

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 3073 of 1998**

Bajrang Lal S/o Ramvriksha, Panika, aged about 26 years R/o Village Revatipur
PS Ramchandarpur, District Sarguja M.P. (Now Chhattisgarh)

----Appellant**Versus**

State of M.P., through PS Ramchandarpur, District Sarguja M.P. (Now
Chhattisgarh).

---- Respondent

For Appellant	:	Mr. Anand Kumar Gupta, Advocate
For Respondent	:	Mr. Ajay Kumbrani, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****28/01/2020**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 10/12/1998 passed in Special Criminal Case No. 136/1997 by the Special Judge (under prevention of Atrocities Act), whereby the Appellant has been convicted under Section 376 (1) of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that the Prosecutrix (PW1), aged about 14 years was the member of Korva, (Schedule tribe). On 24/09/1996 at about 12 noon, the Prosecutrix was returning from the house of Fagiat after watching Karma dance. On the way near the house of Lalbihari, the Appellant caught hold her and took her to the nearby field and committed sexual intercourse with her due to which she got injuries in her private part and became unconscious. The Appellant fled away from the spot leaving the Prosecutrix there. Thereafter, the villagers came there and

took the Prosecutrix to her house. The matter was reported by the Prosecutrix vide Ex.P.-8. Her statement was recorded under Section 161 of the Cr.P.C. She was medically examined by Dr. Smt. Sobha (PW10). Her report is Ex.P-10. On examination she found, bleeding was coming from the private part of the Prosecutrix and hymen was ruptured. She gave opinion that recently intercourse has been performed with her. Statement of other witnesses have been recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 14 witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After completion of trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that the Prosecutrix herself has not fully supported the case of the prosecution regarding commission of sexual intercourse with her by the Appellant. Aunt of the Prosecutrix namely Shanti Bai also not supported the case of the prosecution who, according to the case of the prosecution, was accompanied with the Prosecutrix at the time of the incident. There are material contradictions and omissions occurred in the statement of the Prosecution witnesses, therefore, the conviction of the Appellant is not

sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In her court statement, the Prosecutrix (PW1) deposed that on the date of incident at about 12:00 noon when she was returning after watching Karma dance, the Appellant caught hold her near the house of Lalbihari, and closed her mouth by a piece of cloth. She further deposed that the Appellant inserted his finger in her vagina and she became unconscious. Thereafter, she does not know what happened with her. When she became conscious, she was feeling pain and bleeding was coming out from her private part. Though, this witness has not specifically stated that the Appellant had committed sexual intercourse with her, according to this witness the Appellant had inserted his finger in her vagina and she became unconscious, and thereafter what was happened with her she does not know. Ramoteen Bai (PW2), Ramnath (PW3), Lalbhihar (PW5) and Kunti Devi (PW6) have deposed that the Prosecutrix was lying unconscious in the Badi of Lalbihari. According to the statement of Ramnath (PW4), the Prosecutrix told him at that time, the Appellant caught hold her and closed her mouth, and he come over her. Lalbihari (PW5) and Kunti Devi (PW6) have further deposed that they saw the Prosecutrix in unconscious condition, her clothes were stained with blood and bleeding was coming out from her private part. Kunti Devi (PW6) further stated that when she reached to the spot, the Appellant was

fleeing from the spot. Head Constable Rajju Ram (PW9) recorded the FIR vide Ex.P-8. ASI, R.B. Tripathi (PW8) is a witness who investigated this matter. During course of investigation, he recorded the statement of witnesses and prepared spot map. He also seized one lungi from the Appellant which the Appellant was wearing at the time of incident. Dr. Smt. Shobha Khare (PW10) has examined the Prosecutrix on 26/09/1996. Her report is Ex.P-10. During examination, she found that two fingers were easily going inside her private part. Bleeding was coming out from her private part. Hymen was ruptured. According to this witness, recently intercourse was performed with her. Dr. S.K. Shrivastava (PW11) has examined the Appellant. His report is Ex.P-11. According to his report, the Appellant was capable to perform sexual intercourse. Dr. M.K. Jain (PW12) has conducted ossification test of the Prosecutrix. His report is Ex.P-12. According to this witness, the age of the Prosecutrix was about 14 years. Ram Dev (PW13) and Ramratan (PW14) are the witness of seizure memo Ex.P-14. Ram Dev (PW13) has not supported the case of the prosecution. Ramratan (PW14) has deposed that during course of investigation, the police has seized peti-coat from the Prosecutrix vide Ex.P-14.

8. On minute examination of the above evidence, it is clear that at the time of incident, the age of the Prosecutrix was about 14 years. According to her statement when she was returning after watching karma dance, the Appellant caught hold her and inserted his finger in her vagina, which caused bleeding to her and she became unconscious. Though this witness has not stated anything that the Appellant has committed sexual intercourse with her, she deposed that after becoming unconscious, she

does not know what was happened with her. Apart from this when Ramoteen Bai (PW2), Ramnath (PW3), Lalbhihar (PW5) and Kunti Devi (PW6) reached to the spot and saw the Prosecutrix in unconscious condition, at that time bleeding was coming out from her private part. According to the statement of Ramnath (PW3), the Prosecutrix told that the Appellant lie over her and thereafter she became unconscious. The presence of the Appellant was also disclosed by Kunti Devi (PW6). All the above witnesses have remained firm during their cross-examination. From the medical report also, it is established that recently intercourse was performed with the Prosecutrix and her hymen was ruptured. There is no material available on record on the basis of which it can be said that there was previous enmity between the Prosecutrix and the Appellant and therefore, the Prosecutrix has falsely implicated him. From the entire material available on record, the offence is duly proved against the Appellant and the trial Court has rightly convicted the Appellant

9. Considering the above facts, I do not find any merit in this appeal.
10. Accordingly, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge