

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 686 of 2001**

Goutram Nai, S/o. Kamta Nai, Aged about 22 years, R/o. Village Kesla, Police Station Palari, District Raipur Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through: Police Station Palari, District Raipur, Chhattisgarh

----Respondent

For Appellant	:	Ms. Sunita Jain, Advocate (Amicus appointed by the Court)
For State	:	Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/03/2018**

1. There is no representation on behalf of the appellant when the matter is called on two occasions. The appeal is of the year 2004, as such the appeal itself is 14 years old. Considering seniority of the matter, this Court is compelled to request Ms. Sunita Jain, Advocate present in the Court to assist for disposal of the appeal.
2. The High Court Legal Services Authority, Bilaspur is directed to ensure issuance of necessary powers and other formalities required for her to represent the Legal Aid Department.
3. The matter was taken up after some times.
4. The present is an appeal challenging the judgment of conviction dated 11.05.2001, passed by the Special Judge (Atrocities), Raipur, Chhattisgarh, in Special Sessions Trial No. 40/2000. Vide the said judgment, the appellant has been found guilty of an offence under Section 376 of Indian Penal Code and for which he has been

sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.10,000/- with default stipulation.

5. The case of the prosecution is that on the date of incident i.e. on 01.07.2000, at around 5-6 p.m. in the evening, when the prosecutrix along with PW/2 Punibai had gone to the field to answer nature's call, the present appellant and one Mannulal is said to have reached the spot and the present appellant is said to have caught hold of the prosecutrix and is said to have raped her. Likewise the allegation also is that the person who had accompanied the present appellant namely Mannulal had caught hold of the PW/2 Punibai and is said to have dragged her to some distance and there he too has raped the PW/2. Subsequently, on an alarm being raised by the prosecutrix in the present case, the PW/3 the brother of the prosecutrix reached the spot along with PW/4 Manoj Kumar and they saw the appellant ravishing the prosecutrix. The PW/3 is said to have assaulted the present appellant with a 'Lathi' who thereafter he is said to have fled away from the scene. Later a report was lodged and a case was registered against the present appellant for the offence punishable under Section 376 of Indian Penal Code as also under Section 3(2)(V) of the Scheduled Caste Scheduled Tribe (Atrocities) Act.
6. The prosecution in all examined 11 witnesses and one witness was examined on behalf of defence. Subsequently, vide the impugned judgment the appellant was found guilty for the offence only under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for 7 years with fine of Rs.10,000/- with default stipulation leading to the filing of the present appeal.

7. The State counsel on the contrary submits that it is a case where the prosecution has in fact proved this case by leading cogent material before the trial Court both in respect of the incident as also in respect of the prosecutrix being a minor and as such there is no scope of any interference in the appeal and prayed for dismissal of the appeal.
8. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects from the record is that there is the statement of the prosecutrix which stands fully corroborated from three eyewitnesses those are PW/2 Punibai who was accompanying the prosecutrix on the date of incident and in addition PW/3 and PW/4 are the two persons who reached the spot on the prosecutrix raising an alarm. Thus the prosecution case in fact stands conclusively proved from the statement of three witnesses.
9. The case of the prosecution further gets strengthened from the fact that the prosecution being a minor was also established from the evidence of PW/5 the Kotwar Kashi Prasad, who was the Kotwar of village Kesla and who had produced before the Court the Kotwari Birth Register (exhibit D/3), where the date of birth of the prosecutrix was entered as 23.04.1984, which brings the age of the prosecutrix on the date of incident to be around 16 years. Thus it is apparently established that she was a minor on the date of incident.
10. There was no document or sufficient cross-examination of the said Kotwar to disbelieve the date of birth or to disbelieve the fact that the prosecutrix was not a minor. Further the fact that the prosecutrix

was a minor also stands established from Ossification test conducted by Dr. Sarla Jaiswal (PW/11).

11. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the prosecution in the instant case has been able to prove its case beyond all reasonable doubts so far as the offence to have been committed by the present appellant and the finding of the trial Court while convicting the appellant does not seem to be either perverse or contrary to evidence.
12. The appeal thus being devoid of merit deserves to be and is accordingly rejected.
13. The record shows that the appellant in the instant case has in due course of time completed the substantive sentence and has been released from jail on 06.02.2006. Since the appellant stands released from jail, no further step needs to be taken on the dismissal of the present appeal.

Sd/-
(P. Sam Koshy)
Judge