

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 20-6-2019****Pronounced on 25-6-2019****CRA No. 226 of 2003**

Ganesh Rawat, aged about 23 years, S/o Mohan Lal Rawat, R/o Village Kolpadar, Police Station Tumgaon, District Mahasamund (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Station Officer, Police Station Tumgaon, District Mahasamund (CG)

---- Respondent

For appellant	:	Ms. Shipra Biswas, Adv.
For State	:	Mr. Vinod Tekam, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, J**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 31-1-2003 passed by the Special Judge, Raipur constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereafter called as 'SC ST Act'), in Special Sessions No. 176/2001 whereby and whereunder he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
342, IPC	1 Year	-	-
323, IPC	1 Year	-	-
376 (1), IPC	7 Years	Rs. 1000/-	2 months RI
3 (1)(xii) of SC ST Act	1 Year	Rs.500/-	1 month RI

All the jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that prosecutrix was about 18 years old at the time of alleged incident. She was resident of village Kolpaddar. She was member of Scheduled Tribe. Appellant is neither member of Scheduled Caste nor Scheduled Tribe. On 19/09/2001 at about 12.30 p.m. she was going towards the house of her maternal uncle Munna. In front of house of appellant he took her in his house after pressing her mouth. He gagged handkerchief in her mouth. He

roped her hands. He beat her by leg, hands and fists. He committed forcible sexual intercourse with her. At about 4.00 p.m. he removed rope from her hands. She went in her house and narrated the incident to her family members. On very day she went to outpost Patewa at about 21.30 hours and intimated about incident. An FIR was registered there in zero number. Thereafter numbered FIR was registered in Police Station, Tumgaon. After completion of the investigation, a charge sheet was filed against him for the offences punishable under Sections 323, 342, 376, 506 of the Indian Penal Code (in brevity 'IPC') and under Section 3(1) (xii) of SC ST Act. The trial Court framed the charges against him under Sections 341, 342, 323 of the IPC and Section 3(1) (xii), 3(2)(v) of SC ST Act. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined 8 witnesses. He examined 2 witnesses in his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above. However, trial Court acquitted him from the charges punishable under Section 341 of IPC and 3(2)(v) of SC ST Act.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentences, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submits that the appellant has been falsely implicated. No offence has been committed by him with the prosecutrix. Trial Court has not properly appreciated the evidence available on record in proper perspective. She was the consenting party. Therefore, the impugned judgment of conviction and order of sentences may be set aside and he may be acquitted of the aforesaid charges.

5. On the other hand, the Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence the appeal may be dismissed.

6. As per the alleged MLC report Ex. P- 8, P.W. 7 Dr. R.K. Pardal had examined appellant and found that no external injury was present on his body. He was able to perform sexual intercourse.

7. There is no such evidence on record on strength of which it can be said that Ex. P-8 is not believable. Thus, this Court believes on Ex. P-8.

8. As per the alleged MLC report Ex.P- 22, P.W. 8 Dr. Alka Pardal

had examined prosecutrix and found following injuries on her body :-

- (i) swelling and contusion over lower lip,
- (ii) one round burn mark over right cheek,
- (iii) one round burn mark over left cheek,
- (iv) one contusion over right thigh.

9. P.W. 8 opined that physical and sexual assault were taken place with prosecutrix.

10. There is no such evidence on record on strength of which it can be said that Ex. P- 22 is not believable. Thus, this Court believes on Ex. P-22.

11. PW-1 prosecutrix says in para No. 2 & 3 of her statement given on oath that, she was going to the house of her maternal uncle. In front of the house of appellant he pressed her mouth and took in his house, he roped her hands, committed forcible sexual intercourse with her, beat her by leg and fists. Thereafter he removed rope from her hands.

12. PW-2 Ku. Falita Bai, who is the sister of prosecutrix in relation says in para No. 2, 3 & 4 of her statement given on oath that prosecutrix had told her that she was going to the house of her maternal uncle, on the way appellant pressed her mouth and took her in his house and beat her. She had seen injury on her lip and burn mark over her cheek. Her maternal aunt PW-3 Smt. Gajabai had told her that prosecutrix had told that appellant had committed wrong act with prosecutrix.

13. PW-3 Smt. Gajabai, who is the maternal aunt of the prosecutrix says in para No. 2 of her statement given on oath that she had seen an injury on her lip, she had told him that she was going to the house of her maternal uncle, on the way appellant took her in his house, roped her hands and committed forcible sexual intercourse with her.

14. D.W.-1 Gayaram says in para No. 1 of his statement given on oath that prosecutrix had jumped into a well. She had told that as marriage is not being performed with appellant, thus she jumped in a well. There was love affair between her and appellant.

15. D.W.-2 Nain Singh says in para No. 1 of his statement given on oath that he had seen that appellant and prosecutrix were present under a vehicle.

16. Hon'ble Supreme Court in the matter of **Munna -v- Sate of M.P.**

[(2014) 10 SCC 254] observed in para 11 as under :-

“11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused.”

17. Hon'ble Supreme Court in the matter of **Radhu Vs. State of M.P.** [(2007)12, SCC 57], laid down following judicial precedent :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape, sufficient to disbelieve the victim. However courts should , at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

18. Hon'ble Supreme Court in the matter of **Raju and others -v- State of MP** [(2009) 3 SCC(Cri) 751)], held that testimony of the prosecutrix is believable on a par with that of an injured witness, her testimony cannot always be presumed to be gospel truth. Possibility of exaggeration or embellishment or false implication where several persons are accused cannot be ruled out. Possibility of immoral past of prosecutrix based on evidence can be considered.

19. In the matter of **Mohd. Ali -v- State of UP** [2015 (7) SCC 272],

Hon'ble Supreme Court observed in para 30 as under :-

“30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.”

20. If no injury was found on body of appellant, it doesn't mean that prosecutrix was allegedly “consenting party”.

21. In the matter of **State of HP -v- Shree Kant Shekari** [2004 (8) SCC 153], the Hon'ble Supreme Court has dealt with the false implication, the relevant portion of para 22 reads as under :-

“22. In any event no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse”

22. There is no such evidence on record on strength of which it can be said that P.W.1 prosecutrix, P.W.2 Ku. Falita Bai, P.W. 3 Smt. Gajabai had given aforesaid statements only because allegedly there was quarrel occurred between maternal uncles of prosecutrix namely Jagdish, Bahur Singh and appellant on account of entering cattle in barn, knowingly that appellant had not committed any offence. Moreover, in the case in hand, the prosecutrix was a tender aged girl. Looking to the facts and circumstances of the case, there is no possibility that prosecutrix and her mother would stake the future of the prosecutrix to falsely implicate the appellant. Thus, looking to the these facts and judicial precedent laid down in **Shree Kant Shekari** (supra), this Court finds that there is no possibility of false implication of the appellant in the case in hand.

23. In the case in hand alleged FIR Ex. P-1 has been lodged promptly. In Ex. P-1 it has been mentioned that appellant had pressed the mouth of the prosecutrix and took her in his house, beat her, roped her hands, committed forcible sexual intercourse with her, at about 4 – 5 p.m. he had removed roped from her hands.

24. Looking to the above mentioned facts and circumstances, this Court

finds that Ex. P-1 is normal, natural and simple and is not concocted, not fabricated to falsely implicate the appellant.

24. No such omissions and contradictions have been dealt during the cross examination of P.W.1 prosecutrix, P.W. 2 Ku. Falita Bai, P.W.3 Smt. Gajabai, which may adversely affect the aforesaid testimony of aforesaid witnesses.

25. There is no such evidence on record on strength of which it can be said that P.W. 2 Ku. Falita Bai, P.W.3 Smt. Gajabai had given aforesaid statements because they were interested with prosecutrix family for such reasons.

27. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W.1 prosecutrix, P.W.2 Ku. Falita Bai, P.W. 3 Smt. Gajabai are not simple, not natural, not normal.

28. Looking to the above mentioned facts and circumstances of the case, this Court finds that from the aforesaid statements of D.W.1 Gayaram, D.W.2 Nainsingh, statement made in para No. 7 by P.W. 3 Smt. Gajabai that, this is true that one day the mother and father of appellant had come in her house and told that prosecutrix used to come and go in their house, thus they be married her, from the photos Ex. D.1, D-2 and D-3, it cannot be said that prosecutrix was allegedly 'consenting party'.

29. This has been earlier decided that prosecutrix was not a free consenting party. After the appreciation of the evidence discussed herebefore, this Court believes on aforesaid statements of P.W.1 prosecutrix, P.W.2 Ku. Falita Bai para No. 1 of P.W. 3 Smt. Gajabai.

31. On the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Munna** (supra), **Radhu** (supra), **Raju and others** (supra) and **Mohd. Ali** (supra), this Court finds that this Court can act upon aforesaid sole testimony of P.W.1 Prosecutrix.

32. In the case in hand, the aforesaid statement of prosecutrix gets corroboration from the aforesaid statements of P.W.2 Ku. Falita Bai, para No. 2 of P.W. 3 Smt. Gajabai, Ex. P-1, Ex. P-8, Ex. P-22.

33. Trial Court had acquitted appellant from the charge punishable under Section 3(2)(v) of SC ST Act on the ground that appellant had not committed rape with prosecutrix only on the ground that she was

member of Scheduled Tribe. Thus he cannot be convicted for the offence punishable under Section 3(1)(xii) of SC ST Act.

34. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt the offences punishable under Section 342, 323, 376 (1) of the IPC but failed to prove beyond reasonable doubt the offence punishable under Section 3 (1)(xii) of SC ST Act. Thus, this Court affirms the judgment of conviction as it relates with the offences punishable under Section 342, 323, 376(1) of IPC passed by the trial Court.

35. As regards sentences awarded to the appellant for offences punishable under Sections 342, 323, 376(1) of the IPC, considering the facts and circumstances of the case, they appear to be just and proper, and do not call for any interference. Hence, this Court also affirms the sentences regarding Sections 342, 323, 376(1) of the IPC.

36. The conviction and sentence of the appellant for Section 3(1)(xii) of SC ST Act are hereby set-aside. The fine amount if deposited by the appellant under this Section, be refunded to him after the expiration of prescribed period for further legal remedy available to him.

37. The appeal is partly allowed.

38. The appellant is reported to be on bail. His bail and bonds are canceled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of sentences, if any. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentences, if any.

Sd/-
(Sharad Kumar Gupta)
Judge