

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.448 of 2010**

Punauram @ Punuram S/o. Chaitram, Caste Lohar aged about 36 years, Occupation Lohari Work, R/o. Village Negiguda, Nayapara, PS Nagarnar, Distt. Bastar CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through Police Station A.Ja.Ka. Jagdalpur, Distt. Bastar (CG)

---- Respondent

For the appellant : Ms. Rajkumari Yadav, Advocate on behalf of Shri Subhash Yadav, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****04.12.2018.**

1. This appeal is directed against the judgment dated 22.6.2010 passed by Sessions Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989') Bastar at Jagdalpur (CG) in Session Trial No.141/2009 wherein the said Court convicted the appellant for commission of offence under Sections 457, 376(1) of the Indian Penal Code and under Section 3(1)(xii) of the Act 1989 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of 500/-; RI for seven years and to pay fine of R.500/-; RI for two years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW-4. As per the prosecution case, on 03.9.2009 in the night the prosecutrix and her one year old child were alone in the house situated at village Negiguda. The appellant entered into the house in the night and committed sexual intercourse with her without her will and consent. As the prosecutrix is Bhatra by caste which belongs to Scheduled Tribe, charges under the Act 1989 was also framed. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that the date of incident was in the intervening night of 03-04.9.2009 but the report was lodged on 22.9.2009 and there is no explanation for the said delay, therefore, version of the prosecution is doubtful. Version of the prosecutrix and other witnesses are not reliable and conduct of the prosecutrix and her husband after the incident is unnatural therefore, the finding arrived at by the trial Court on the basis of their evidence is not sustainable. The trial Court has ignored the evidence which are favourable to the appellant. Therefore, the judgment of conviction is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. Prosecutrix (PW-4) deposed before the trial Court that on the date of incident about 3.00 am she was sleeping with her child

aged about one year, at that time the appellant entered into her room covering his face by cloth but she identified him as he was her neighbour. She further deposed that after removing her cloth, he committed sexual intercourse with her against her will and consent. She narrated the incident to her mother-in-law, brother-in-law (devar) who saw the appellant in her house. She further deposed that when her husband returned she informed the incident to him. She further deposed that due to fear of her husband, she left the house and the matter was reported later on. Version of the prosecutrix is supported by the version of Goverdhan (PW-7) who is the husband of the prosecutrix. When Jagannath (PW-6) reached on the spot after information the appellant fled away by crossing the kitchen garden. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence side.

6. From the evidence, presence of the appellant in the house of the prosecutrix is established. Looking to the conduct of the appellant it appears that he knew about the absence of the husband of the prosecutrix in the house and that shows his bad intention. If the prosecutrix would have been a consenting party she would not have cried for help and would not have informed the incident to her relatives. Conduct of the prosecutrix shows that she was not a consenting party. True it is that there was some minor contradictions in the statement of the witnesses but the same do not go to the root of the case and are insignificant

and therefore, minor contradictions have no adverse effect on the entire case of the prosecution.

7. The statement of the prosecutrix is quite natural, inspire confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence.

8. It is true that there is delay of 17 days in lodging the report in the Police Station. Prosecutrix is a married woman, she was fearful after the incident to her husband that is why she left the house, but when her husband reached to her and found the support of the family she decided to lodge the report. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the

Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. After reassessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated.

9. Delay has no adverse effect in the facts and circumstances of the case. The trial Court has evaluated the evidence elaborately and this Court has no reason to substitute a contrary finding. House trespass in order to commit offence punishable with imprisonment for life is an offence under Section 450 of IPC and rape is punishable under Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

10. So far as offence under Section 3(1)(xii) of the Act is concerns, which reads as under:

“3. Punishments for offences of atrocities. - (1)

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxxx

xxxx

xxxx

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;”

In the present case, the appellant was not in a position to dominate the will of the prosecutrix because there was no fiduciary relation between the prosecutrix and the appellant,

therefore, offence under Section 3(1)(xii) of the Act is not made out. Conviction of the appellant for the above said offence is not sustainable and the same is set aside. Accordingly, he is acquitted of the charges under Section 3(1)(xii) of the Act.

11. Heard on the point of sentence.

The trial Court awarded RI for seven years for the offence under Section 376(1) of the IPC which is minimum prescribed for the offence. Less than the minimum cannot be awarded, therefore, sentence part is not liable to be interfered with. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

12. Accordingly, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**