

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 925 of 2010

Ramjee Mishra son of late Tejnarayan Mishra, aged 47 years, R/o Sarnatoli, Mishra Colony, Jashpur, P.S. and Tahsil Jashpurnagar, District Jashpur (CG) ---Appellant

Versus

State of Chattisgarh through S.H.O., Police Station Jashpurnagar, District Jashpur (CG) ---Respondent

For Applicant	:	Mr. Kayan Kalamkar, Advocate
For Respondents	:	Mr. Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

17/05/2019

FIR (Ex.P-3) lodged by the prosecutrix (PW-3) aged about 27 years at the relevant time discloses that on 03.04.2008 at about 9:30 AM when she alighted the bus at Jashpur bus stand, the accused/appellant met her and asked her to come to his house being called by his wife. About half an hour thereafter when she reached the house of the accused/appellant, it is he who opened the door and started misbehaving/eve-teasing her. FIR further discloses that when the prosecutrix made resistance to the act of the accused/appellant he silenced her on the point of knife. He is then alleged to have thrown her on the bed, undressed her and himself as well and committed forcible sexual intercourse with her against her will and without her consent. While trying to get out of his clutches, the bangles worn by her got broken and in the process she sustained scratches on her wrist and cheek. After medical examination of the prosecutrix, the *challan* was filed against the accused/applicant under Sections 376 IPC and 3(1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act followed by framing of charge.

2. Learned Court below however acquitted the accused/appellant of the charge under Section 3(1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act but convicted him under Section 376 (1) IPC

and sentenced to undergo RI for 7 years with fine of Rs.100/-. Hence this appeal.

3. Counsel for the accused/appellant submits that the accused/appellant is innocent and has falsely been roped in the case in hand. He submits that the evidence of the prosecutrix contains several contradictions and omissions and, therefore, it cannot be made a basis for convicting the accused/appellant. He further submits that even her brother examined as DW-7 has stood against her, which shows that she has cooked-up a false story against the accused/appellant.

4. State counsel however supports the judgment impugned and submits that the judgment impugned is based on proper assessment of the evidence of the witnesses and, therefore, no disturbance therewith is required. He submits that the prosecutrix has been consistent in painting her agony of sexual victimization at the hands of the accused/appellant, very consistently and, therefore, also there is no room to disbelieve her version.

5. Prosecutrix (PW-3) has stated that on the date of incident the accused/appellant called her to his house on the pretext of being called by his wife and as soon as she happened to be there, he pounced on her and subjected her to forcible sexual intercourse despite her stiff resistance. Her resistance is apparent from the fact that the bangles worn by her got smashed and caused scratches in her wrist and cheek. She has further clarified that the accused/appellant was also trying not to ensure her medical examination by deploying the goons in the hospital. According to her, even her parents and brother did not stand by her, but in the quest of justice she came forward and chose to lodge the report. She has further stated that even after she tried to attract the outsiders to her rescue by way of raising her voice, none had turned up. Her evidence further makes it clear that the threat to life put by goons deployed by the accused/appellant made her spend whole night in the hospital itself. Doctor Smt. Kumud Kerketta who medically examined the prosecutrix and gave her report Ex.P-5 has

clearly stated that she noticed abrasions on her right wrist and right cheek which are said to have been caused as a result of breaking of bangles. She has given a definite opinion regarding physical exploitation of the prosecutrix. The broken bangles of the prosecutrix were seized under Ex.P-9. This witness has reiterated in last portion of her deposition that the symptoms existing on the person of the prosecutrix lead to the conclusion of her being subjected to sexual exploitation. Investigating Officer (PW-5) has also supported the case of the prosecution.

6. Having thus assessed the evidence of the witnesses it is unequivocally clear that the accused/appellant knowing full well that on the date of incident there was none in his house, called her inside and in order to satisfy his lust he pounced upon her and committed sexual assault on her. The evidence of the prosecutrix receives full corroboration from the medical evidence also where the doctor conducting her medical examination has clearly stated about the rape being committed on her. Theory of false implication pressed into service by the counsel for the appellant does not convince the judicial conscience of this Court for the reason that no respectable woman would come out with such a mean stand which ultimately has to remain in her lot forever. Evidence thus clearly points at the guilt of the accused/appellant of playing with the privacy of the prosecutrix. No illegality or irregularity has struck the mind of this Court worth interference with the well reasoned findings recorded in the judgment impugned.

7. In aforesaid view of the matter, this Court does not see any reason to interfere with the judgment under challenge in this appeal, and being so it is hereby affirmed with dismissal of the appeal.

**Sd/-
(Vimla Singh Kapoor)**

Judge