant to perform marriage of the Appellant with the prosecutrix. On this, the family members of the Appellant responded that after the birth of the child from the prosecutrix they will take the prosecutrix with them to their house. On 12.10.1998, child of the prosecutrix was delivered at the house of the *Mama* (uncle) of the Appellant at Rajnandgaon. Thereafter, the Appellant refused to marry the prosecutrix. On this, she lodged the FIR (Ex.P1). Regarding date of birth of the prosecutrix, a Kotwari Book (Ex.P6) was seized from Kotwar Nathuram (PW9) vide seizure memo (Ex.P7). Medical examination of the prosecutrix was done by late Dr. Jyoti Sadani (could not be examined due to her death) and her report is Ex.P5. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable

under Section 376 of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989. Charges were framed against him under Sections 506B, 376(1) (Two Counts) and 417 of the Indian Penal Code and Sections 3(1)(xii) and 3(2)(v) of the Act of 1989.

3. To rope in the accused/Appellant, the prosecution examined as many as 10 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 Appellant has been falsely implicated in the in case. There is no conclusive evidence on record to prove guilt of the Appellant. The prosecutrix became pregnant from any other person, not from the Appellant. She has falsely implicated the Appellant. It was further argued that both the prosecutrix (PW2) and Chandravati (PW1), mother of the prosecutrix have admitted that as was asked by the police officials to make a report, the prosecutrix lodged the FIR accordingly. Both these witnesses have admitted that the police officials had told them that if the report is lodged against a non-tribal person, they will get money from the Government and, therefore, they reported the matter against the Appellant. It was

further argued that even if it is accepted that the pregnancy of the prosecutrix was from the Appellant, the prosecutrix was a consenting party because she did not make any complaint nor did she lodge any report prior to the birth of her child. The age of the prosecutrix, on the date of alleged incident, was more than 16 years. Therefore, in these circumstances also, no offence 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 (PW2) has stated that her mother and mother of the Appellant had gone to Nagpur for treatment of the mother of the Appellant. She was sleeping in the house of the Appellant in the night. One night, he came to her and deliberately scared her and took her to the room of utensils and thereafter he committed rape with her. Due to fear, she did not disclose the incident to anyone. She has further stated that thereafter also, he committed sexual intercourse with her 2-3 times due to which she became pregnant. When she was carrying pregnancy of about 5-6 months, her parents took her to the doctor. Thereafter, a village meeting was called in which on being asked the Appellant refused to accept that the pregnancy of the prosecutrix was from him. She has further stated that thereafter she went to the house of *Mama* (uncle) of the Appellant at Rajnandgaon for delivery of the child.

After 2 months from the delivery of the child, she return to her village. Again a village meeting was called in which the AppelaInt refused to accept that the child delivered by her was of his own. Thereafter, she lodged the FIR (Ex.P1). In paragraph 4 of her cross-examination, she has admitted that there was an old acquaintance between her and the Appellant and the sexual intercourse had taken place with their mutual consent. She has further stated that the police officials had persuaded her that on a report being lodged against a non-tribal person, money will be given to her by the Government and on this persuading, she lodged the FIR against the Appellant. She has further stated that her family members had sent her to Rajnandgaon along with Suresh and Shivkumar (not along with the Appellant) for abortion, but delivery of the child took place at Rajnandgaon. She has further stated that she had got name of father of the child recorded as Chintu. In paragraph 3 of her cross-examination, she has categorically stated that the financial aid from the Government has been paid to her in part and she had given statement against the AppelaInt because rest of the financial aid is to be paid to her after the judgment.

9. Chandravati (PW1), mother of the prosecutrix has stated that when her daughter (the prosecutrix) has stated that when the prosecutrix was carrying a pregnancy of about 3-4 months she was taken to the doctor where on being asked the prosecutrix took the name of the Appellant as being responsible for making her pregnant. Thereafter, they called village meeting twice. In both the meetings, the Appellant refused about having any relationship with the prosecutrix. In paragraph 14, she has stated that the prosecutrix

had taken the name of the Appellant on being asked forcefully. In paragraph 20, she has categorically stated that the Appellant refused to marry the prosecutrix saying that he was not responsible for the pregnancy of the prosecutrix. In paragraph 21, she has also stated that as was persuaded and told by the police officials, the FIR (Ex.P1) was lodged and the statements were given to the police and as was persuaded and told by the police officials, she had given her statement in the Court.

10. Shatrughan (PW3), father of the prosecutrix, Rajendra Pal (PW4) and K.D. Singh (PW5) are residents of Village Bortalab where the prosecutrix was residing. All these three witnesses have stated that in the village meeting, the prosecutrix had taken the name of the Appellant responsible for making her pregnant, but the Appellant had refused about having any relationship with the prosecutrix.
11. The apparent age of the prosecutrix (PW2) recorded by the Trial Court on the date of her examination in Court is 17 years. The prosecutrix has not made any statement regarding her age. In paragraph 4, she has categorically stated that she was not aware of her date of birth. She has further stated that her grandmother resides in Village Pitepani, she took birth at Pitepani and she never resided at Village Jatkanhar.
12. Chandravati (PW1), mother of the prosecutrix and Shatrughan (PW3), father of the prosecutrix have not been able to state about the date or year of birth of the prosecutrix. In paragraph 7,

Chandravati has stated that birth of the prosecutrix had taken place in Village Bortalab. As per the Court statement of Kotwar Nathuram (PW9) and the entires of Kotwari Book, the date of birth of the prosecutrix is 2.4.1983 and her birth palce is Village Jatkanhar and the entires ere recorded by one Punit. As stated above, as per the prosecutrix, she had taken birth at Village Pitepani, but as per the statement of her mother, the prosecutrix took birth at Village Bortalab. Punit, who had made the relevant entries regarding the date and place of birth of the prosecutrix has not been examined by the prosecution. In these circumstances, the Kotwari entries made vide Ex.P4 are not acceptable.

13. On minute examination of the above evidence, it is clear that the FIR (Ex.P1) was lodged 2 months after taking birth of the child and after 1 year of the alleged incident. From the evidence on record, 2 village meetings had taken place, but in both the meetings the Appellant had refused about having any relationship with the prosecutrix. Though birth of the child of the prosecutrix took place in the house of Dhanesh (PW7), Mama (uncle) of the Appellant yet as per the statement of Dhanesh (PW7), the prosecutrix was taken to his house for delivery of the child by the elder brother of the Appellant and the brother of the prosecutrix. It has not been stated by Dhanesh (PW7) that the AppelaInt had taken the prosecutrix to his house for delivery of the child nor has he stated that the Appelalnt was having any relationship with the prosecutrix. From the admission of the prosecutrix (PW2) and her mother Chandravati (PW1), it is clear that the FIR (Ex.P1) against the Appellant was lodged because they had been persuaded by the police officials that if the report is lodged against a non-tribal

person, money will be given by the Government.

14. From the above, it is not proved beyond reasonable doubt that the pregnancy of the prosecutrix was from the AppellaInt. Even if for the sake of argument it is considered that the AppellaInt was responsible for the pregnancy of the prosecutrix, the evidence on record establishes that the prosecutrix was a consenting party. At the relevant time, it is not proved that the prosecutrix was below 16 years. In these circumstances, the offence under Section 376(1) of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989 are not proved beyond reasonable doubt.
15. Consequently, the appeal is allowed. The conviction and sentence imposed upon the Appellant is set aside. The Appellant is acquitted of the charges framed against him.
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