

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 08-08-2019

Delivered on 09-08-2019

**CRMP No. 1245 of 2018**

In Reference Case Of Mohan Lal Deshmukh @ Konda S/o Manglu Ram Deshmukh, Caste Kurmi, Aged About 19 Years, R/o Village Awaspara Papra, Police Station Suregaon, Tahsil Doundilohara, District Balod, Chhattisgarh

---- **Petitioner****Versus**

State Of Chhattisgarh Through Station House Officer Suregaon, District Balod, Chhattisgarh

---- **Respondent**


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For State  
Amicus curiae

Shri H.S. Ahluwalia, Dy. Adv. General.  
Shri Sarfaraj Khan, Adv.

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**Hon'ble Shri Justice Sharad Kumar Gupta****CAV Order**

1. This reference has been made by Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act'), Balod in Special Case No. 37 of 2017 judgment dated 22-6-2018 whereby and whereunder he convicted the accused Mohanlal Deshmukh alias Konda for the offence punishable under Section 376(1) of the Indian Penal Code (in brevity 'IPC') giving the finding that accused is unable to understand the proceedings of the Court as he is deaf and dumb, under the provisions of Section 318 of the Criminal Procedure Code (in brevity Cr.P.C.).

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was about 21 years old and resident of village Papra. She is a member of scheduled tribe. On 31-1-2017 at about 1.30 pm prosecutrix was cutting wood. Accused who is deaf and dumb reached there, caught hold her, took her by dragging and committed

sexual intercourse with her removing her legging and underwear on the field. She shouted but nobody reached there. She returned back and narrated the incident to Jaichand Yadav, Sukwarobai Nishad, Hansmani Tekam, her mother Ramtibai, her father Ishwari Taram, president of Women Commando Jageshwari Deshmukh, Devki Giri Goswami. On the very day, she gave an application to SHO Police Station Suregaon where on the same day at about 22.30 hour an FIR was lodged against him. A charge sheet was filed against him. After conclusion of the trial, trial Court convicted him as aforesaid however, trial Court acquitted him of the offence punishable under Section 3 (2)(v) of the SCST Act.

3. The Government Advocate and the Amicus Curie submitted that accused is unable to understand the proceedings of the Court as he is deaf and dumb, the trial conducted by the trial Court is fair, sufficient evidence is available on record to hold the guilt of accused for the offence punishable under Section 376(1) IPC. He was sufficiently intelligent to understand the criminal character of the act committed by him and its consequences. He had committed the act with dishonest intention.

4. It would be manifest to mention the provisions of Section 318 of the Cr.P.C. which reads as under:-

**“318. Procedure where accused does not understand proceedings:-** If the accused, though not of unsound mind, cannot be made to understand the proceedings, the court may proceed with the inquiry or trial; and, in the case of Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.”

5. In the case of **Emperor -v- A Deaf and Dumb** (AIR 1917 Bombay 288), a Division Bench of the Bombay High Court has made the following observations -

“Though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment.”

6. In the matter of **in reference : Peethambaran**, (AIR 1959 Kerala 165) it was made clear that the provisions of Section 341 (as it then was) can be invoked only when the accused is unable to follow the proceedings. The Court making the reference should record a finding as to whether the accused, though a deaf, mute had sufficient intelligence to understand the criminal character of the act committed by him. To sustain conviction, against such a person, the Court trying him should not only be satisfied that he is the same but also that he is of sufficient intelligence as to know the criminal nature of the act he commits.

7. In the case of **State -v- Radhamal Sangatmal Sindhi** (AIR 1960 Bombay 526) a Division Bench of the Bombay High Court has made following observations :

“.....The fact, however, that an accused is deaf and dumb and is unable to follow and understand the nature of the proceedings against him would not exempt him from punishment if it be shown and found that he had sufficient intelligence to understand the criminal character of his act.”

8. In the case of **State -v- Kampu Shetty** (AIR 1965 Mysore 95) a Division Bench of Mysore High Court had made the following observation -

“Where in a trial it is averred that a particular accused though not insane, is deaf and dumb and the public prosecutor does not challenge its veracity and his attitude is in no way helpful to the Court for purpose of ascertaining as to whether the accused cannot be made to understand the proceeding of the Court, that does not in any way lessen the responsibility of the magistrate to make every reasonable attempt to find out whether it is possible to make the accused understand the proceedings of the Court, the Magistrate's conclusion that the accused is deaf and dumb by merely observing the demeanor and conduct of the accused and by questioning with reference to certain pieces of evidence, is not proper when he has not made every attempt or taken every step

to make the accused understand the proceedings of the court. He should have made an endeavor to find out as to whether it was not possible for any of the relations or friends of the accused to communicate with him by signs and as to whether it would not be possible for such a person to interpret the proceedings of the Court further, he should have sent the accused before a doctor for the purpose of ascertaining the degree of his disability. The object of Section 341 is that the High Court should be in a position to satisfy itself that the accused is ensured a fair trial.  
.....”

9. in the case of **In re : Beda** (AIR 1970 Orissa 3), Hon'ble Orissa High Court has observed that it is also necessary for the Sessions Judge to ascertain for himself whether the accused can be made to understand the proceedings with the help of relations and friends and if necessary to keep him under medical observations to enable him to come to his conclusion.

10. From the provisions of Section 318 of the Cr.P.C and aforesaid judicial precedents, following prepositions emerge :-

i. Trial Court is bound to give the finding to the effect that accused was unable to understand the proceedings being deaf and dumb. For ascertaining this aspect, Court should have sent accused for examination by doctor who may certify the degree of disability, Court should have communicated the accused - with the help of his relative or friends by gesture and signs; with the help of an expert; if the accused is able to read and / or write then through this medium.

ii. There must be a fair trial.

iii. Prosecution must prove beyond reasonable doubt the alleged offence against accused.

iv. The accused had sufficient intelligence to understand the criminal character of the act committed by him and its consequences. He had committed the act with dishonest intention.

11. First and foremost question for consideration before this Court is whether accused was unable to understand the proceedings being deaf and dumb.

12. As per the accused statement dated 21-5-2018 and order sheet dated 21-5-2018, accused was unable to read and write.

13. Unfortunately, in the case in hand the trial Court has not made attempts to communicate the accused with the help of his relative or friends by gesture and signs, or with the help of an expert, the trial Court has also not sent the accused for the examination by the doctor who might ascertain the degree of disability, though the trial Court should have done so.

14. As per the prosecution case the accused is allegedly deaf and dumb. In the case in hand, prosecution had not challenged the alleged deafness and dumbness of the accused. As per the alleged MLC report Ex. P-11, P.W. 5 Dr. P.S. Keram had examined accused and found that his voice was not clear, it was informed that he is deaf and dumb by birth. In these circumstances, aforesaid omissions committed by the trial Court have no effect.

15. The Trial Court has given the finding in order sheet dated 21-5-2018 that the proceedings of the Court cannot be made understand to the accused his being deaf and dumb. The trial Court has also given the finding in para 38 of the judgment and in order sheet dated 22-6-2018 that accused was unable to understand the proceedings of the Court due to his deafness and dumbness. The Public Prosecutor has not taken the stand during the trial that accused was allegedly able to understand the proceedings of the Court.

16. In aforesaid circumstances, this Court finds that accused was

unable to understand the proceedings being deaf and dumb.

17. Second question for consideration before this Court is whether the trial was fair or not.

18. As per the order sheet dated 12-6-2017 trial Court had appointed a counsel namely Shri R. M. Agrawal, to protect the interest of the accused through Legal Service Authority, Balod. The family members of the accused engaged a counsel Shri Bharat Sonbarsha on their own wish, who represented accused throughout the trial, cross-examined the prosecution witnesses. On behalf of accused two witnesses were also examined on his defence. Engaged counsel finally argued the case.

19. In the case in hand, the examination of the accused under Section 313 of the Cr.P.C. had not been done. Earlier, it has been found that accused was unable to understand the proceedings because he was deaf and dumb. Thus, non-recording of his reply is not fatal.

20. Above mentioned circumstances clearly and strongly indicate that trial of the accused was a fair trial.

21. Third question before this Court for adjudication is that whether prosecution has succeeded to prove beyond reasonable doubt the alleged offence against accused.

22. As per Ex. P-11, P.W.5 Dr. B.S. Keram opined that the accused was capable to perform sexual intercourse.

23. There is no such evidence on record on strength of which it can be said that Ex. P-1 is not believable.

24. As per the alleged MLC report Ex. P-13, P.W. 7 Dr. S.P. Khan had examined prosecutrix and found the following injuries on her

body :-

1. Swelling and tenderness over right occipital region, size 1cmx1.5cm,
  2. One abrasion over right shoulder, size 0.5cmx 0.5cm,
  3. One abrasion over right shoulder, size 0.5cmx 0.5cm,
  4. One abrasion over right elbow, size 0.5cmx 0.5cm,
  5. One abrasion over right palm, size 1cm x 1cm,
  6. One abrasion over right index and little finger, size 0.5cm x 0.25cm,
  7. Multiple abrasions over left upper arm,
  8. Abrasion over both buttocks.
25. In internal examination of prosecutrix P.W. 7 Dr. S.P. Khan found that swelling and tenderness were present over labia minora, hymn torn ruptured, slight blood mix discharge coming out, abrasion was present over post vagina wall size 0.5 cm x 0.5 cm.
26. P.W.7 Dr. S.P. Khan opined that injuries were caused within 48 hours, penetration seems to be of hard and blunt object in vagina, opinion about intercourse depends upon chemical examination of slides and clothes in forensic lab.
27. There is no such evidence on record on strength of which it can be said that Ex. P-13 is not believable.
28. P.W. 1 says in para 2 of her statement given on oath that when she was picking wood, accused came from back side, took her by pulling, removed her leggings and underwear and committed wrong work.
29. P.W. 2 Jaychand Yadav who is Baba of the prosecutrix in village relation, says in para 1 of his statement given on oath that accused had dishonoured her.
30. P.W. 3 Smt. Ramtibai Tekam says in para 2 of her statement given on oath that Jageshwari Deshmukh had told Women Commando

that accused had committed bad act with prosecutrix.

31. P.W. 4 Smt. Sukwaro Bai Kenwat says in question No. 1 of her statement given on oath that prosecutrix had told that accused had committed sexual intercourse with her.

32. D.W. 1 Santram Netam and D.W. 2 Rajendra Prasad Deshmukh say in para 2 of their statements given on oath that she had gone for collecting the wood, accused reached there, fell down wood, she sustained abrasions.

33. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W.1 prosecutrix, P.W. 2 Jaichand Yadav, P.W.3 Smt. Ramtibai Tekam, P.W. 4 Smt. Sukwarobai Kenwat are not simple, not natural, not normal.

34. Alleged application Ex. P-1 was given by the prosecutrix to the SHO Suregaon on very day without any delay. Ex. P-1 reveals that accused took her by dragging, removed her clothes and committed forcible sexual intercourse, she shouted but nobody reached there.

35. There is no such evidence on record on strength of which it can be said that Ex. P-1 is not natural and lodged as an afterthought to falsely implicate the accused.

36. Looking to the above mentioned facts and circumstances of the case, this Court finds that trial Court had not committed any illegality in believing aforesaid statements of P.W.1 prosecutrix, P.W.2 Jaichand Yadav, P.W.3 Smt. Ramtibai Tekam, P.W. 4 Sukwarobai Kenwat, Ex. P-11, Ex. P-13 and disbelieving aforesaid statements of D.W.1 Santram Netam, D.W.2 Rajendra Prasad Deshmukh in the reference that accused had not committed alleged offence. Thus, trial Court had not committed any illegality in convicting the accused for the offence

punishable under Section 376 (1) of the IPC.

37. Fourth question for consideration before this Court is that whether the accused had sufficient intelligence to understand the criminal character of the act committed by him and its consequences and he had committed the act with dishonest intention.

38. In the case in hand accused had come from the back side of the prosecutrix, took away her by pulling / dragging, removed her clothes and committed sexual intercourse with her. These circumstances are indicative that accused had sufficient intelligence to understand the criminal character of the act and its consequences and he had committed the act with dishonest intention.

39. Considering above mentioned facts and circumstances of the case, as a sequel, the conviction of the accused is upheld and he is sentenced to undergo RI for 7 years and fine of Rs. 1,000/- in default of payment of fine to further undergo RI for two months.

40. Before parting with, this Courts record appreciation for the valuable assistance rendered by Shri Sarfaraj Khan, as an amicus curiae in this case.

41. The CRMP for the reference is disposed off accordingly.

**Sd/-**  
**(Sharad Kumar Gupta)**  
**Judge**