

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.336 of 2013

Judgment Reserved on : 2.8.2019

Judgment Delivered on : 24.10.2019

Mukesh Yadav, S/o Babulal Yadav, aged about 21 years, R/o Village Sapos,
Police Station Dabhra, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station
Scheduled Castes and Scheduled Tribes Welfare, Janjgir, District Janjgir-
Champa, Chhattisgarh

--- Respondent

For Appellant : Shri C.P. Lahrey and Shri Rishi Rahul Soni, Advocates
For Respondent : Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 2.1.2013 passed by the Special Judge, Janjgir-Champa in Special Sessions Trial No.124 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(f) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.10,000/- with default stipulation

2. Facts of the case, in brief, are that on the relevant date, age of the prosecutrix (PW1) was below 12 years. On 24.3.2012, at about 1:00 p.m., she was going along with her sister Ganeshi (PW6) to the field of Village Medapali. Allegedly, the Appellant threw down the prosecutrix in the field and committed forcible sexual

intercourse with her. Having seen the Appellant lying over the prosecutrix, Ganeshi (PW6) went to her village to call her mother Dhanbai (PW7). Before reaching Dhanbai (PW7) at the spot, the Appellant had already committed rape with the prosecutrix and he was trying to run away from there. Dhanbai (PW7) and other persons saw the Appellant and caught him. Before them, the Appellant accepted his guilt and thereafter ran away from there. First Information Report (Ex.P1) was lodged by the prosecutrix. She was medically examined by Dr. P.C. Jain (PW14). Her report is Ex.P26. The Appellant was also examined by Dr. G.L. Miri (PW11). His report is Ex.P16. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. With regard to age of the prosecutrix, dakhil-kharij register (Ex.P4) was also seized. According to the entries made in Ex.P4, date of birth of the prosecutrix is 25.4.2000. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Section 376(2)(f) of the Indian Penal Code and Sections 3(1)(xii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act').

3. In support of its case, the prosecution examined as many as 15 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. After trial, the Trial Court acquitted the Appellant of the charges framed under Sections 3(1)(xii) and 3(2)(v) of the Act, but convicted and sentenced him as mentioned in the first paragraph

of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that without there being any clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. The statement of the prosecutrix is suspicious and not reliable. It was further submitted that as opined by Dr. P.C. Jain (PW14), hymen of the prosecutrix was found intact and no other internal or external injury was found over the body of the prosecutrix. As per the statement of Dr. P.C. Jain, while examining the prosecutrix, it was told by the prosecutrix to Dr. P.C. Jain that she was not raped and she was telling a lie due to fear of her mother. Thus, no offence is made out against the Appellant.
6. Learned Counsel 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. In her Court statement, the prosecutrix (PW1) has deposed that at the time of incident, she had gone along with her sister Ganeshi (PW6) to the field. At that time, the Appellant removed her clothes and committed sexual intercourse with her. After sometime, her mother Dhanbai (PW7) and sisters Seema (not examined) and Ganeshi (PW6) reached the spot. On this, the Appellant left her and ran away. While running away of the Appellant, Setlal (not examined) and Nandlal (PW5) saw him running away. Thereafter, she lodged the FIR (Ex.P1). In her cross-examination, in paragraph 7, she has further stated that the Appellant had gagged

her mouth and caused her to fall down. On falling down, she had shouted. Then having seen her, her sister Ganeshi (PW6) ran to call her mother. The above statement of the prosecutrix is duly corroborated by her younger sister Ganeshi (PW6) and mother Dhanbai (PW7).

9. Ganeshi (PW6) has deposed that when she had gone along with the prosecutrix to the field, the Appellant removed the under garment of the prosecutrix and committed wrong act with her. She went to call her mother. On this, the Appellant tried to run away from there, but he was caught.
10. Dhanbai (PW7) has also deposed that Ganeshi (PW6) came home shouting and told that someone had caught the prosecutrix and slept over her. Then Set Kumar, Nandlal (PW5) and Mahendra (PW4) reached the spot. At that time, the Appellant was running away, but he was caught. The prosecutrix told that the Appellant had committed wrong act with her.
11. Mahendra (PW4) and Nandlal (PW5) have also deposed that when they reached the spot along with Dhanbai (PW7) and Ganeshi (PW6), the Appellant began to run away from there, but they caught him. The prosecutrix told that the Appellant had committed rape with her. Both Mahendra and Nandlal have further deposed that on being asked, the Appellant said that he had committed wrong and he may be pardoned.
12. The prosecutrix was medically examined by Dr. P.C. Jain (PW14). As stated by Dr. Jain, she did not find any injury in the internal private part or external private part of the prosecutrix. She found

that hymen membrane of the prosecutrix was old ruptured. One finger was entering into the vagina of the prosecutrix with severe pain. She has reported that it was not possible for her to opine whether rape was committed with the prosecutrix or not. The doctor has further deposed that at the time of examination, the prosecutrix had told her that nobody had done any forcible act with her and she was telling a lie due to fear of her mother.

- 13.** With regard to age of the prosecutrix, Tushen Kumar (PW2), a teacher of the Primary School, Medapali has produced dakhil-kharij register (Ex.P4) in the Trial Court. According to Ex.P4, date of birth of the prosecutrix is 25.4.2000. As stated by this witness, the entries were made in Ex.P4 on the basis of declaration given by father of the prosecutrix.
- 14.** Dr. G.L. Miri (PW11) examined the Appellant. As stated by him, he found the Appellant capable to perform sexual intercourse and also found one abrasion near left elbow and two abrasions over right forearm of the Appellant.
- 15.** S.D.O. (Police) Pooja Agrawal (PW12) is the witness who investigated the offence in question. Inspector Smt. Usha Sondhiya (PW15) recorded numbered FIR (Ex.P26) on the basis of FIR (Ex.P1) registered on zero.
- 16.** On a minute examination of the above evidence available on record, it is clear that on the date of incident, age of the prosecutrix was below 12 years. As stated by the prosecutrix (PW1) before the Trial Court, she was raped by the Appellant when she had gone along with her sister Ganeshi (PW6) to the field. As stated by

the prosecutrix, the incident was witnessed by Ganeshi (PW6). Her statement is duly corroborated by Ganeshi (PW6). Dhanbai (PW7), mother of the prosecutrix, Mahendra (PW4) and Nandlal (PW5) have also deposed that on being told by Ganeshi (PW6) when they reached the spot, they saw the Appellant running away from there and they caught the Appellant while his running away. As stated by Mahendra (PW4) and Nandlal (PW5), the Appellant had also admitted his guilt before them. All the above witnesses were firm during their cross-examination. There is no fact disclosed in their cross-examination to show that there was any previous enmity between these witnesses and the Appellant. Therefore, it cannot be said that they have falsely implicated the Appellant. Though Dr. P.C. Jain (PW14) has stated that hymen membrane of the prosecutrix was old ruptured and one finger was entering into the vagina of the prosecutrix with severe pain, only on this basis, it cannot be said that rape was not committed with the prosecutrix. The prosecutrix has categorically stated that the Appellant had committed sexual intercourse with her and the incident was witnessed by Ganeshi (PW6). Therefore, the offence is duly proved.

17. As regards the argument raised by Learned Counsel appearing for the Appellant that at the time of medical examination, the prosecutrix had stated before Dr. P.C. Jain (PW14) that no forcible act was done with her and she was telling a lie due to fear of her mother is also not acceptable because this statement was given by the prosecutrix in what circumstances and why has not been explained by Dr. P.C. Jain (PW14). Apart from this, in her Court statement, the prosecutrix (PW1) has categorically stated that she

was raped by the Appellant and she has remained firm during her cross-examination. In these circumstances, the defence does not get any weightage from the statement of Dr. P.C. Jain (PW14) and only on this basis, the entire prosecution evidence cannot be disbelieved. From the above discussion, I find that the Trial Court has rightly convicted the Appellant. Hence, the conviction of the Appellant under Section 376(2)(f) of the Indian Penal Code is affirmed. The sentence imposed by the Trial Court is also just and proper.

- 18.** Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
- 19.** 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