

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 20-6-2019****Pronounced on 24-6-2019****CRA No. 898 of 2001**

Vinod Kumar, son of Viswanath, aged 28 years, occupation Agriculturist
R/o. Village Kenderi PS Chando, Distt. Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh (CG)

---- Respondent

For Appellant	:	Ms. C.K. Navrang, Adv.
For State	:	Mr. Vikram Dixit, Govt. Adv.

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 7-9-2001 passed by the Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity the SCST Act) in Misc. Criminal Case No. 1/2001 whereby and whereunder, he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
376, IPC	5 Years	Rs. 500/-	3 months RI

2. In brief, the prosecution story is that on 30-11-2000 prosecutrix was aged about 12 years old. She was resident of village Kandri. She is a member of Scheduled Caste. The applicant is neither a member of Scheduled Caste nor Scheduled Tribe. On Tuesday of Jeth month of year 2000, when prosecutrix was alone in her house, applicant entered in her house, closed the door from inside, gagged her mouth by a handkerchief and committed forcible sexual intercourse with her. Thereafter, he committed repeatedly sexual intercourse with her. When she became pregnant he threatened her that if she discloses about the incident to anyone, she will face dire consequences. When her belly grown, then she disclosed the incident to her mother. On 30-11-2000 she lodged an FIR in police station Chando. After completion of the

investigation, a charge sheet was filed against him for the offences punishable under Section 376 (2)(f) and Section 3(1)(xii) of the SCST Act. The trial Court framed the charges against him under Section 376 of the IPC and Section 3(1)(xii) of SCST Act. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined 9 witnesses in all. He did not examine any witness in his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above. However, he was acquitted of the charge punishable under Section 3(1)(xii) of the SCST Act.

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

4. Counsel for the appellant submits that the appellant has been falsely implicated. No rape 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 sentence may be set aside and he may be acquitted of the aforesaid charge.

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-7, P.W. 8 Dr. Smt. Kiran Bhajgavli had examined prosecutrix and found that no any external injury was present on her body. No injury was present on her private part. She was pregnant by 28 weeks.

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

8. Now we will consider as to what was the age of the prosecutrix on Tuesday in the month of Jeth of year, 2000.

9. In the matter of **Alamelu and another Vs. State represented by Inspector of Police**, [(2011) 2 SCC 385], the Supreme Court has held as under:-

“9. That the transfer certificate which is issued by a government school and is duly signed by Headmaster would be admissible in

evidence u/s 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentially value to prove the age of the prosecutrix in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentially value unless the person, who made the entry or who gave the date of birth is examined.”

10. As per the alleged certificate Ex. P-4 the date of birth of the prosecutrix is 04.03.1990. In the photocopy of Dakhil Kharij register Ex. P-5C the date of birth of the prosecutrix is mentioned as 04.03.1990.

11. P.W.-6 Salim Akhtar who is the teacher in the Alternative School, Jawakhar says in para 7 during his cross-examination that this is wrong that he had made entry in Ex.P-5C arbitrarily, he had made the relevant entry after the alleged commission of incident.

12. There is no such evidence on record on strength of which it can be said that aforesaid statement of P.W.-6 Salim Akhtar is not simple, not natural, not normal. Moreover, P.W.-8 Doctor Smt. Kiran Bhajagwali says in para 2 that prosecutrix was about 14 years of age. Moreover, during the recording of the statements of the prosecutrix the Court estimated the age of prosecutrix is 12 years. In these circumstances and looking to the above mentioned judicial precedent laid down the Hon'ble Supreme Court in the matter of **Alamelu (supra)**. This Court believes on Ex. P-4 and Ex.P-5C.

13. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove that on Tuesday in the month of Jeth of year, 2000 prosecutrix was below 16 years of age.

14. Now we will consider that whether as to alleged rape was committed by appellant with the prosecutrix.

15. PW-1 prosecutrix says in para 2 of her statement given on oath that appellant entered in her house and committed forcible sexual intercourse with her.

16. PW-2 Pati Bai who is the mother of the prosecutrix says in para 2 of her statement given on oath that prosecutrix had told her that appellant had committed wrong act with her in the month of Jeth and, thereafter, he repeatedly committed wrong act with her.

17. PW-3 Chikhru and PW-4 Hafij Khan say in para 2 of their

statement given on oath that when they asked prosecutrix as to whose pregnancy she is carrying then she told that she is impregnated by appellant.

18. In the matter of **Munna -v- State of M.P.** [(2014) 10 SCC 254] para 11 the Hon'ble Supreme Court has observed 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.”

19. Hon'ble Supreme Court in the matter of **Radhu Vs. State of M.P.** [(2007)12, SCC 57] has 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.”

20. 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.

21. 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.”

22. In the matter of **State of H.P. Vs. 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”

23. In the case in hand, the prosecutrix is 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 judicial precedent in the matter of **Shree Kant Shekari** (supra), this Court finds that there is no possibility of false implication of the appellant in the case in hand.

24. There is no such omissions and contradictions have been dealt during the cross-examination of aforesaid witnesses which can adversely affect the aforesaid testimony of the aforesaid witnesses.

25. There is no such material available on record on the strength of which it can be said that P.W.-3 Chikhru and P.W.-4 Hafij Khan had given aforesaid statements only because they are interested with the prosecutrix's family for such reason or prejudiced with appellant on account of such reasons.

26. In the matter of **Shree Kant Shekari** (supra), the Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay

in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

27. The relevant portion of para-13 of **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some observation is quoted below :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

28. In the case in hand alleged FIR Ex.P-1 is delayed. P.W.-1 prosecutrix says in para 3 that appellant had threatened her. This reason has also been mentioned in Ex.P-1.

29. There is no such evidence on record on strength of which it can be said that the aforesaid explanation is not natural, not simple, not normal. Moreover prosecutrix was a tender aged girl. In these circumstances, this Court finds that delay in lodging Ex.P-1 is satisfactory and convincing. Thus, looking to the above judicial precedents laid down by Hon'ble Supreme Court in the matter of **Shree**

Kant Shekari (supra), **Puran Chand** (supra) and **Munna** (supra), this Court finds that delay in lodging Ex.P-1 is not fatal to the prosecution case.

30. There is no such evidence on record on the strength of which it can be said that Ex.P-1 is fabricated or concocted to falsely implicate the appellant in alleged offence.

31. In the matter of **Harpal singh -v- State of Himanchal Pradesh** [(1981) 1 SCC 560], which was a matter of sexual intercourse with a girl below 16 years of age, Hon'ble Supreme Court held that consent of girl below 16 years of age for sexual intercourse is of no consequence. The fact that no injury was detected on the private part of the girl and that she was found to have been used to sexual intercourse is immaterial.

32. In **Shree Kant Shekari** (supra), Hon'ble Supreme Court dealt with the matter of sexual intercourse with minor girl, the relevant portion of para 14 is extracted herebelow :-

“14.Therefore, on the date of occurrence and even when the FIR was lodged on 20-11-1993 she was about 14 years of age. Therefore, the question of consent was really of no consequence”

33. This has been earlier decided that on Tuesday in the month of Jeth of year, 2000 prosecutrix was below 16 years of age. Thus, looking to the above mentioned judicial precedent laid down by the Hon'ble Supreme Court in the matter of **Harpal Singh** (supra), **Shree Kant Shekari** (supra), this Court finds that the question of consent of the prosecutrix does not arise in the case.

34. Looking to the above mentioned facts and circumstances of the case, this Court finds that the aforesaid statements of P.W.-1 prosecutrix, P.W.-2 Pati Bai, P.W.-3 Chikhru, P.W.-4 Hafij Khan are simple, natural and normal. Thus on the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Munna** (supra), **Radhu** (supra), **Raju** (supra) and **Md. Ali** (supra), this Court finds that this Court can act upon the sole testimony of the prosecutrix.

35. In the case in hand aforesaid statement of prosecutrix gets corroborations from the aforesaid statements of P.W.-2 Smt. Pati Bai, PW3 Chikhru, PW4 Hafij Khan, Ex.P-1 and Ex. P-7.

36. After appreciation of the evidence discussed herebefore this

Court believes on the aforesaid statements of P.W.-1 prosecutrix, P.W.-2 Smt. Pati Bai, P.W.-3 Chikhru and P.W.-4 Hafij Khan.

37. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond the reasonable doubt that the appellant had committed rape with prosecutrix which is punishable under Section 376(1) of the IPC. This Court affirms the judgment of conviction and order of sentence passed by the trial Court.

38. The appeal being devoid of merit deserves to be and is hereby dismissed.

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

Sd/-
(Sharad Kumar Gupta)
Judge