

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 969 OF 2014Judgment Reserved on 14/01/2020Judgment delivered on 19/05/2020

Ramdayal Kenwat S/o Shri Salikram Kenwat, Aged about 43 years R/o Barpali,  
Paharipara, Police Outpost- Uruga, District Korba (C.G.)

....Appellant

**Versus**

State of Chhattisgarh Through Aarakshi kendra Adim Jati Kalyad, District Korba  
(C.G.)

...Respondent

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For Appellant: Mr. F.S. Khare, Advocate

For Respondent: Ms. Smriti Shrivastava, PL

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Hon'ble Shri Justice Arvind Singh Chandel

**CAV JUDGMENT**

1. This appeal has been preferred against the judgment dated 23/07/2014 passed in Sessions Trial No. 17/2012 by the Special Judge (Atrocities), Bilaspur (C.G.), whereby the Appellant has been convicted under Sections 376 read with Section 511 and 307 of the Indian Penal Code and sentenced to undergo RI for 7 years with fine of Rs. 3000/- and RI for 5 years with fine of Rs. 1000/-, respectively, with default stipulations. The sentences were directed to run one after another.
2. Facts of the case are that prior to the incident, the Appellant used to visit the house of the Prosecutrix, a minor girl. At the behest of the Appellant, the Prosecutrix had made a flower pot on a paper. On 05/02/2012 at about

7:30 am, the Appellant came to her house and said that the flower pot which she had made, has been submitted to the teacher and in lieu of that some money will be given to her. He also said to go Barpali and from Barpali to Korba. Then, at about 8:00 am, the Prosecutrix and her father departed for Sarangbudiya Railway station along with the Appellant. Around 09:30 am they reached to the railway station, where the Appellant told her father to stay and take care of his bicycle, and he took the Prosecutrix in a vacant bogie of Chhattisgarh Express train. On the way, he tried to rape with the Prosecutrix. When the Prosecutrix made cry then he threw her from the train, due to which she sustained injuries. One Suraj Kurree had taken the Prosecutrix to the hospital. After getting information, father of the Prosecutrix reached to the hospital and thereafter the Prosecutrix lodged an FIR. Statements of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 11 witnesses. 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 trial, the trial Court has acquitted the Appellant from the charge framed under Section 3(2)(5) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, however, he has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that

the Appellant has been wrongly convicted without there being any clinching evidence available on record. It has been further submitted that the statements of the Prosecutrix and her father are not reliable and suspicious. There are material contradictions and omissions occurred in their statements. It has been further submitted that the material witness Suraj Kurre has not been examined in the present case.

5. Learned counsel appearing on behalf of the State opposes the argument advanced by the counsel for the Appellant and submits that there is sufficient evidence available on record to convict the Appellant, therefore, the conviction does not require any interference.
6. I have heard counsel for the parties and perused the record minutely.
7. In her Court statement, the Prosecutrix (PW5) has deposed that before the incident, the Appellant used to visit her house. She had made a flower pot on a paper. The Appellant told her that they will get money in lieu of that. On the date of incident, the Appellant came to her house and told to go for receiving of money. Then she along with her father had gone with the Appellant. At railway station, the Appellant told her father to stay at the railway station. He took her with him in a vacant bogie of train. Ramadhar (PW6), father of the Prosecutrix has dully corroborated the above statement of the Prosecutrix and deposed that the Appellant had taken the Prosecutrix from his house along with him to the Railway station. On this point, the above statement of the Prosecutrix and her father Ramadhar (PW6) are not rebutted during their cross-examination. The Prosecutrix (PW5) has further deposed that in the vacant bogie of train, the Appellant pressed her breast and closed her mouth. He tried to remove her

underwear to which she protested. The Appellant had also closed the doors of the bogie from both side. She tried to open the door then the Appellant threw her from the train. She sustained injuries. According to this witness, one boy namely Suraj had taken her to the hospital. During cross-examination, this witness has remained firm on these points. There is nothing in her cross-examination on the basis of which her statement can be discarded.

8. Ramadhar (PW6) has also deposed that at the behest of the Appellant, he stayed at the railway station. The Appellant returned there after some time then he asked the whereabouts of the Prosecutrix from the Appellant. In reply, the Appellant told him that the Prosecutrix is mentally ill and she has bitted some people in the train. He also told that he does not know where the Prosecutrix has gone. The above statement of this witness has also not duly rebutted during his cross-examination. There is nothing in the statement of Ramadhar (PW6) and the Prosecutrix (PW5) on the basis of which it can be said that they were having any previous enmity with the Appellant. In these circumstances, there is no possibility that they are falsely implicating the Appellant. Though one material witness Suraj has not been examined by the prosecution, from the statement of the Prosecutrix (PW5) and her father Ramadhar (PW6), it is well established that the Appellant had taken the prosecutrix in a train where he tried to rape her and when the protest was made by the Prosecutrix, he threw her from the train. Apart from this, from the statement of Dr. Smt. Maniyaro Kujur (PW3) and MLC report of the Prosecutrix (Ex.P-4), it is also established that there were many abrasions found on the body of the Prosecutrix. There is nothing on record on the basis of which it can be said

that the said abrasions were self made. Thus, the medical report also corroborates the statement of the Prosecutrix. Looking to the above evidence available on record, in my considered opinion, the finding of the trial Court is in accordance with the evidence available on record and the said Court has rightly convicted the Appellant. Thus, the conviction of the Appellant under the aforementioned sections is affirmed.

9. With regard to the sentence, the Appellant was sentenced for 7 years and 5 years and the sentences were directed to run one after another. Meaning thereby, the Appellant has to face total 12 years of jail sentence. The Appellant is in jail since 08/02/2012 and has already undergone about 8 years 4 months. Considering this aspect, I am of the view that while upholding the conviction imposed upon the Appellant under the abovementioned sections, he is sentenced to the period already undergone by him.
10. In the result, the appeal is partly allowed. The conviction of the Appellant is upheld and he is sentenced to the period already undergone by him. He be released forthwith, if not required in any other case.
11. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

**Sd/-**  
**(Arvind Singh Chandel)**  
Judge