

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 78 of 2013**

- Akturam @ Agaturam Sahu S/o Dular Singh Sahu, Aged About 33 Years, R/o Village Tamora, Police Station Utai, District Durg C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Utai, District Durg C.G., Chhattisgarh

---- Respondent

For Appellant : Mr. Goutam Khetrapal, Advocate.

For Respondent/State: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****28/11/2018**

1. This appeal has been preferred against judgment dated 22-01-2011 passed in Special S.T. No.16/2009 by the Special Judge [the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act)], Durg, C.G. convicting the appellant under Section 376(1) of the IPC and sentencing him with R.I. for 7 years along with fine Rs.1000/- with default stipulation.
2. The case of the prosecution, in brief, is this that, on 01-12-2008 at about 08:30 p.m. the appellant forcefully raped the prosecutrix without her consent and willingness regarding which the FIR (Ex.-P/20) was lodged. Because of the assault by this appellant, the prosecutrix succumbed to the injuries and died regarding which offence was added. After completion of the investigation charges sheet was filed.
3. The appellant was charged with offence under Section 376 and 302

of the IPC along with Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to which he denied and prayed for trial.

4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence brought against him by the prosecution, pleaded innocence and false implication. Two witnesses were examined in defence.
5. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned. However, he was acquitted of charges under Section 302 of the IPC and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
6. It is submitted by the counsel for the appellant that the appellant has been falsely implicated and he has been convicted without there being any reliable and trustworthy evidence of prosecution. Hence, the appellant is entitled for acquittal.
7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt. Therefore, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix has died, hence she could not be examined before the Court. Her husband Nawagaiya (PW-9) has stated that on

hearing cry of his wife, the prosecutrix, he went to the spot and saw his wife and the appellant. He also saw that the appellant was above the prosecutrix and the prosecutrix was wriggling and crying and on seeing this witness the appellant ran away from the spot. He has further stated that on asking the prosecutrix she informed that the appellant had raped her. In cross-examination his statement has not been shaken by the defence.

10. The Prosecutrix had lodged the FIR (Ex.-P/20), in which, she has stated that the appellant had raped her. Regarding which S.I. Awadesh Kumar Mishra (PW-12) has given statement that he recorded the FIR lodged by the prosecutrix. On this basis, the FIR (Ex.-P/21) was also recorded by him.
11. Doctor Smt. S. Sahu (PW-10) examined the prosecutrix and found various injuries on her body, although she has not given any opinion regarding commission of offence of rape.
12. After close scrutinizing of all the evidence present in the record of the trial Court, I am of this opinion that no case is made out for acquittal of the appellant in this case. Accordingly, the appeal is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
 Judge