

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-1-2019****Pronounced on 14-1-2019****CRIMINAL APPE 838/2008**

(Arising out of judgment of conviction and order of sentence dated 6-8-2008 passed by Special Sessions Judge, [constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989], Sessions Division Sarguja at Ambikapur in Spl. Session Case No. 13/2008)

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Sitaram Bargah, S/o. Govind Prasad Bargah, aged about 30 years,
R/o. Village Vishnupur, P.S. Gandhi Nagar, Distt. Sarguja (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through S.H.O. P.S. A.J.K. Police Station,
Ambikapur, Distt. Sarguja (CG)

---Respondent

For appellant	: Shri Aman Kesharwani, Adv.
For respondent/State	: Shri I. Lakra, Dy. Govt. Adv.

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

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 6-8-2008 passed by Special Sessions Judge, [constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989] (hereinafter called as 'SCST Act'), Sessions Division Sarguja at Ambikapur in Spl. Sessions Case No. 13/2008 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
376(1), IPC	7 Years	200/-	1 month
450, IPC	3 Years	200/-	1 month

Both jail sentences are directed to run concurrently.

2. In brief the prosecution story is that at the time of the alleged incident prosecutrix was 32 years old and resident of village Vishunpur, Gors. On 4-10-2007, in the night she was lying on the bed in her house. She was waiting for her husband. Light was switch on, at about 11 pm. appellant opened the door and entered in her house, pressed her mouth and committed forcible sexual intercourse with her giving threats to kill her. She narrated the incident to her husband on next day of morning when she came to his house. On 6-10-2007 she lodged the report in police station Ajak, Ambikapur. After completion of investigation, a charge sheet was filed against the appellant. The trial Court framed the charges against the appellant under Sections 450, 506 part II, of the Indian Penal Code (in brevity 'IPC'), Section 3 (2)(v) of the SCST Act, in alternate, Section 376(1), of the IPC. After completion of trial, trial Court convicted and sentenced the appellant as aforesaid, however acquitted him of charges under Section 3(2)(v) of the SCST Act and 506 part II, of the IPC.
3. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
4. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction

and sentences of the appellant do not call for any interference by this Court.

5. As per the alleged MLC report Ex. P-4, P.W. 3 Dr. A.K. Bansal had examined the appellant and opined that he was able to perform the sexual intercourse.
6. There is no such evidence on record on the strength of which it can be said that Ex. P-4 is not believable, thus this Court believes on Ex. P-4.
7. P.W. 6 Prosecutrix says in para 2, 3 and 4 that she was sleeping on cot. Light was switch on. Appellant opened the door and entered in her house, he pressed her mouth, committed sexual intercourse with her, he had also given threats to kill her.
8. P.W. 5 Ramlal Dubey says in para 2 of his statement given on oath that his wife prosecutrix had told him that appellant had committed rape with her.
9. In alleged FIR Ex. P-10 it has been mentioned that prosecutrix was lying on cot in her house in the night, light was switch on, appellant opened the door and entered in her house, committed forcible sexual intercourse with her giving threats to kill her.
10. There is no such evidence on record on the strength of which it can be said that Ex. P-10 is concocted or is an afterthought with the intention to falsely implicate the appellant.
11. There is no such evidence on record on the strength of which it can be said that aforesaid statement of the P.W. 6 prosecutrix and P.W. 5 Ramlal Dubey are not simple, not natural and nor normal.
12. Looking to the aforesaid facts and circumstances, this Court

finds that prosecution has succeeded to prove the charges punishable under Sections 376(1), 450, IPC, against the appellant.

13. Thus, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed. The appeal is accordingly dismissed. The conviction and sentences of the appellant under Section 376(1) and 450, IPC are hereby affirmed.
14. As per the report received from the office of Jail Superintendent, Central Jail, Ambikapur- Sarguja dated 11-12-2018, the appellant has been released on 18-4-2018 after getting the benefit of remission extended to him. He has also deposited fine amount in jail. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge