

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.945 of 2002

1. Tiblu @ Baljit, son of Amira Rohidas, aged about 30 years,
2. Sajan, son of Santram Rohidas, aged about 29 years,
Both residents of Village Arda, Police Station Bankimogra, District Korba, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through District Magistrate, District Korba,
Chhattisgarh

--- Respondent

For Appellants	:	Ms. Indira Tripathi, Advocate
For Respondent	:	Shri H.S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

23.6.2021

1. The instant appeal has been preferred against the judgment dated 29.8.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity 'the PoA Act') and Additional Sessions Judge, Bilaspur in Sessions Trial No.333 of 2000, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(g) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.200 with default stipulation

2. According to the case of prosecution, on 6.7.2000 at about 7:30 p.m., when the prosecutrix (PW4) was returning her house after

completing begging, on the way, the Appellants met her and told her that they may help her, but she refused for their help. Thereafter, the Appellants followed her and when she reached near a canal, Appellant No.1, Tiblu snatched her rice bag and committed forcible sexual intercourse with her. Thereafter, Appellant No.2, Sajan also committed rape with her. After the incident, she began to return to her village. At her village, on the way, she found that a meeting of the villagers was going on. Shyamlal Patel (PW3), Devnath (PW6), Lalan Yadav (PW7), Satyapal Singh (PW9) and Nehru Pratap Singh (PW11) were also present in the said meeting. She complained of the incident to the persons present in the meeting. She also got a written report (Ex.P11) prepared from the village Sarpanch and submitted the same in the police station next day. On the basis of Ex.P11, First Information Report (Ex.P4) was registered. She was medically examined by Dr. Mrs. R. Dahire (PW5). Her report is Ex.P6. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. The Trial Court framed a charge against them.

3. To bring home the offence, the prosecution examined as many as 15 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
4. On completion of the trial, the Trial Court convicted and sentenced

the Appellants as mentioned in 1st paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submits that without there being any clinching evidence on record, the Trial Court has convicted the Appellants. It is further submitted that the statement of the prosecutrix (PW4) is suspicious. There are material contradictions and omissions in her statement. It is further submitted that though immediately after the incident the prosecutrix made a complaint of the incident in the village meeting, none of the witnesses who were present in the meeting stated that in the said meeting the prosecutrix named the rapists. Instead, she stated about commission of rape with her by 3-4 persons. Therefore also, the statement of the prosecutrix is suspicious. Thus, the conviction of the Appellants is not sustainable. The Appellants are entitled to get benefit of doubt.
6. On the contrary, Learned Counsel appearing for the State opposes the submissions put-forth on behalf of the Appellants and supports the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the entire material available on record including the statements of witnesses.
8. As regards the incident, in her Court statement, the prosecutrix (PW4) stated that at the time of incident, when she was returning after begging, the Appellants chased her. Thereafter, Appellant Tiblu brought down her *gathari* (bale) kept over her head.

Thereafter, Appellant Sajan caught her hand and took her 10-15 steps away and committed forcible sexual intercourse with her there. She further deposed that thereafter Appellant Tiblu also made her fall down and committed rape with her. Thereafter, both the Appellants ran away from there. Thereafter, she returned her village. At her village, she found that a meeting of the villagers was going on near the shop of one Thakur. She intimated those villagers about the incident. Next day, she made a report in the police station. However, during cross-examination, she admitted the fact that on the fateful day after return to her house she did not inform about the incident to her family members. She did not inform about the incident to her neighbours also and when she went to take bath at the *ghat* (bank of the pond), there also she did not tell about the incident to the ladies taking bath. In paragraph 7 of her cross-examination, she explained that she did not tell about the incident to her family members due to fear that after telling about the incident she could be beaten by the family members and she could also be ousted from home. In paragraph 13 of cross-examination, she admitted that at the time of incident, she did not cry and shout, but she requested the Appellants by touching their feet for not doing any wrong with her. Explaining further, she deposed that how could she resist two persons and prevent them from committing rape with her and who would have come there on her shouting.

9. According to the case of prosecution, while returning after the incident, during the village meeting, the prosecutrix intimated the

villagers present in the meeting about the incident. Shyamlal Patel (PW3), Devnath (PW6), Satyapal Singh (PW9) and Nehru Pratap Singh (PW11), who were present in the said meeting, have supported the statement of the prosecutrix to the only effect that the prosecutrix had told in the meeting about commission of rape with her by 3-4 persons. None of the above four witnesses has stated that in the said meeting the prosecutrix had told name of any of the rapists. Therefore, all these four witnesses have been declared hostile by the prosecution.

10. Dr. Mrs. R. Dahire (PW5) examined the prosecutrix on 8.7.2000. Her report is Ex.P6. She deposed according to her report that in the examination of the prosecutrix she found four abrasions. Abrasions number one and two were found on her back, abrasion number three was found over right scapula region and abrasion number four was found over right elbow joint. Ulcers were also found in the cervix of her uterus. As opined by this witness, those ulcers could be result of forcible sexual intercourse.
11. On a minute examination of the above evidence, it is clear that in her Court statement, the prosecutrix (PW4) supported the entire case of the prosecution and categorically stated that the Appellants committed forcible sexual intercourse with her one by one. On this point, she remained firm during her cross-examination. There is nothing in her cross-examination to establish that there was a previous enmity between her and the Appellants. No suggestion was put to her by the defence during cross-examination. Therefore, possibility of false implication of the Appellants by her

does not appear. Though Shyamlal Patel (PW3), Devnath (PW6), Satyapal Singh (PW9) and Nehru Pratap Singh (PW11) have not supported the entire case of the prosecution, they have categorically stated that during the village meeting the prosecutrix had come to them and complained of rape with her. If no rape had been committed with her, she would not have publicly complained of rape before the villagers sitting in the meeting. Though she did not tell about the incident to her family members, reason therefor has been explained by her that it was due to fear of being beaten and ousted from home. Being a beggar, i.e., a poor woman, her such fear is natural. Therefore, even if she did not tell about the incident to her family members, this does not leave any adverse effect on the case of the prosecution. The medical evidence available on record also corroborates the case of the prosecution. Looking to the entire evidence of the prosecution, in my considered view, the Trial Court has rightly convicted the Appellants. Therefore, I do not find any substance in this appeal.

12. Consequently, the appeal is dismissed.
13. The Appellants are reported to be on bail. Their bail bonds are cancelled. The Trial Court is directed to take all necessary steps for completion of the remaining sentence of the Appellants.

Sd/-
(Arvind Singh Chandel)
JUDGE