

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.76 of 2014

Sudhaker Ghotekar, S/o Harichand Ghotekar, aged about 25 years, R/o New Railway Colony, Dongergarh, P.S. and Tahsil Dongergarh, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through S.H.O. Dongergarh, District Rajnandgaon, Chhattisgarh

--- Respondent

For Appellant	:	Shri B.P. Singh, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

23.9.2019

1. The instant appeal has been preferred against the judgment dated 15.1.2014 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Rajnandgaon in Special Case No.8 of 2013, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 3(1)(xii) of the Act	Rigorous Imprisonment for 3 years and fine of Rs.5,000/- with default stipulation

2. As per the prosecution story, the Appellant was in love relation with the prosecutrix (PW1) and he had committed sexual intercourse with her on many occasions and had given her false pretext that he

will perform marriage with her and on that basis he had been regularly committing sexual intercourse with her. When the prosecutrix asked him to marry her, he refused her making a promise that he will marry her after ring ceremony (engagement) of his sister. Thereafter also, he refused to perform marriage with her. It is alleged that the Appellant denied to marry her saying that she belongs to a lower caste. Thereafter, First Information Report (Ex.P1) was lodged by the prosecutrix. After investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Section 376(1) of the Indian Penal Code and Section 3(1)(xii) of the Act.

3. In support of its case, the prosecution examined as many as 9 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After trial, the Trial Court acquitted the Appellant of the charge framed against him under Section 376(1) of the Indian Penal Code, but convicted and sentenced him as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Shri B.P. Singh, Learned Counsel appearing for the Appellant submits that without there being any evidence on record against the Appellant, he has been wrongly convicted by the Trial Court. It is further submitted that from the material available on record, it is well established that at the time of alleged incident, the prosecutrix was aged about 26 years and she was working as a Rojgar Sahayak. At that time, the Appellant was also working in the

Railway Department. Both had love relation with each other for a long time and both were committing sexual intercourse regularly. Therefore, it cannot be said that the Appellant was in a position to dominate the will of the prosecutrix who belongs to a Scheduled Tribe and used that position to exploit her sexually to which she would not have otherwise agreed. Therefore, no offence is made out against the Appellant.

6. Smt. Smita Ghai, Learned Panel Lawyer appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that at the time of incident, the prosecutrix (PW1) was working as a Rojgar Sahayak in the office of Gram Panchayat, Bhainsara and the Appellant was also working in the Railway Department. There is also no dispute that both were in love relation for about 2½ years prior to the alleged incident and they were also committing sexual intercourse. There is also no dispute that the prosecutrix is a member of Scheduled Tribe (Gond) and the Appellant is Kurmi by caste.
9. In her Court statement, the prosecutrix (PW1) has admitted the fact that she and the Appellant were already acquainted with each other and they were also aware of their castes. She has also admitted the fact that she is graduate and was working as a Rojgar Sahayak. In paragraph 9, she has deposed that when she

reported the matter in the police station, the Appellant stated therein that since she belongs to a lower caste, he cannot perform marriage with her. Apart from this, no specific allegation has been made by the prosecutrix against the Appellant.

- 10.** For making out an offence punishable under Section 3(1)(xii) of the Act, it must be proved that the accused was in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and used that position to exploit her sexually to which she would not have otherwise agreed. In the instant case, it does not appear that the Appellant was in such a dominating position. From the evidence on record, it is established that both the prosecutrix and the Appellant were educated persons, both were aware of their castes and both were working persons too. In this case, the conduct and evidence of the prosecutrix show that she had consented for commission of sexual intercourse and the sexual intercourse took place between them many times on account of the fact that both had to marry with each other. If the prosecutrix had given consent to the Appellant for sexual intercourse many times for a very long period on account of the fact that they had to marry with each other and she happens to be a member of Scheduled Tribe by chance, offence under Section 3(1)(xii) of the Act is not made out because it was the prosecutrix herself who consented and agreed to the act done with her and that too for a very long period. Considering the entire material available on record, the conviction imposed upon the Appellant under Section 3(1)(xii) of the Act is not sustainable.

- 11.** Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.

- 12.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge