

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.900 of 2002**

1. Ratan Singh, S/o. Shamnath, aged 21 years, Labourer, R/o. Village Garenga, PS Bhanpuri, Distt. Bastar
2. Gobar alias Goverdhan, aged 21 years, S/o. Jhitroo, Labourer, R/o. Village Garenga, Patelpara, PS Bhanpuri, District Bastar.

---- Appellants**Versus**

- The State of Chhattisgarh Through Police Station Bhanpuri, Distt. Jagdalpur.

---- Respondent

For Appellants	: Shri Vinod Tekam, Advocate.
For respondent/State	: Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****27.01.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 01.7.2002 passed by Special Judge [under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989]/Additional Sessions Judge, Session Division Bastar at Jagdalpur in Sessions Trial No.400/2001 wherein the said Court convicted appellant Ratan Singh for commission of offence under Sections 366, 376(1), 506 Pt-II & 342 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.500/-, RI for seven years and to pay fine of Rs.700/-, RI for two years and to pay fine of Rs.300/- and RI for six months respectively with default stipulations and convicted appellant Gobar @ Goverdhan under Sections 366 and 506 Pt-II of the Indian Penal Code and

sentenced him to undergo RI for four years and to pay fine of Rs.500/-, RI for two years and to pay fine of Rs. 300/- respectively with default stipulations.

2. As per the prosecution case, on 17.02.2001 the prosecutrix was at her home with her father in the Village Garenga and at about 8.00 pm she went to kitchen garden to ease herself. At that time, appellant Gober @ Goverdhan was present there having one knife in his hand and threatened the prosecutrix that if she shout, he will kill her and dragged her to outside the house where appellant Ratan Singh was standing. Appellant Ratan Singh was also having a knife with him and caught hold the prosecutrix and threatened to kill her and thereafter he took her to the house of one Bomni Karit @ Kanakdei and committed rape with her. When the prosecutrix was not found in the house, her paternal uncle Sukhchand reported the matter at Police Outpost Karpawand and during the search she was found in the house of Kanakdei. On the basis of the report made by the prosecutrix, *dehati nalishi* (Ex-P/5) was registered. Her petticoat and undergarment were seized as per Ex-P/1. One knife was seized from appellant Ratan Singh and his undergarment was also seized. The prosecutrix and appellant Ratan Singh were sent for medical examination and seized articles and slides of vaginal swab of the prosecutrix prepared by Dr. (Smt.) A. Kacchap were sent for chemical examination where the report was found to be positive. After completion of investigation charge sheet was filed, the appellants

did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants submits as under:

(i) The prosecutrix is not wholly a liable witness and her statement suffers from material contradiction and discrepancies.

(ii) Statements of other witnesses are not natural and trustworthy and contrary to each other.

(iii) The prosecutrix was the consenting party, her age was above 18 years at the time of incident and also there was no mark of violence on her person.

4. On the other hand, learned counsel for the State submits that the finding of the trial Court is based on legal and admissible evidence and the same is not to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. In the present case, date of incident is 17.02.2001 and First Information Report was recorded on 20.02.2001 (Ex-P/4) in which both the appellants are named as culprits. As per the version of the prosecutrix, on 18.02.2001 when she left the house and gone outside to ease herself, accused/appellant Gober @ Goverdhan came there and took her outside the kitchen garden where accused/appellant Ratan Singh was standing. She further

deposed that appellant Ratan Singh dragged her into the house of one Bomni Karit @ Kanakdei where he committed rape in spite of her protest. This witness is subjected to incisive and searching cross-examination but nothing could be elicited in favour of the defence. Version of this witness is supported by the version of Dr. (Smt.) A. Kachhap (PW-11) and Dr. KS Paikra (PW-12). Again her version is supported by Neelam Chand (PW-1), Uttam Chand (PW-2), Raisingh (PW-4), Asst. Sub Inspector DS Gahlot (PW-5).

7. Looking to the FIR which is prompt and recorded against the appellants and looking to the direct evidence of the prosecutrix, supportive statements of other witnesses and medical evidence, the trial Court convicted both the appellants as mentioned above and in the opinion of this Court, the finding arrived at by the trial Court is based on the facts established and legal aspects of the case. Finding of the trial Court is not liable to be interfered with and the same is hereby affirmed.

8. Heard on sentence.

As per the report of Central Jail, Jagdalpur dated 06.11.2017, appellant Ratan Singh has suffered full term of jail sentences awarded to him. As per the judgment of the trial Court, appellant Gober @ Goverdhan remained in jail for one year three months and 13 days during trial. The judgment was pronounced on 01.7.2002 and this Court vide order dated 04.8.2003 granted bail to him and per the application dated 31.7.2006 filed by

appellant Goverdhan, he was not released on bail as he failed to pay surety and bond as ordered by this Court. It appears that he also suffered full term jail sentence imposed upon him. Accordingly, sentence part is also not liable to be interfered with.

9. Accordingly, the appeal fails and is dismissed accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE