

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.484 of 2001

Ganesh, S/o Gokul Vantra, aged about 26 years, occupation Student, resident of Village Chapka, Police Station Bhanpuri, District Bastar, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through the District Magistrate, Bastar, Chhattisgarh

--- Respondent

and

Criminal Appeal No.491 of 2001

Basu, S/o Rainu Bhatra, aged about 25 years, R/o Village Chapka, Police Station Bhanpuri, District Bastar, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through Police Station Bhanpuri, District Bastar, Chhattisgarh

--- Respondent

For Respective Appellant	:	Shri R.N. Jha and Shri Varunendra Mishra, Advocates
For State/Respondent	:	Shri Rajkumar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

10.1.2018

1. Since the present appeals arise out of a common judgment, they are decided by this common judgment.
2. The appeals are preferred against the judgment dated 18.5.2001 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989')/Additional Sessions Judge, Jagdalpur in Sessions Trial No.493 of 2000 convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.3,000/- with default stipulation

3. Facts of the case, in brief, are that in the night of 2.10.2000 at about 12:30 a.m., the prosecutrix (PW3), aged about 21 years, an unmarried girl and her friends Sukari, Phoolobai, Tilobai, Budhobai, Rameshwari, Malti, Ramesh, Dhalu and Laxman were coming back to their village after watching a dance ceremony. It is alleged that both the Appellants caught the prosecutrix and her girl friends. The Appellants showed knife and asked the boy friends of the prosecutrix to leave the place and thereafter both the Appellants committed forcible sexual intercourse with the prosecutrix. First Information Report (Ex.P12) was lodged by the prosecutrix on 5.10.2000. The prosecutrix was medically examined by Dr. (Smt.) A. Kachh (PW1) on 6.10.2000. Her report is Ex.P1 in which she has stated that she did not see any type of staining on the wearing clothes of the prosecutrix. She did not see any mark of violence on any part of the body of the prosecutrix. She did not see any staining on the pubic hairs. She did not find any sign of discharge from the vagina of the prosecutrix. She did not find any injury on the genitals. She found that the hymen of the prosecutrix was intact and not lacerated. She found that only a little finger was admitting in the vagina of the prosecutrix and while insertion of the finger she complained of pain. It is opined by the doctor that there was no sign of complete sexual intercourse with the prosecutrix. As per the prosecution story, at the time of occurrence, the prosecutrix could not identify the culprits. Later on, her boy friends Ramesh, Dhalu and Laxman told her that Jogi, Ganesh (Appellant), Lachhu and their friends had caught her. During investigation, on 7.10.2000, the prosecutrix identified both the Appellants vide identification memo (Ex.P11). 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 Appellants under Sections 376(g) and 120B of the Indian Penal Code. Charges were framed against them under Section 376(2)(g) of the Indian Penal Code.

4. In support of its case, the prosecution examined as many as 9 witnesses. The Appellants were also examined under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Being aggrieved, the Appellants filed the aforementioned two appeals separately.
6. Learned Counsel appearing for the respective Appellants argued that the Appellants have been falsely implicated in the case. There is nothing on record to show that any such incident had taken place. It was further argued that in the Court statement, the prosecutrix has stated that during commission of sexual intercourse with her, first, one of the Appellants, while committing sexual intercourse, penetrated his penis about 50 times and thereafter the other Appellant penetrated his penis about 20 times. But, as per the medical report (Ex.P1) and the statement of Dr. A. Kachh (PW1), hymen of the prosecutrix was found intact during her medical examination and no injury on any part of the body of the prosecutrix was found. The doctor also opined that there was no sign of complete sexual intercourse with the prosecutrix. Therefore, the testimony of the prosecutrix is not

trustworthy and she has exaggerated her version before the Court. It was further argued that the FIR is not a named one. The prosecutrix has admitted that at the time of test identification parade, she identified and named the Appellants on being told by the police officers and her boy friends. Thus, the identification parade does not bear legal value. The whole case of the prosecution is doubtful. The alleged offence is not proved beyond doubt.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the record minutely.
9. Dr. (Smt.) A. Kachh (PW1), who examined the prosecutrix on 6.10.2000 and gave her report Ex.P1, has stated that at the time of examination of the prosecutrix, she did not see any type of staining on the wearing clothes of the prosecutrix. She did not see any mark of violence on any part of the body of the prosecutrix. She did not see any staining on the pubic hairs. She did not find any sign of discharge from the vagina of the prosecutrix. She did not find any injury on the genitals. She found that the hymen of the prosecutrix was intact and not lacerated. She found that only a little finger was admitting in the vagina of the prosecutrix and while insertion of the finger she complained of pain. It has been opined by her that there was no sign of complete sexual intercourse with the prosecutrix.
10. Dr. K.S. Paikara (PW2), who examined Appellant Basu, has given report (Ex.P3). He also examined Appellant Ganesh and gave

report (Ex.P5). In Ex.P3 and P5, he found that both the Appellants were capable of performing sexual intercourse. He also found that there was no injury on their private parts.

11. The prosecutrix (PW3), aged about 21 years, who was an unmarried girl at the time of alleged occurrence, has stated that in the fateful night, she was returning home after watching a dance ceremony along with her friends Sukari, Phoolobai, Tilobai, Budhobai, Rameshwari, Malti, Ramesh, Dhalu and Laxman. She has further stated that when they reached Kosa plot, the Appellants came there and caught her by showing knives. They took her towards a bush and both the Appellants committed forcible sexual intercourse with her there. She has further stated that later on police officials reached there and they caught her and the Appellants as well. She has further stated that later on she had reported the matter in the police and identified the Appellants in the police station. In cross-examination, she has admitted that due to the fateful time being a dark night, she could not identify any of the culprits at the time of occurrence. She has further admitted that she had told about the incident to her family members next day of the incident and reported the matter in the police after 3 days of the incident. In paragraph 13 of her cross-examination, she has stated that when the Appellants, after committing sexual intercourse, got-up, she also got-up and worn her clothes. At that time, the police officials also reached there. The police officials caught the Appellants and her simultaneously. In paragraph 12 of her cross-examination, she has stated that the Appellants had committed sexual intercourse with her one by one. At that time, one of the culprits, who first committed sexual intercourse with her, penetrated his penis 50 times while committing the sexual

intercourse. Thereafter, the other culprit, while committing the sexual intercourse with her, penetrated his penis 10-12 times. In paragraph 14, she has admitted that she did not want to report. But, the matter could be disclosed in the village and on being asked by her boy friends Dhaluram and Ramesh, she lodged the report in police. In paragraph 19, she has admitted that she had not identified any of the culprits at the time of incident. She identified the Appellants for the first time in the police station. She has categorically stated that she identified the Appellants when the Station House Officer told her about the persons present in the police station that they are the culprits. She has further categorically stated that if Dhalu and Ramesh did not tell her the names of the culprits in the police station, she could not identify them.

12. Ku. Malti (PW4) is the witness who was with the prosecutrix at the relevant point of time. She has deposed that when they were returning, many boys came to them and they caught elder girls of their group. She has further stated that she could not identify any of those boys.
13. Dhaluram (PW5) has stated that when they were returning, boys of Village Chapka, among whom Appellant Basu was also present, made the boys of their group flee from there by showing knives and took the girls of their group with them. He has further stated that they informed about the matter to the police. The police officials reached there. In the light of a torch, the police officials saw that Appellant Basu, one boy, namely, Astu and one girl, namely, Budho were present there with the prosecutrix. In paragraph 3 of his cross-examination, he has categorically stated

that Appellant Ganesh was not present there at that time.

- 14.** Laxman (PW6) has stated that 15-20 boys stopped them and they caught the girls. He fled from there. He has not identified any of those boys and has been declared hostile. Bhagchand (PW7) is the witness before whom petticoat of the prosecutrix was seized vide Ex.P8. Tularam (PW8) is the witness of identification memo (Ex.P11). He only admits his signature on Ex.P11. Investigating Officer Naresh Dubey (PW9) has stated that during investigation, he prepared an identification memo (Ex.P11). He has further stated that vide Ex.P11, the prosecutrix had identified the Appellants.
- 15.** A minute examination of the evidence available on record makes it evident that the FIR is unnamed and was lodged after 3 days of the incident. Though the prosecutrix has stated that she had told about the incident to her family members next day of the incident yet why did she cause delay of 3 days in lodging the FIR is not properly explained by her. As per the statements of the prosecutrix (PW3) and the so called eyewitness Dhaluram (PW5), at the time of incident itself, the police officials had reached the spot and the Appellants were caught by those police officials. Had it happened so, why was the FIR not lodged immediately has not been explained by the prosecution. It is also apparent that at the time of incident, it was a dark night. As per the statement of the prosecutrix, she did not identify the culprits at the time of incident. Though, later on, identification parade was conducted vide Ex.P11 yet the prosecutrix has stated that she had identified the Appellants only when the police officials and her boy friends Dhalu and Laxman told her the names of the Appellants in the police station

as their being the culprits of the incident. Thus, the identification parade does not bear any legal value. From the evidence on record, it is further clear that as per the statement of Dr. (Smt.) A. Kachh (PW1) and the medical examination report (Ex.P1), no injury was found on the private parts of the prosecutrix, but the prosecutrix has stated before the Court that one of the culprits who first committed sexual intercourse with her penetrated his penis 50 times and the other culprit thereafter while committing the sexual intercourse with her penetrated his penis 10-12 times. From the above, it is clear that the prosecutrix has exaggerated her version before the Court. From the evidence on record, it seems that no such incident took place or had any such incident taken place, it was the Appellants who committed the alleged offence is not proved beyond reasonable doubt.

16. Consequently, the appeals are allowed. The impugned judgment of conviction and sentence is set aside. Appellants Ganesh and Basu are acquitted of the charge framed against them.
17. It is reported that the Appellants are on bail. Their 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.
18. 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