

HIGH COURT OF CHHATTISGARH, BILASPUR

• **CRA No. 707 of 2001**

• Niya Ram Dhobi

---- Appellant

Versus

• State of Chhattisgarh

-----Respondent

Post for pronouncement of the judgment on 27.08.2021

Sd/-
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 28.07.2021****Judgment delivered on : 27.08.2021****CRA No. 707 of 2001**

- Niya Ram Dhobi, Aged about 18 years, S/o. Johan Lal Nirmalkar, PS Tumgaon, district Mahasamund (CG)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Tumgaon, district Mahasamund CG

---- Respondent

For Appellant	: Shri Shivendu Pandya, Advocate
For Respondent/State	: Ms. Shubha Shrivastava, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****27/08/2021**

This appeal arises out of judgment and order dated 27.07.2001 passed by the Special Judge (SC/ST (Prevention of Atrocities Act) in S.T. No. 80/2000 convicting the accused/appellant under Section 376 IPC sentencing him to undergo imprisonment for five years with fine of Rs. 5,000 plus default stipulation.

2. Brief facts of the case are that on 24.06.2000 FIR (Ex.P-1) wasprosecutrix is a married woman lodged by the prosecutrix (PW-1), a minor girl alleging that one year prior thereto, on the date of incident, when she was all alone in the house, at about 3.00 p.m., accused/appellant came there and after removing her as well as his own clothing, made her lie on the floor and committed forcible sexual intercourse with her. It is further case of the prosecution that the appellant and the prosecutrix had sexual intercourse with each other for a long time and on several occasions, presumably on the alleged assurance of the accused that he would marry the prosecutrix and later on, after a sufficiently long gap, when the prosecutrix finds that the accused does not intend to marry her or that his assurances were unfounded or false, she lodged the FIR against the accused/appellant under Section 376 IPC. Prosecutrix was medically examined on 24.06.2000 by Dr. Smt. Alka Pardal (PW-11) vide Ex. P-8 and she opined that the prosecutrix is having seven months pregnancy and for age determination, she advised the same after delivery as radiation is injuries to the foetus. After investigation, charge sheet was filed on 16.08.2000 under Sections 450 and 376 IPC and 3(1)(v) of the SC/ST (Prevention of Atrocities) Act and accordingly charges were framed.

3. So as to hold the accused/appellant guilty, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge leveled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, trial Court has acquitted the accused/appellant of the offences under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act but has convicted and sentenced him as mentioned in para one of this judgment. Hence the present appeal.

5. Contention of Shri Pandya, counsel for the appellant is that the trial court has convicted the appellant mainly on the ground that the prosecutrix was below 16 years of age and on the pretext of marriage he committed sexual intercourse with her. He further submits that the Court below has erred in law in awarding the sentence to prosecutrix is a married woman accused/appellant. He has placed his reliance on the various judgments reported in 2015 (2) CGLJ 236 (Dharmesh @ Dharmendra Bairagi Vs. State of CG); 2015 (4) CGLJ 21 (MP) (Raghubeer Prasad Vs. State of M.P.) ; 2014 (1) CGLJ 499 (Dashrath Bhuiyan Vs. State of CG) and 2012 (4) CGLJ 168 (Netram Sahu Vs. State of CG) and submits that the prosecution has failed to prove the case beyond reasonable doubt because at the time of commission of the offence, the prosecutrix was below 16 years of age but in her statement made before the Court, to some extent it can be said that she was a consenting party. He submits that the prosecutrix also continued to have physical relation with him and it was only when the appellant refused to marry her, she informed her parents and therefore it cannot be said that the same was contrary to her wish.

6. On the other hand, it has been argued by the State counsel that the impugned judgment is strictly in accordance with law and there is no infirmity in the same. It has further been argued that considering the

age of the prosecutrix the Court below has rightly awarded the sentence to the accused/appellant.

7. Heard counsel for the parties and perused the material available on record.

8. Prosecutrix (PW-1) - has stated in her evidence that she knew the accused/appellant. She has stated that on the date of incident, he came to her house at 2.30-3.00 pm and forcibly subjected her to sexual intercourse and promised her that he will keep her as his wife. She has stated that he continued to have sexual intercourse with her and when she became pregnant, he refused to marry her. She then informed her parents whereupon a meeting was convened in the village in which the appellant denied the allegation levelled against him and refused to keep her as his wife. Thereafter the report was lodged at the police station against the appellant for the offence under Section 376 IPC. In cross-examination she remained very firm and nothing could be elicited from her. Manglu Ram (PW-2) father of the prosecutrix has stated that came to know about the pregnancy of his daughter after 5-6 months. He has also stated that when the appellant refused to marry his daughter, village meeting was convened and thereafter the report was lodged. Bhojram Patel(PW-3) is the Patel of the village who attended the meeting and went along with the prosecutrix to lodge the report. Baldau (PW-4) is the panch of the village who was also present in the meeting. G.L.Gajendra (PW-7) is the patwari who prepared spot map Ex.P-4. J.L.Sahu (PW-8) is the ASI who has written the report Ex.P-1 at police station and thereafter

she was sent for medical examination to the doctor. T.P.Sonwani (PW-9) is the SI who arrested the accused/appellant and sent for medical examination Dr.(Smt.) Alka Pardal (PW-11) has medically examined the prosecutrix vide Ex. P-8 has found that she is having seven months pregnancy and for age determination, she advised the same after delivery as radiation is injurious to the foetus.

9. Learned trial court found that on the date of incident, the prosecutrix was above 16 years of age. In para 14 and 15 of the judgment impugned, the trial court appreciated oral and documentary evidence and found that on the date of incident i.e. 24.06.1999 the prosecutrix was more than 16 years of age and the prosecution has failed to prove the case beyond reasonable doubt that the prosecutrix (PW-1) was below 16 years at the time of commission of the crime for the first time. If the same is not proved beyond doubt then the benefit must go to the appellant and it is clear from the conduct of the prosecutrix that she was a consenting party. As has been held in the matter of **Dharmesh @ Dharemndra Bairagi Vs. State of Chhattisgarh reported in 2015(2) CGLJ**, that so far as the promise of marriage is concerned, it may not work right from the first incident when she herself gave her consent and continued her relation with the appellant, in absence of any threat and inducement, it would not be safe to hold that for such a long period, the promise of marriage had been given, same has been accepted till she became pregnant and it was known to her parents only after 3 months and the villagers came to know about the incident after about seven months.

11. As the prosecutrix was a consenting party with the appellant to

commit the alleged act, the appellant is entitled to be extended acquittal from the charges of the offence under Section 376 IPC. In the light of the aforesaid discussion, this court is of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. The appeal succeeds and is accordingly allowed. The impugned judgment is hereby set aside. The appellant is acquitted from of the charges leveled against him. He is accordingly set free. His bail bonds are accordingly discharged.

Sd/-

(Rajani Dubey)
Judge