

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 749 of 2004

Order reserved on 01.07.2020

Judgment pronounced on 14.08.2020

Ram Kishan Dhimar, S/o Shri Manisha Ram, aged about 18 years,
Resident of Darra, Police Station Kashdol, District Raipur (CG)
--- Appellant

Versus

State of Chhattisgarh, through Police Station House Kashdol.

--- Respondent

For Appellant	: Mr. Ashok Verma, Advocate.
For State	: Mr. Raghvendra Verma, GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

In the case in hand initially the report was made by the prosecutrix (PW-1) to the effect that on 04.10.2003 in the night hours when her father had gone to participate in some ritual being observed on the occasion of Durga festival and at that time she was in the house with her younger sister, who at the relevant time had fallen asleep. The allegation made by the prosecutrix in the FIR so lodged Ex.P-8 is that in the absence of her father the accused/appellant came to her house and in-spite of resistance being made, he committed forcible sexual intercourse with her. It is alleged that after returning home, her father PW-2 caught the two in compromising position and then written report Ex.P-1 was made on the basis of which FIR (Ex.P-8) came to be registered for the offences under Section 363, 366 and 376 IPC and Section 3 (1) (xii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "**Special Act**"). After investigation *challan* was filed under the same sections followed by framing of charge accordingly.

2. Learned Court below vide its judgment dated 28.06.2004 passed in Special Case No.07/2004 acquitted the accused/appellant under Sections 363, 366 and 376 IPC but convicted him under Section 3 (1) (xii) of the Special Act and sentenced to undergo RI for 262 days and pay fine of Rs.500, plus default stipulation. Hence this appeal.

3. Learned counsel for the accused/appellant submits that the material available on record including the statement of the prosecutrix is lucid to the effect that the prosecutrix was a consenting party to the act of the accused/appellant, and for that reason only learned Court below has acquitted the accused of the charges under Sections 363, 366 and 376 IPC. He submits that of-course the accused/appellant may have known the caste of the prosecutrix yet none of the witnesses has stated that he physically exploited her only for her belonging to the Scheduled Caste category. He further submits that since the conviction under the Special Act arose out of the incident under Sections 363, 366 and 376 for which the accused/appellant had got the clean chit, being based on the same set of evidence he should have been given the same treatment under the Special Act too. According to the counsel for the accused/appellant, there was a pre-existing affair between the accused and the prosecutrix and had her father not caught both red handed in compromising position probably the report would not have been lodged and the affair must have lasted long between the two unreported.

4. on the other hand, State counsel supported the judgment impugned to be justified and based on the evidence collected by the prosecution.

5. Heard counsel for the parties gone through the evidence of the witnesses with utmost care and caution.

6. Since learned Court below while acquitting the accused/appellant of the charges under Sections 363, 366 and 376 IPC has already dealt with the evidence in detail, this Court feels it unnecessary to repeat the same exercise. Needless to say for the present this Court confines itself within the scope of interference with the conviction of the accused/appellant under Section 3 (1) (xii) of the Special Act. The portrayal of incident by the prosecutrix that on that day the accused/appellant had come to her house in the absence of her father and had sex with her in the presence of her younger sister is indicative of the fact that it was consensual in nature. This fact further gets corroborated from the fact that after the father of the prosecutrix got back and went to call villagers, the accused/appellant took her to the pond side and there also sexual intercourse was committed on the prosecutrix. She has also stated that even prior to the date of incident the physical relations were existing between the two. All this leads to the inference that the act of the accused/appellant and the prosecutrix was out of free will and taking into consideration all these circumstances learned Court below has given a clean chit under all the aforesaid sections of Indian Penal Code. However, the prosecutrix has not given even a single instance that the accused/appellant taken her away had sex with her only for the reason that she belonged to the Scheduled Caste category. No doubt, the accused/appellant might have been, as stated by the prosecutrix as well, aware of the caste of the prosecutrix but for holding one guilty under Section 3 (1) (xii) of the Special Act this alone is not sufficient. The burden is on the

prosecution to prove that the accused/appellant dominated the will of the prosecutrix belonging to the Scheduled Caste category and used his position to sexually exploit her, otherwise she would not have agreed thereto. While dealing with an identical case in the matter of **Hanmant Ramhari Ghodake and etc. Vs. State of Maharashtra (2003 CRI.L.J. 4368)** it has been held by the Apex Court that intercourse between the prosecutrix and accused with consent cannot be construed to be on the ground that the prosecutrix belonged to Scheduled Caste category. It has further held that drawing such an inference would be absurd.

7. In view of the aforesaid factual and legal position, this Court does not concur with the findings recorded by the Court below holding the accused/appellant guilty under Section 3 (1) (xii) of the Act because the prosecution has utterly failed to prove that he used his position to sexually exploit her merely because she was a member of Scheduled Caste category. Being so, such baseless finding recorded by the Court below cannot be allowed to sustain and is liable to be set aside.

8. In the result, the appeal is allowed, the judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. Since the accused/appellant has been imposed the sentence of 262 days RI which he had spent in jail, no further order is necessary as regards sentence.

Sd/-

(Vimla Singh Kapoor)

Judge