

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 514 of 2001

- Vindhya Prasad Dubey @ Gappu Kumar Dubey, aged about 23 years, S/o Ganga Ram, R/o Village-Koilari, P.S. Jhilmili, Tehsil Surajpur, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh through the District Magistrate.

---- Respondent

For Appellant	:	Smt. Savita Tiwari with Smt. Smriti Shrivastava, Advocates.
For Respondent/State	:	Shri V. Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

08/02/2018

This appeal arises out of the judgment of conviction and order of sentence dated 21.4.2001 passed by the Special Judge {Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act}, Surguja, in Special S.T.No.17/2000 convicting the accused/appellant under Section 376(2)(g) of IPC and sentencing him to undergo RI for 10 years and to pay a fine of Rs.5000/- with default stipulation.

02. As per prosecution case, on 27.5.1999 unnumbered FIR (Ex.P/2) was lodged at Police Station-Jhilmili by PW-10 prosecutrix alleging therein that on 26.5.1999 at about 6 pm when she was going to attend the call of nature, on the way accused/appellant and absconded accused Nanhu Gond met her, lifted her, gagged her mouth and after

throwing her on the field, co-accused Nanhu and the appellant committed forcible sexual intercourse with her one by one. She states that while she was being subjected to rape by the present appellant, her brother reached there and after seeing him, the accused persons fled from the spot. Based on this FIR offence under Section 376 (2)(g) of IPC and Section 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act was registered against the appellant and accused Nanhu Gond. Later, the FIR was registered by Police Station – SC-ST, Ambikapur against both the accused persons under the aforesaid sections. The prosecutrix was medically examined vide Ex.P/6 by PW-11 Dr. Rajshree Singh who noticed scratch over right shoulder, tenderness above back bone, bruising on back little right to back bone; abrasion over 5th vertebra and no injury on lower abdomen or thigh region. She noticed no scratch or swelling on her private part; hymen was old ruptured, there was a fresh tear; one finger easily entered but when two fingers inserted she complained of pain. According to the doctor, no definite opinion about rape could be given but forceful intercourse was done; injury on back was due to rubbing on hard surface and that she was not habitual to intercourse. The doctor prepared two vaginal slides and sent it for chemical examination. During investigation petticoat and underwear of the prosecutrix were also sent to the doctor for examination and as per Ex.P/7, Dr. Rajshree Singh (PW-11) found that there were white spot blood mix stains on the underwear and petticoat. After investigation charge sheet was filed against the appellant showing accused Nanhu absconding. While framing charge, the trial Judge framed charges under Sections 366/34, 376(2)(g) of IPC and Section 3(2)(v) of

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellant of charges under Section 366/34 of IPC and Section 3(2)(v) of SC/ST Act, convicted and sentenced him as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that a very improbable story has been put forth by the prosecutrix. The medical report of the prosecutrix also does not support her version as no injury was found on her private parts. According to the prosecutrix when she was being subjected to rape by the appellant, her brother reached there and then the accused persons fled from the spot. Thus, it appears that if any such act was committed, then the prosecutrix was a consenting party to it and as the same was seen by her brother, a false story has been put forth by her implicating the appellant.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the prosecutrix has duly supported the prosecution case and her version finds due corroboration from the

medical evidence as well. While referring to Section 114A of the Evidence Act, it has been argued that when the prosecutrix has categorically stated in the Court that she had not consented to the sexual intercourse by the accused, it has to be presumed that such act was per force, without her consent. He submits that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-10 prosecutrix has stated that she knew the appellant and other accused. On the date of incident when she was returning from the field after attending the call of nature, the appellant and one Nanhu caught hold of her from behind and then first she was subjected to rape by the appellant and thereafter by Nanhu. During this period she was trying to escape from there but could not succeed. However, when her brother Shanu came there, the accused persons fled from the spot. She states that she is married, however, as her father had expired she came to her parental house and that her marriage was performed 2-3 months ago. She has proved the FIR (Ex.P/2) and states that her medical examination was done with her consent and her undergarments were seized by the police. In cross-examination, but for minor omissions as compared to the FIR and her diary statement, she remained firm and reiterated that it is the appellant and one Nanhu who committed forcible sexual intercourse with her.

09. PW-11 Dr. Rajshree Singh medically examined the prosecutrix

on 28.5.1999 vide Ex.P/6 and noticed scratch over right shoulder, tenderness above back bone, bruising on back little right to back bone; abrasion over 5th vertebra and no injury on lower abdomen or thigh region. She noticed no scratch or swelling on her private part; hymen was old ruptured, there was a fresh tear; one finger easily entered but when two fingers inserted she complained of pain. According to the doctor, no definite opinion about rape could be given but forceful intercourse was done; injury on back was due to rubbing on hard surface and that she was not habitual to intercourse. The doctor prepared two vaginal slides and sent it for chemical examination. This witness also examined the undergarments of the prosecutrix sent to her by the police and found that there were white spot blood mix stains on the underwear and petticoat vide Ex.P/7.

10. PW-1 Khaderan Ram is a witness of seizure of clothes of the prosecutrix (Ex.P/1). PW-2 R. Swaminathan assisted in the investigation. PW-3 Narendra Bahadur Singh recorded FIR and did initial part of investigation. PW-4 Motilal, PW-5 Heerachand & PW-6 Mansai have turned hostile. PW-7 Mahesh, cousin of the prosecutrix, reached the place of occurrence while the prosecutrix is being raped by the appellant, he saw the appellant committing rape and that after seeing him the accused persons fled from the spot. PW-8 Smt. Shantibai, mother of the prosecutrix, has stated that on the date of incident she was in the house and at that time, the prosecutrix had gone for easing herself. She states that she was informed by Mahesh and Mukesh that two persons are taking the prosecutrix forcibly, she asked her son Ramkumar to go there and accordingly he went there and came back after some time. He informed that there were three

persons, however, they fled from there and he could not identify them. When she (this witness) went to the spot, she found the prosecutrix lying in the field. Thereafter, she along with the prosecutrix went to Sarpanch Pappu who then called the accused persons, but they did not turn up and therefore, he advised them for lodging report at the police station. Thereafter, she along with the prosecutrix went to police station and the report was lodged by the prosecutrix. She states that the prosecutrix had informed her that it is the appellant and Nanhu who committed rape with her. PW-9 Sanu has turned hostile. PW-11 KR Kamre, investigating officer, has duly supported the prosecution case.

11. DW-1 Malikram has stated that there was land dispute between the appellant and the prosecutrix. DW-2 Mukesh Kumar Dubey has stated about enmity between the family of the appellant and that of the prosecutrix.

12. According to the prosecutrix, on 26.5.1999 at about 6 pm when she was returning to her village after attending call of nature, on the way she was caught by the accused/appellant and accused Nanhu Gond and then subjected to forcible sexual intercourse, first by the appellant and thereafter by Nanhu Gond. A prompt report was lodged with the police by her on the very next day wherein she has stated as to the manner in which the incident occurred. Her version is duly supported by the evidence of her cousin PW-7 Mahesh who saw the appellant over the prosecutrix in the field and committing forcible intercourse with her. PW-8 Shantibai, mother of the prosecutrix, has also supported the prosecution case and states that after coming to know about the incident when she went to the spot, she found the

prosecutrix lying in the field and that on being asked, the prosecutrix informed her about commission of rape with her by the appellant and accused Nanhu Gond. Though in the statements of PW-7 & PW-8, there are some contradictions, but considering the statement of the prosecutrix wherein she has consistently stated about the act of the appellant and the defence could not elicit anything from her in cross-examination to render her evidence untrustworthy or shaky, such contradictions cannot prevail over the evidence of the prosecutrix to discard the same as a whole.

13. This apart, medical evidence also lends support to the version of the prosecutrix. PW-11 Dr. Rajshree Singh on medical examination of the prosecutrix vide Ex.P/6 noticed scratch over right shoulder, tenderness above back bone, bruising on back little right to back bone; abrasion over 5th vertebra. Though according to the doctor, no definite opinion about rape could be given but she categorically stated about forcible intercourse with the prosecutrix and that injury on back was due to rubbing on hard surface. This witness also examined the undergarments of the prosecutrix sent to her by the police and found that there were white spot blood mix stains on the underwear and petticoat vide Ex.P/7. So far as absence of injury on private parts is concerned, it is of no consequence because the prosecutrix was a married lady, the doctor had noticed old rupture of hymen and a fresh tear on medical examination of the prosecutrix and also stated that she appears to have been subjected to forcible sexual intercourse.

14. As regards the argument that the sexual act, if any, committed was consensual one, the prosecutrix has categorically stated in the

Court that she was subjected to such an act against her will and without her consent, though she was trying to come out of the clutches of the accused persons, but she was overpowered and as such could not escape from there. Therefore, in view of the provisions of Section 114A of the Evidence Act, it has to be presumed that such act was per force, without the consent of the prosecutrix, in particular when there is no evidence adduced by the defence to rebut the said presumption. Even otherwise, the injuries found on her person also suggest that the said act was per force.

15. Thus, regard being had to the overall evidence, in particular of the prosecutrix and the medical evidence, this Court is of the considered opinion that the findings of guilt recorded by the trial Court holding the appellant guilty under Section 376(2)(g) of IPC are based on proper appreciation of the evidence on record and need no interference. Accordingly, the appeal being bereft of any substance is liable to be dismissed and is, dismissed as such. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)

Judge