

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 773 of 2001**

- Ratiram Gharwa, aged about 30 years, son of Basant Kumar, resident of village Naimed, Bazarpara, Police Station -Bizapur, Distt. Dantewada (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : Police Station – Bizapur, Distt. Dantewada (C.G.)

----Respondent

For Appellant : Ms. Usha Chandrakar, for the appellant.
For Respondent : Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

02.07.2020

1. The matter is heard through video conferencing.
2. When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of the High Court Legal Service Committee to represent the appellant.

3. On being asked, Ms. Usha Chandrakar, who is one of the empanelled lawyers of High Court Legal Service Committee in this regard, is ready and willing to argue the matter. Therefore, in the interest of justice, Ms. Usha Chandrakar, who is one of the lawyers in the panel of High Court Legal Service Committee, is appointed as counsel to represent the appellant.

4. Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

5. This appeal is directed against the judgment of conviction and order of sentence dated 19th May, 2001, passed by Special Judge {Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Bastar at Jagdalpur in Sessions Trial No. 261/2000, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
Under Section 376 (1) of Indian Penal Code	Rigorous imprisonment for seven years with fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.
Under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "SC/ST Act, 1989").	Rigorous imprisonment for two years with fine of Rs.1,000/- in default of payment of fine, to further undergo rigorous imprisonment for six months.

	Both the sentences were ordered to run concurrently.
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6. Case of the prosecution, in brief is that on the date of incident i.e. on 20.03.2000 the prosecutrix, who was aged about 50 years, along with her daughter- Sakamli went to the village market and there she purchased country made liquor (Tadi) alongwith her son-in-law – Bojja and thereafter she consumed the said liquor along with her friend & daughter. When after consuming liquor she was sleeping with her daughter under the tree in a drunken condition, at that time, accused came there and committed forcible sexual intercourse against her will. When she was crying for help, accused/appellant tried to press her neck, due to which the prosecutrix sustained scratch injuries on her neck. FIR (Ex. P/1) to that effect was lodged by the prosecutrix on 22.03.2000 i.e. after two days of the incident. One undergarment of the accused/appellant was seized from his possession vide Ex. P/4. One petticoat of prosecutrix was also seized vide Ex. P/7. The prosecutrix was medically examined by Dr. Anita Gangesh (PW-7) and she noticed following injuries on her person vide Ex. P/10, which read thus :-

- (i) One abrasion, which is irregular in size and shape over left side of maxillary region.
- (ii) One abrasion, which is irregular size & shape over left mandible (near angal of mandible).
- (iii) Pain over back side of neck.

(iv) Abrasion in the size of 1/4" x 1/4" over left elbow joint.

(v) Abrasion, which is irregular in size & shape over exterior surface of right forearm on lower half injuries.

The accused/appellant was also medically examined vide Ex. P/8 by Dr. R. L. Gangesh (PW06) and he opined that the accused is fully capable to perform sexual intercourse. Spot map Ex. P/13 was also prepared by Sagua Ram Sori (PW10).

7. After recording statements of the prosecutrix and other witnesses, chargesheet was filed under Section 376 of Indian Penal Code & Section 3 (1) (xii) of the SC/ST Act. Thereafter, learned Special Judge (SC/ST, Act), Bastar at Jagdalpur framed charges against the accused/appellant under Section 376 of IPC and Section 3 (1) (xii) of the SC/ST Act, 1989. Accused denied the charges and prayed for trial.

8. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses namely- prosecutrix (PW-1), who was in-fact one Kudiyam Jibbo @ Hirpe and was projected as prosecutrix, Kudiyam Somli (PW-2), the prosecutrix (PW-3), Telam Budhram (PW-4), Telam Aaytu (PW-5), Dr. R.R. Gangesh (PW-6), Dr. (Smt.) Anita Gangesh (PW-7), Kudiyam Bojja (PW-8), A.R. Dhritlahare (PW-9) & Sagua Ram Sori (PW-10). Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against

him in the prosecution case, pleaded innocence and false implication. He took a defence that due to previous enmity, he has been falsely implicated in the crime in question. No defence witness has been examined on behalf of the accused.

9. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in paragraph 5 of this judgment.

10. Learned counsel appearing for the appellant/accused submits that the appellant has been falsely implicated in the crime in question as none of the independent witnesses has substantially corroborated the statement of the prosecutrix (PW-03). She submits that even daughter of the prosecutrix was not examined during trial whereas according to the prosecutrix she was present along with her at the time of incident. She also submits that in the present case, there is no evidence adduced by the prosecution to the effect that the appellant was in a position to dominate the will of a prosecutrix belonging to a Scheduled Tribe or he was in a position to exploit her sexually to which she would not have otherwise agreed, thus, the basic ingredients of Section 3(1)(xii) of the Act, 1989 are missing in the present case, therefore, Special Court had committed illegality in convicting and sentencing the accused/appellant under Section 376 of the IPC and Section 3(1)(xii) of the Act, 1989 and the appellant deserves

to be acquitted of the said charges.

11. On the other hand, learned counsel for the State while supporting the impugned judgment submits that after appreciating the material available on record, the Special Court has convicted and sentenced the accused/appellant as aforementioned, which does not call for any interference.

12. Prosecutrix (PW-3) has stated in her evidence that she belongs to "*Gond*" community whereas accused/appellant belongs to "*Ghandwa*" community. On the date of incident, she alongwith her daughter went to the village market and there she, after consuming liquor (*Tadi*), was sleeping under the tree, accused/appellant came there and committed forcible sexual intercourse with her against her will and when she cried for help, he threatened her and pressed her neck, as a result thereof, his (accused) nails caused scratch injuries to her and her bangles were also broken. Thereafter, she herself lodged FIR (Ex.P-1) and then was medically examined by Dr. (Smt.) Anita Gangesh (PW-7). In her cross-examination, no contradictions or omissions were found and she was firm in her statement.

13. Telam Aaytu (PW-5), son of the prosecutrix, has also stated in his evidence that appellant committed sexual intercourse with her mother when she was sleeping under the tree after consuming country made liquor. Statement of Telam Aaytu (PW-

5) remain unchallenged in his cross- examination.

14. Dr. (Smt.) Anita Gangesh (PW-7) has noticed five injuries on the body of the prosecutrix, as mentioned in the MLC report (Ex.P-10). She opined that the prosecutrix was subjected to forcible sexual intercourse.

15. Kudiya Bojja (PW-8), who is son-in-law of the prosecutrix, has also stated in his evidence that the accused/appellant has committed forcible sexual intercourse with his mother-in-law.

16. From careful perusal of the statements of the aforesaid prosecution witnesses, I do not find any reason to disbelieve the statement of the prosecutrix (PW-3). Accused/appellant has failed to prove his defence of false implication in the crime in question. The prosecution case is also proved by the statements of Dr. (Smt.) Anita Gangesh (PW07) and other prosecution witnesses. Thus, the offence under Section 376 IPC is made out against the accused/appellant.

17. So far as the conviction of the appellant under Section 3 (1) (xii) of the Act, 1989 is concerned, it appears from the Caste Certificate (Ex.P-11) issued by A. Dhritlahre, Tahsildar, Beejapur (PW-9) that the prosecutrix belongs to “Gond” community, which comes under the category of Scheduled Tribe. Though, the prosecutrix belongs to the “Gond” community, which is covered under the Scheduled Tribe but basic ingredient of Section 3(1)(xii)

does not attract in the present case as there is no evidence on record to prove that the appellant being in a position to dominate the will of a prosecutrix belonging to Scheduled Tribe or being in a position to exploit her, subjected her to sexual assault, to which she would not have otherwise agreed. Therefore, the appellant deserves to be acquitted of the offence under Section 3(1)(xii) of the Act, 1989.

18. Looking to the evidence of the prosecutrix, her medical report, and the statement of the Dr. (Smt.) Anita Gangesh (PW-7), who medically examined her after the incident, and other prosecution witness, it is established that offence under Section 376 of the IPC is made out against the appellant. Therefore, the finding recorded by the Special Judge convicting and sentencing the accused/appellant for the offence under Section 376 of the IPC deserve affirmation but the conviction and sentence awarded under Section 3(1)(xii) of the SC/ST Act are hereby set aside.

19. Resultantly, the appeal is allowed in part, the conviction & order of sentence of the appellant under Section 376 of the IPC passed by the Court below is hereby affirmed *whereas* the impugned judgment relating to offence under Section 3(1)(xii) of the Act, 1989 is hereby set aside and the appellant is acquitted of the said charge. Consequently, the fine sentence with regard to offence under Section 3(1)(xii) of the Act, 1989 is directed to be refunded to the accused/appellant. As per report dated

30.06.2020, received from the Central Jail, Bastar at Jagdalpur the appellant has complected his jail sentence and released from jail, therefore, no further order regarding surrender, arrest etc. of the appellant is required to be passed.

Sd/-

(Gautam Chourdiya)
Judge

Amita