

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1189 of 2014**

- Tek Singh, S/o Kuslo, Caste Panara, aged about 28 Years, Occupation Mason, R/o Village Palwa, Khaspara, Police Station Frezerpur, Civil and Revenue, District Bastar C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through the Arakshi Kendra Aadim Jati Kalyan, Jagdalpur, District Bastar C.G.

---- Respondent

For Appellant	Shri Aman Kesharwani, Advocate.
For Respondent/State	Shri Jitendra Pali, Deputy A.G.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

17/06/2020

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 14.10.2014, passed by the Sessions Judge (Atrocity) Bastar at Jagdalpur, C.G. in S.T. No.37/2014, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 376 (1) of Indian Penal Code	R.I. for seven years and fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.
Under Section 506 Part- II of Indian Penal Code	R.I. for two years and fine of Rs.1,000/-, in default of

	payment of fine to further undergo R.I. for 6 months.
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2. Case of the prosecution in brief is that on 05.01.2010 at 9 pm, prosecutrix, aged about 31 years, a married woman along with one Sangeeta after returning from labour work was waiting for taxi near Sheetal Hotel, Jagdalpur. At that time, the accused/appellant (mason of contractor Gopal) came there and took the prosecutrix in his bicycle and went towards the Sun City (a construction building) where appellant committed sexual intercourse with her without her consent and against her will and also threatened her to kill. After committing the sexual intercourse, appellant left the Prosecutrix in the house of contractor Gopal at village Titarkuti where prosecutrix stayed in night and on next day she returned to her house and narrated the incident to her parents stating that the accused/appellant, knowing her as a tribal woman, deliberately raped her. Thereafter, on 07.01.2010 at 13:30 pm, FIR Ex.P-4 was lodged by the prosecutrix against the accused/appellant and the offence was registered against the accused/appellant. Prosecutrix was medically examined by PW-1 Dr. Manisha Goyal who found the following injuries on her person vide Ex.P-1:-

1. Contusion mark of 5 x 4 cm present in left scapular region.
2. Lacerated wound in left molar bone 2 x 1cm.
3. Lacerated wound in right forearm $\frac{1}{2}$ x $\frac{1}{2}$ cm.

She opined that no definite opinion about rape can be given, she is habitual for intercourse. Pubic Hair, two vaginal

smear and cloth with blood stain of the prosecutrix were sent to lab for examination. According to the Doctor for blood, lab examination has to be done to confirm menstrual blood. During investigation, peti-coat of the prosecutrix was seized vide Ex.P-2 and slide was also seized vide Ex.P-3. Spot Map was prepared vide Ex.P-6. Seized articles were sent for chemical examination to FSL. Caste Certificate of the prosecutrix was also seized vide Ex.P-7. Statements of the witnesses were recorded and charge sheet was filed against appellant under Sections 376, 506 of IPC and under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989').

3. The trial Court framed the charge under Sections 376 (1), 506 Part-II of IPC and under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. against the accused appellant which was denied by him and he prayed for trial.

4. So as to hold the appellant guilty prosecution has examined as many as 10 witnesses i.e. PW-1 Dr. Manisha Goyal, PW-2 Sukhman, PW-3 Prosecutrix, PW-4 Cheti, PW-5 Naniram, PW-6 Ku. Sangeeta Feyam, PW-7 Smt. Babyana, PW-8 Smt. Indu Sharma, PW-9 Hemant Feyam and PW-10 Smt. Gayatri Singh. The accused/appellant was examined under Section 313 of the Cr.P.C., in which, he denied the incriminating circumstances appearing against him in the prosecution case and stated that he has been falsely implicated in the case. However, no defence

witness has been examined by him. After completion of trial, the appellant was convicted and sentenced as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. He further submits that no rape has been committed by him with the prosecutrix. He also submits that the trial Court has not properly appreciated the evidence available on record in proper perspective. The evidence of the prosecutrix is not supported by medical report. She was the consenting party. All the prosecution witnesses are interested witnesses. The FIR is delayed and no reasonable explanation has been given by the prosecution. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the charges.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

7. I have heard learned counsel for the parties, perused the judgment impugned and the evidence on record.

8. PW-3 Prosecutrix has specifically stated in her evidence that on the date of incident the appellant forcibly committed sexual intercourse with her and also committed *Marpeet* with her. She states that she informed about the said incident to her parents

next morning and thereafter FIR Ex.P-4 was lodged and her medical examination was done.

9. PW-5 Naniram, father of the prosecutrix, has supported the prosecution case by stating in para 3 that the prosecutrix informed him about the rape committed by the appellant with her. He has also proved seizure of peti-coat of the prosecutrix vide Ex.P-2 and seizure of vaginal slide and pubic hair of the prosecutrix vide Ex.P-3.

10. PW-6 Sangeeta Feyam who was working with the prosecutrix as a labour on the date of incident has also turned hostile but admitted the fact that on the next day of incident the prosecutrix informed her about rape by the appellant with her.

11. PW-10 Gayatri Singh, Additional Sub-Inspector, is the Investigating Officer and she has duly supported the prosecution case.

12. True it is that in this case most of the witnesses have turned hostile and not supported the prosecution case but the prosecutrix has categorically stated about the rape being committed by the appellant with her in the FIR, diary statement Ex.D-1 and in her deposition. The evidence of the prosecutrix also finds due support from the medical evidence in the form of MLC Ex.P-1 and the evidence of PW-1 Dr. Manisha Goyal.

13. In the matter of ***Vijay alias Chinee vs. State of Madhya Pradesh***, reported in ***(2010) 8 SCC 191***, the Hon'ble Supreme Court while dealing with the offence under Section 376(2)(g) read

with Section 34 of IPC referring to various earlier judgments of the Supreme Court on the legality of sole evidence of the prosecutrix held that the statement of the prosecutrix if found to be worthy of credence and reliable requires no corroboration and the Court may convict the accused on the sole testimony of the prosecutrix. In the said case, the prosecutrix consistently stated that she had never consented to intercourse and was forcibly caught, threatened at knife-point and thereafter subjected to gang rape by the accused persons. There was no dispute regarding place or alleged occurrence, the FIR was lodged promptly, the accused were arrested immediately and that no evidence of false implication was there since the accused were unknown to the prosecutrix. Though, there were certain discrepancies in her testimony which were insignificant as she was illiterate rustic village girl. In these circumstances, the Hon'ble Supreme Court upheld the conviction of the appellant under Section 376/34.

14. In the present case, looking to the statement of the prosecutrix who is an illiterate villager, duly supported by medical evidence and the FIR, though lodged belatedly but the delay was properly explained and further considering the fact that there is no major contradiction or omission in her statement affecting the creditability of her version, this Court finds no reason to disbelieve her statement or to arrive at a conclusion that she has falsely implicated the appellant. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the

impugned judgment and as such no interference is called for by this Court.

15. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 11.03.2020 submitted by Jail Superintendent, Central Jail Jagdalpur, District Bastar, the appellant having completed the jail sentence has been released from jail on 25.05.2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh