

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 292 of 2009

Pannalal, S/o. Ranjit Ram Vishwakarma, aged about 26 years,
Tailor, R/o. Village Bilaro, P.S. Patna District Koriya, CG.

---- Appellant

Versus

State of Chhattisgarh through Police Station Patna, District Koriya
CG.

--- Respondent

For Appellant : Shri Aman Kesharwani, Advocate

For State/Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

15/05/2019

FIR (Ex. P-7) lodged by prosecutrix (PW-3) says that on 12.01.2008 the accused/appellant herein allured her to his house promising to marry her and committed forcible sexual intercourse with her. When she did not return home, her brother Pintu @ Praveen Kumar and one Dharampal (PW-4) started searching her and ultimately she was recovered from the house of the accused/appellant and thereafter she disclosed the incident of her captivity and forcible sexual intercourse by the accused/appellant. After medical examination of the prosecutrix and completion of other requisite formalities charge-sheet was filed against the accused/appellant under Sections 363, 366 and 376 IPC and 3 (1) (xii) and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the "Special Act"). The Court below also framed the charge against the accused/appellant under the same Sections.

2. Having gone through the evidence collected by the prosecution the accused/appellant has been acquitted by the Court

below of the charge under the Special Act, but has been convicted under Sections 363, 366 and 376 IPC and sentenced to undergo RI for two years, RI for three years and RI for seven years under each section respectively with fine, vide judgment impugned dated 07.03.2009 passed by the Sessions Judge /Special Judge in Special Sessions trial No. 05/2008.

3. Counsel for the accused/appellant submits that the accused/appellant had not exerted force while taking the prosecutrix (PW-3) to his house, rather she herself had accompanied him of her own sweet-will. He submits that the prosecution has utterly failed to prove its case beyond all reasonable doubt but the Court below has committed an error in convicting and sentencing the accused/appellant as described here-in-above. According to the counsel for the appellant, the evidence of the prosecutrix is shaky but even then the learned court below has ignored the same and erroneously convicted him under Sections 363, 366 and 376 IPC.

4. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no illegality or infirmity in the same.

5. Prosecutrix (PW-3) has clearly stated that prior to the incident also the accused/appellant was insisting of marrying her but she did not succumb to his say. However, on the date of incident when she was returning home after answering the call of nature the accused/appellant met her, allured of marrying her and took her to his house on the said pretext. She has further stated that after taking her to his house the accused/appellant committed forcible sexual

intercourse with her and also threatened her of keeping in his house for the whole night. According to her, when her brother and one Dharampal (PW-4) came to the house of the accused/appellant and knocked at the door, the accused/appellant followed by her came to open the door where she disclosed the entire incident to them. Father of the prosecutrix (PW-1) has also supported the case of the prosecution stating that after returning home along with her brother and PW-4 the prosecutrix was crying and on being asked about the reason thereof, she narrated the entire incident of being taken away and raped by the accused/appellant. Smt. Pramila (PW-2) - the step mother of the prosecutrix has also supported the case of the prosecution stating that the prosecutrix was recovered from the house of the accused/appellant and after returning home she disclosed the entire incident of being taken away by the accused/appellant to his house and subjected to forcible sexual intercourse. Dharampal (PW-4) who had gone to the house of the accused/appellant along with one Pintu in search of the prosecutrix has stated that after being recovered from the house of the accused/appellant the prosecutrix started weeping and on being asked, she informed him about the act of the accused/appellant of being raped by him. Dr. Swati Bansariya (PW-5) is the witness who medically examined the prosecutrix has stated that all the secondary sexual characteristics of the prosecutrix were fully developed; that her hymen was ruptured; two fingers easily entered her vagina and that she was habitual to sexual intercourse. She however, has not given any opinion regarding the recent sexual intercourse with the prosecutrix. For determination of age, the prosecutrix was referred to the radiologist also but unfortunately there is no such report on

record. Dr. Rameshwer Sharma (PW-14) who medically examined the accused/appellant and gave his report (Ex. P-17) has opined that he was fully capable of having sexual intercourse. Investigating Officer (PW-12) has also supported the case of the prosecution.

6. After hearing learned counsel for the parties and taking into consideration the evidence on record, it is apparent that on the date of incident the accused/appellant had allured the prosecutrix to his house where on the pretext of marriage he committed forcible sexual intercourse. The overall evidence also makes it clear that the accused/appellant had no intention of marrying the prosecutrix and it is for this reason he pounced on her to satisfy his lust which he did twice. The findings of the court below that on the date of incident the prosecutrix was above 16 and below 18 years of age appears to be fully justified while proceeding against the accused/appellant. The evidence of the prosecutrix (PW-3) is wholly consistent on the point that the accused/appellant had forcibly taken her to his house and committed sexual intercourse. Evidence of PW-4 who had gone to the house of the accused/appellant in search of the prosecutrix is also fully reliable where he has stated that immediately after coming out from the house of the appellant she had told her tale of ravishment by the accused/appellant. Though the appellant has taken the defence that previously there was a love affair with the prosecutrix, but she has outrightly denied this aspect of the matter. The father and the step mother of the prosecutrix have also fully supported the case of the prosecution stating that after returning home the prosecutrix had disclosed to them that after taking to his house the accused/appellant had committed forcible sexual intercourse with her. Though the medical evidence shows that the

prosecutrix was habitual to sexual intercourse, it does not stand by the accused/applicant in any manner what-so-ever for playing with her chastity on the pretext of marriage.

7. In view of the aforesaid factual analysis, this Court has no hesitation to say that the accused/appellant had removed the prosecutrix from her lawful guardianship and committed forcible sexual intercourse with her on the pretext of marriage. No illegality or infirmity in the well assessed findings recorded by the Court below holding the accused/ appellant guilty under Sections 363, 366 and 376 IPC is visible to this Court worth interference with the judgment impugned.

8. In aforesaid view of the matter, the appeal is held to be without any substance and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge