

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 63 of 2015**

- Madan Mohan Yadav son of Ramchandra Yadav, aged about 30 years, Occupation Service, Caste – Mahkul, resident of village – Charbhathi Narayanpur, Police Station – Narayanpur, Civil and Revenue District Janjgir-Champa (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : The Station House Officer, Police Station – Kunkuri, District Jashpur (C.G.)

---- Respondent

For Appellant : Smt. Indira Tripathi, Advocate.
For Respondent/State : Shri Subhash Yadav, Dy.G.A.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**07.03.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 27.12.2014 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Jashpur, in Special Case No.28/2013 whereby and whereunder, the appellant has been held guilty of commission of offence and sentence him as described below.

Conviction	Sentence
Under Section 450 IPC	R.I. for 10 years and fine of Rs.25,000/-, in default of payment of fine, 1 year additional R.I.

Under Section 506(B) IPC	R.I. for 3 years and fine of Rs.5000/-, in default of payment of fine 6 months additional R.I.
Under Section 376 (1) IPC	For life imprisonment and fine of Rs.50,000/-, in default of payment of fine 2 years additional R.I.

03. The Prosecutrix (PW/7) lodged a written report in the police station on 17th March, 2013, stating that the appellant had come to her house and he caught hold of her, threatened her that if she cries, she would be killed and then committed rape on her. Investigation eventually culminated in filing of the charge sheet against the appellant for alleged commission of offences under Sections 506(B), 450 and 376 IPC. At the time of filing of charge sheet, it was the case of the prosecution that the Prosecutrix belongs to reserved category, therefore, the appellant was also charged of commission of offence under Section 3 (1) (xii) and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (for short 'the SC/ST Act').

04. The Prosecutrix (PW/7) stated in her evidence before the Court that the appellant had come to her house and committed rape on her, which was informed by her to her sister and husband on the next day. The evidence of the Prosecutrix was made the foundation of conviction of the appellant in the alleged commission of offence. However, as the prosecution could not prove that the Prosecutrix belongs to reserved category, the appellant was acquitted of the charge under Sections 3 (1) (xii) and 3 (2) (v) of the SC/ST Act.

05. Learned counsel for the appellant assailed correctness and

validity of the impugned judgment of conviction and order of sentence on the submissions that there has been delay in lodging the FIR, the medical report does not support the case of the prosecution, there is established plea of alibi and that in any case the circumstances and the conduct of the Prosecutrix probablizes that even if there was any sexual intercourse, it was consensual in nature. Elaborating her submission, learned counsel for the appellant argued that according to the Prosecutrix, the incident happened at about 1.30 i.e. in the afternoon of 15th March, 2013, but, she, on that day, did not inform this matter to anybody, and even according to the Prosecutrix, this was informed by her to her husband and sister only on the next day. It is argued that according to the Prosecutrix, her sister-in-law was residing in the neighbourhood but non disclosure of the incident to her raises serious doubt with regard to the allegation of the Prosecutrix having been subjected to rape. Next submission of learned counsel for the appellant is that, in the present case, the Prosecutrix has been found to be major and there are no injury found in the private parts or anywhere on the body of the Prosecutrix, which again makes it highly doubtful that there was subjected to any forcible act of sexual intercourse with the Prosecutrix. According to the learned counsel for the appellant, the Prosecutrix's evidence that because of the appellant's threat, she could not immediately call anybody for help, is highly improbable, and further that some amount of resistance is expected from the Prosecutrix where an attempt is made to commit rape, but in the present case, the Prosecutrix was not found having suffered any kind of injury. Learned counsel for the appellant further elaborated that the Prosecutrix has

made inconsistent statement in her evidence where sometimes she says that she came to know regarding appellant only on the date of commission of rape whereas, she has admitted other suggestions that the appellant had come to her house for the first time on 28th February, 2013 and even thereafter. Therefore, the Prosecutrix is not reliable. Further submission is that the appellant was working as Nagar Sainik and both oral and documentary evidence has been led to prove alibi. On the basis of evidence of Vishwanath Ratre (DW/1), Smt. Sonmati Bai (DW/2), Dildhar Ram (DW/3) and Satelal (DW/4), it is argued, that on the date of incident, the appellant was engaged in serving notices to different persons at different places during the time when rape is alleged to have taken place in the house of the Prosecutrix. Referring to the Rojnamcha Sanha of the police station, it is argued that this also corroborates the statement of the defence witnesses that at an around the time of the incident, as alleged by the Prosecutrix, the appellant was actually engaged in serving notices to different persons and, therefore, very presence of the appellant in the house of the Prosecutrix is wholly improbable and false implication cannot be ruled out.

Last but not the least, learned counsel for the appellant would argue that the Prosecutrix having admitted that the appellant was frequently coming to her house and that on the date of incident, she admits being in the company of the appellant, having not raised any hue and cry immediately thereafter, and making allegations only on next day by calling her sister and husband, there being no signs of injury anywhere in the body, renders probable that even if there was

some intercourse, it was all consensual in nature without there being any element of force or against the wish or consent of the Prosecutrix. In support of submission, learned counsel for the appellant placed reliance upon the decision of the Supreme Court in the matter of **Narendra Kumar v. State (NCT of Delhi)** reported in **(2012) 7 SCC 171** and **Narayan v. State of M.P. (Now C.G.)** reported in **2013 (4) C.G.L.J. 330.**

06. On the other hand, learned counsel for the State argued that the Prosecutrix was subjected to rape in the afternoon of 15th March, 2013, and on the very next day, she informed her husband and sister, which is proved from their evidence and then on the next day, written report was lodged in the police station, therefore, delay in filing the FIR has been sufficiently explained. He would next submit that the plea of alibi is afterthought because suggestion has been given to the Prosecutrix in her cross-examination that on the date of incident, the appellant had not only come to the house of the Prosecutrix but he remained sitting there for quite some time and also offered a glass of water. According to the learned counsel for the State, the Prosecutrix was living all alone with a minor child and she having been subjected to rape, was in a state of shock, and that she had informed the incident to her sister and husband very next day, ruled out that it was a case of either false implication or consent. He has also argued that nothing has come in the evidence that the Prosecutrix had any motive to falsely implicate the appellant and that there is no circumstance that having enjoyed consensual sexual intercourse, the Prosecutrix will inform her sister and husband regarding rape committed on her.

07. We have heard learned counsel for the parties and perused the record.

08. The Prosecutrix has lodged the report. According to the Prosecutrix, incident happened on 15th March, 2013 at about 1.30 PM. The Prosecutrix has stated in her evidence that she informed the incident to her husband and also to her sister on that day. Her sister Smt. Aruna Kujur (PW/1) has deposed that on 16th March, 2013, she had received a call from her sister, the Prosecutrix, that the appellant had come to her house on the earlier day while she was alone in the house with her three years son. According to her, she was informed by her sister that the appellant committed rape on her. The husband of the Prosecutrix Fabiyanus Lakra (PW/8) has also deposed that he received a call on 15th March, 2013 from her wife that she was ravished on 15th March 2013, and then he received a call from her sister also regarding commission of the offence. He further states that on 17th March, 2013 at about 11.00 PM, he reached his house.

According to the Prosecutrix, she was subjected to rape in the afternoon of 15th March, 2013, and on the very next day she informed her sister as well as husband and then on next day i.e. on 17th March, a report was lodged in the police station. On the aforesaid proven facts, we don't think that there was so much of delay as to doubt the complete story of the prosecution and the evidence of the Prosecutrix to suggest that it was a case of false implication. In cases of such a nature where a woman is subjected to sexual offence, the criminal overt act not only puts her into bodily injury but at the same time in a mental shock. The ordinary law with regard to credibility of the

prosecution case on the ground of delay in lodging the FIR is not applicable in cases where report is lodged by a woman making allegation of commission of sexual offence against her. It will have to be judged from the circumstances of every case and once there is an explanation or established circumstances, merely because the report was lodged after two days, the prosecution case cannot be doubted. As far as the present case is concerned, it is not that the Prosecutrix was sitting at home. It is seen that the Prosecutrix was living all alone with her minor child and her husband was serving elsewhere. She had reported the matter to her husband and sister the next day and, it is not that for many days, she kept mum without doing anything. Her husband has stated that on 17th March he came back to his house and on that day itself, the Prosecutrix lodged report in the police station. Therefore, we see that firstly the delay is not very long and, secondly the circumstances and conduct of the Prosecutrix explain short delay.

09. The evidence of the Prosecutrix (PW/7) is that on 28th February, 2013, the appellant had come to her house for the purpose of serving notice and since then, he is known to her. In her cross-examination, it has been suggested to her, which has been admitted, that on 28.02.2013, the appellant had come to her house. Further suggestion of the defence is that on 10.03.2013, the appellant had come to the house of the Prosecutrix along with his wife and children. This suggestion has also been admitted by the Prosecutrix. The suggestion that when they had come, they were offered tea and snacks and well treated, has also been admitted. The suggestion that the Prosecutrix met with the appellant on 1st March, 2013, in Kunkuri Court, has also

been admitted. Importantly, in para 21 of the cross-examination, it is the defence case, which has been elicited by way of suggestion and admitted by the Prosecutrix, that on 15th March, 2013 the appellant had come to her house, he was offered a chair and a glass of water and that she has not raised any objection to the same and further that the appellant had stayed in her house for about half an hour. This evidence of the Prosecutrix which has come on the suggestion given by none other than the defence, demolishes the plea of alibi taken by the appellant. The defence witnesses and the documents are to the effect that on 15th March, 2013 the appellant was given duty of serving notices to different places. But when the defence itself has come out with a case during cross-examination of the Prosecutrix that he himself has gone to the house of the Prosecutrix on 15.03.2013, the plea of alibi does not help the appellant and on that ground, the presence of the appellant in the house of the Prosecutrix, cannot be doubted.

10. On the plea of there being no injury found on the private part or any part of the body of the Prosecutrix, the same would not render prosecution case liable to be rejected firstly, because it is settled legal position that where the evidence of the Prosecutrix inspires confidence and does not appear to be doubtful, there is no necessity to look for corroboration from any other evidence including medical evidence. Moreover, the Prosecutrix is a major and, therefore, possibility of injury in the private part of the Prosecutrix is not a must in such cases of rape.

Secondly, as far as absence of bodily injuries are concerned, the Prosecutrix has emphatically stated that the appellant had come to her

house. The circumstances are that there was no major member in her house and only a small child was sleeping. According to the Prosecutrix, the appellant taking advantage of this situation, caught hold of her and she was threatened that if she raises any voice, she would be killed. Obviously, this threat given to the Prosecutrix when she was all alone in her house, disabled her and possibility of offering resistance is ruled out because of such a threat administered to the Prosecutrix.

11. The argument that, it could possibly be a case of consent between the parties, is liable to be rejected on two counts. Firstly, the appellant has not come out with any such case that the Prosecutrix had sexual intercourse with the consent of both the parties. Secondly, had it been a case of consent, there was no reason as to why the Prosecutrix would, later on, report the matter to her sister and her husband over telephone and then lodge a report in the police station. There is nothing on record to show that while the appellant was in the house of the Prosecutrix, some other person suddenly came to her house and then only the Prosecutrix proceeded to lodge the report. The Prosecutrix was living all alone with her minor child in the house and there was nobody. If it was a case consensual sexual affair, there was no reason as to why the Prosecutrix would lodge the report. It is not even a case of defence that it was used as a blackmailing tactics to extract something from the appellant. The established circumstance is that the Prosecutrix was all alone in her house. The appellant had come to her house once on 28th February, 2013 and he having found the Prosecutrix living alone and her husband doing job elsewhere,

entered into familiarity by visiting the house of the Prosecutrix and one day i.e. on 15th March, 2013, he committed rape on the Prosecutrix.

12. The two decisions cited by learned counsel for the appellant will not come to the aid because in the case of **Narendra Kumar (Supra)**, the Supreme Court highlighted that if the statement of the prosecutrix suffers from serious infirmity, inconsistency and deliberate improvement, it would be difficult to place reliance there upon. As regards the manner in which the incident happened, we do not find that there is any contradiction or material discrepancies, whatsoever, with regard to the time, place and the manner in which the Prosecutrix was subjected to rape.

The Other decision in the case of **Narayan (Supra)** was that the story of the prosecution was doubted on the ground that the house was found bolted from inside and the Prosecutrix did not cry for help. The Court noticed that in that case, she had opened the door and, thereafter, the accused escaped through the roof of the house. It was not a case of the Prosecution that because of any threat she was unable to offer any resistance. This case is also distinguishable on facts.

13. Learned counsel for the appellant, at the last, argued that the appellant has been subjected to the maximum punishment of life imprisonment whereas, the present is not a case of extreme nature so as to impose punishment of life imprisonment. It is argued that no injury has been caused to the Prosecutrix nor it appears to be a case where there are serious aggravating circumstances to warrant extreme

punishment of life imprisonment. Learned counsel for the appellant submits that in the interest of justice, the appellant may be settled with minimum punishment of seven years for the alleged commission of offence. We find that the appellant was a Nagar Sainik (Home Guard) and he committed rape on the Prosecutrix when she was undergoing pregnancy. Considering the overall circumstances of the case, we are inclined to reduce the sentence period and order that the appellant shall undergo R.I. for 12 years.

14. The appeal is partly allowed. The conviction of the appellant under Sections 450, 506 (B) and 376 (1) IPC and fine amount shall remain same, however, sentence awarded under Section 376 (1) IPC is reduced to 12 years.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge