

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2153 of 2000

Judgment reserved on 06.02.2020

Judgment Delivered on 18.05.2020

Sallu @ Salim S/o. Nizam Sheikh Musalman, Aged about 24 years, R/o. Pathra Bori, Police Station Dabnibada, Tehsil Gondia (Maharashtra) Presently residing near Sarkari Kuan, Lakholi, House of Subhan Sheikh, Police Station and District Rajnandgaon (C.G.)

---- **Appellant**

Versus

State of M.P. through Police Station Rajnandgaon, District Rajnandgaon (C.G.)

---- **Respondent**

For Appellant : Mr. Roop Naik, Advocate.

For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. The case of the prosecution, in brief, is that accused/appellant herein developed intimacy with deceased who belongs to Satnami caste, by making false promise to marry her and believing the same, she allowed him to have cohabitation with her which continued for a period of one year. It is alleged that from such cohabitation, the prosecutrix became pregnant and for getting the pregnancy terminated and thereby concealing the evidence the accused

administered some pills to her. It is further alleged that when the deceased suffered stomach pain, she was admitted in the hospital for treatment where she died. On the information of death of the prosecutrix, a complaint (Ex.P-9) was made by PW-7 in police Station Bhilainagar and on the basis of which FIR (Ex.P-10) was registered for the offences under Sections 314 and 376 IPC against Bhagwat Sahu and appellant Sallu @ Salman. After completion of investigation charge sheet was filed under Sections 314 and 376 IPC and 3 (i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act followed by framing of charge.

2. Initially the charge was framed against the accused/appellant under Sections 314, 376(1) and 3 (i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, after conducting a full-fledged trial by examining number of witnesses, learned Court below by its judgment dated 04.8.2000 passed in Special Case No. 21 of 2000 acquitted the co-accused of all the charges levelled against him. It also acquitted the accused/ appellant of the charge under Sections 314, 376(1) and 3 (i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, but found him guilty under Sections 417 IPC and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentence him to undergo RI for one year and to pay fine of Rs. 1000/- under Section 417 IPC and RI for five years and to pay fine of Rs. 10,000/- under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Counsel for the accused/appellant submits that the conviction for offence under Section 3(i)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act cannot be sustained as there is no material on record to show that the appellant committed sexual intercourse and then tried to get her pregnancy terminated fully knowing that she was a member of Scheduled Caste category nor was any intention on his part to exploit her that way. He further submits that the Court below has wrongly appreciated the evidence of the prosecution witnesses while convicting and sentencing the accused/appellant as described above.
4. On the other hand, learned State counsel supported the judgment impugned.
5. A perusal of the evidence of Bhuvanlal (PW-8) - the father of the deceased goes to show that after coming to know the pain in the stomach of his daughter he took her to District Hospital, Rajnandgaon for treatment. In the Hospital his deceased daughter had made a disclosure to him that the stomach pain was as a result of sexual intercourse with her by the accused/appellant by putting her on the assurance of marriage. Though, the evidence of father PW-8 gets corroboration from PW-9, yet the doctor who is alleged to have administered medicine on the deceased to get her pregnancy terminated has already been acquitted by the Court below and further that there is no evidence that the accused/appellant herein had taken her to the hospital for termination of the pregnancy or was

there any involvement on his part to do so. Rather the material on record shows that the deceased and the accused/appellant were in love affair which later on, turned into the physical relations between the two and for this only he has been acquitted of the charge under Section 376 IPC. PW-8 and PW-9 being father and uncle of the deceased and as such the most interest witnesses are bound to state against the accused/appellant placing reliance on the say of the deceased made in the hospital. As already stated, the prosecution has not adduced any evidence to show that the accused/appellant got the pregnancy of the deceased terminated just because she was a member of Scheduled Caste category. Thus, the evidence does not make out the case of the prosecution either under Section 417 IPC or under the Special Act.

6. Accordingly, the appeal is allowed, the judgment is set aside and the accused appellant is acquitted of the charges levelled against him. Since the appellant is already enjoying bail, no observation or direction to set him free etc is necessary.

Sd/-

(Vimla Singh Kapoor)
JUDGE