

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 666 of 2014**

- Alitab Khan S/o Jabbar Khan aged about 20 Years R/o. Gatapara, P.S. Gatapara, Tah. Khiragar, Distt. Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Gatapara, Distt. Rajnandgaon C.G., Chhattisgarh

---- Respondent

For the Appellant : Mr. Rudranath Mukherjee, Advocate.

For the State/Respondent : Mr. A.K. Mishra, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****29/11/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 1.4.2014 passed by the Special Judge, Rajnandgaon, Chhattisgarh in Special Case No.02/2013 convicting the accused/appellant under Section 450 of Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 5 years with fine of Rs.200/-; & Section 376 of IPC & Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Atrocities) Act, 1989 RI for 10 years & RI for 10 years with fine of Rs.200/- -200/- plus default stipulations, respectively.

2. The prosecution case, in brief, is this that prosecutrix, aged about 23 years, is mentally retarded and deaf & dumb by birth. It is alleged that on 1.12.2012 some time at night the prosecutrix was sleeping in her room. On hearing cries of the prosecutrix, her father Bhuwan PW-5 went inside the room and saw the appellant committing rape with her. He and his wife (PW-4) caught hold of the appellant, who admitted before them that he was committing rape with the prosecutrix. FIR was lodged on 2.12.2012 and thereafter the prosecutrix was medically examined. Investigation was completed. As the prosecutrix was a member of Schedule Tribe community, therefore, the offence punishable under the Act of 1989 was also added.
3. Charges under Sections 450 & 376 of the IPC & Section 3 (2)(v) of the Act of 1989 was framed against the appellant which were denied by him and he sought trial. Statement of appellant under Section 313 of CrPC was recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No defence witness was examined. After completion of trial, the impugned judgment has been passed convicting and sentencing the appellant in the manner as described above.
4. It is submitted by counsel for appellant that the appellant has been falsely implicated in the case. Evidence available on record being unreliable and untrustworthy, is not sufficient to convict the appellant for the offence in question. Testimonies of the prosecution witnesses,

who have deposed against the appellant, cannot be believed as they are related and interested witnesses. Hence the appellant is entitled to be acquitted.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecution has been able to prove its case beyond reasonable doubt. Presence of an independent witness at the time and place of incident was not possible and natural. Statements of the father and mother of the prosecutrix are wholly reliable and the same had been rightly relied upon by the trial Court. In these circumstances, no case for acquittal is made out in favor of the appellant and this appeal is absolutely without any substance and therefore the same is liable to be dismissed.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?
8. Prosecutrix is a deaf & dumb and mentally retarded girl because of which she has not been examined before the trial Court.
9. Bhuwan PW-3, father of prosecutrix, has stated, that on the date and time of incident upon hearing the cries of his daughter, he went inside

her room and found the appellant indulged in committing rape on his daughter. The wife of this witness had also come there and thereafter both of them caught hold of the appellant, who admitted before them that he was committing rape with the prosecutrix. FIR ExP-1 was lodged by this witness. In cross-examination his statement remained unrebutted and all the adverse suggestions put to this witness in cross-examination had been categorically denied by him. Hence, there is nothing to show that statement of this witness in the cross-examination contradicts his statement in the examination-in-chief.

10. Ahilya Bai PW-4, mother of the prosecutrix, has made almost similar statement as has been made by Bhuwan PW-3, including the fact that the appellant admitted before them that he was committing rape with prosecutrix. Her statement remained unrebutted and there is nothing to show that her statement in the cross-examination contradicts her statement in the examination-in-chief .

11. Taran PW-1 and Moti Ram PW-6 are the witnesses who reached the spot later on and they have also stated that in their presence the appellant had confessed that he has committed the offence of rape with the prosecutrix. Statements of these witnesses remained unrebutted in cross-examination. Other witnesses of extra judicial confession Ramdayal PW-5 has not supported the prosecution case. Kumar Gond PW-7 and Pusau PW-8 has stated that they were informed about the incident by the parents of the prosecutrix. Dayaram PW-12 has also stated that about extra judicial confession made by the appellant in his presence. Although Dr. Leela Ramteke

PW-14 has opined in her report ExP-11 that the prosecutrix was habitual to sexual intercourse and no specific opinion regarding commission of rape was given by her, but this fact cannot be lost sight of that present is a case of eyewitness account coupled with extra judicial confession made by appellant before the witnesses who have duly supported the prosecution case.

12. After close scrutiny of evidence of all the ocular witnesses on the spot and the witnesses before whom the appellant has made extra judicial confession, I am of this opinion that there is no reason to disbelieve such evidence and the trial Court has not committed any error in arriving at a conclusion holding the appellant guilty for the offence with which he has been charged.

13. In the result, the appeal has not substance and the same is liable to be dismissed which is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha