

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 52 of 2014**

Tikeshwar Lal Yadav @ Chhotu S/o Lakhan Lal Yadav, aged about 24 years R/o Village Khalpathara, P.S. Sihawa, Civil and Revenue District Dhamtari (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through P.S. Sihawa, Civil and Revenue District Dhamtari (C.G.)

---- Respondent

For Appellant	:	Mrs. Meenu Banerji, Advocate
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****08/03/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 11/10/2013 passed in Special Sessions Trial No. 02/2013 by the Special Judge, Schedule Caste/Schedule Tribe (Prevention of Atrocities) Act (henceforth 'the Act'), Dhamtari (C.G.), whereby the Appellant has been convicted under Sections 450 and 376 of the IPC and sentenced to undergo RI for 3 years with fine of Rs. 1000/- and RI for 10 years and fine of Rs. 1000/-, respectively with default stipulation.
2. In this case the Prosecutrix (PW1) is aged about 15 years. According to the case of the prosecution, she was mentally weak. On 25/11/2012 at about 5:00 pm, the Prosecutrix was alone in her house. It is alleged that the appellant entered into her house. He committed forcible sexual intercourse with her and fled away from there. When the mother of the

Prosecutrix returned, the Prosecutrix was crying at that time. On being asked, she narrated the entire incident to her mother. It was further case of the prosecution that Sumitra Bai (PW3), neighbor of the Prosecutrix also seen the appellant fleeing from the house of the Prosecutrix. The matter was reported by the mother of the Prosecutrix vide Ex.P-1. The Prosecutrix was medically examined by Dr. Smt. Aasha Tripathi (PW6). Her report is Ex.P-14. Statements of Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After investigation, a charge-sheet was filed. Trial Court framed the charges under Sections 450 & 376 of the IPC and Section 3 (2) (5) of the Act. As many as 10 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was 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 Act, however, he has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence. She further submits that there was previous enmity between the mother of the Prosecutrix and the appellant due to that the appellant has been falsely implicated in this case, but the trial Court has not appreciated this fact. She further submits that as per medical report of the Prosecutrix, no injury was found on the body of the Prosecutrix.

Even no marks of recent intercourse was found during medical examination of the Prosecutrix, and the report of FSL revealing absence of semen in Vagina, therefore, on this point also, the conviction of the appellant is not sustainable. Reliance has been placed upon **2014, CRLJ, 107, The State of Gujarat v. Popatbhai Bhalabhai @ Bharabhai Bharwad.**

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. With regard to the age of the Prosecutrix, from the statement of the Prosecutrix (PW1), her mother Lata Bai (PW2) and on perusal of ossification report (Ex.P-21), it is well established that at the time of incident, the Prosecutrix was below 18 years of age. Apart from that, from the statement of Lata Bai (PW2), Dr. Aasha Tripathi (PW6), Dr. Sharda B. Ansari (PW8) and from the inquiry report (Ex.P-17), it is well established that the Prosecutrix was mentally weak and her mental condition was not equivalent to 8 years child.
8. With regard to the incident, the Prosecutrix (PW1) in the court Statement has deposed that at the time of incident, she was alone in her house. The appellant entered into her house and closed her mouth by a piece of cloth and committed forcible sexual intercourse with her. The appellant thereafter fled away from the spot. She further deposed that later on when her mother returned and saw her in weeping condition, she asked

the Prosecutrix as to why she is weeping, then the Prosecutrix narrated the entire incident to her. Lata Bai (PW2) had duly corroborated the above statement of the Prosecutrix and has deposed that at about 5:30, when she returned, the Prosecutrix was weeping. On being asked, the Prosecutrix told that the appellant had committed forcible sexual intercourse with her. According to this witness, the Prosecutrix was complaining for pain in her private part.

9. Sumitra Bai (PW3) has deposed that on the date of incident she had gone to take water from hand pump. At that time, she saw the appellant fleeing from the house of the Prosecutrix and after some time, the Prosecutrix came out in weeping condition.
10. Dashrath (PW7) has also deposed that after the incident Lata Bai (PW2) told him that the appellant committed rape with the Prosecutrix. Thereafter, a social meeting was called wherein the Prosecutrix narrated that the appellant had committed rape with her. At that time, the Prosecutrix was complaining about pain in her private part.
11. The Prosecutrix was medically examined by Dr. Aasha Tripathi (PW6). Her report is Ex.P-1. According to her report, at the time of examination, the Prosecutrix was complaining about pain in her private part. There was no external bodily injury over her body. According to this witness, hymen was old ruptured, but she was not habitual of intercourse.
12. On minute examination of the above evidence, it makes clear that in her Court statement, the Prosecutrix has categorically stated that at the time of incident she was alone in her house. The appellant entered into the house and committed forcible sexual intercourse with her. From the

statement of Sumitra (PW3), it is also established that when the appellant was fleeing from the house of the appellant, she had seen him. After the incident, Lata Bai (PW2), mother of the Prosecutrix came back and saw the Prosecutrix in weeping condition. The Prosecutrix narrated the entire incident to her mother. From the statement of Dashrath (PW7), it also appears that after the incident, a social meeting was called wherein also, the Prosecutrix had told that the appellant had committed rape with her. Moreover, the Prosecutrix was complaining about pain in her private part. All the above witnesses have remained firm during their cross-examination. Though it was argued by the counsel that due to some previous enmity the appellant has been falsely implicated, there is no material available on record on the basis of which it can be said that there was any enmity between the mother of the Prosecutrix and the appellant. During cross-examination of the witnesses, no such type suggestion were put by the defence, which shows that there was previous enmity between the party. Therefore, I do not find any force on the argument advance by the counsel for the appellant that the appellant has been falsely implicated in the present case due to some previous enmity.

13. Though according to the FSL report (Ex.P-21) no semen of the appellant was found, other evidence available on record clearly shows that the appellant had entered into the house of the Prosecutrix and he was seen by Sumitra (PW3) when he was fleeing from there. Immediately after the incident, the Prosecutrix made complaint and a social meeting was called, wherein also the Prosecutrix had narrated that the appellant had committed rape with her. Further Sumitra (PW3) had seen the appellant

fleeing from the house of the Prosecutrix. Her statement is not duly rebutted. Even this fact has been admitted by the appellant's side. From the statement of Dr. Aasha Tripathi (PW6) and medical report of the Prosecutrix (Ex.P-14), it also appears that the Prosecutrix was complaining about pain in private part, therefore, only on the ground that in vaginal swap FSL report, semen was not found, the appellant could not be given any benefit. The case cited by the counsel for the appellant are having different facts and the same does not relate with the facts of the present case. The said case was of gang rape wherein the Prosecutrix was not sustaining any bodily injury and no semen was found in the vaginal swap, but in the case in hand, there was complaint of pain in the private part of the Prosecutrix and the appellant was seen fleeing from the house of the Prosecutrix by Sumitra (PW3). In these condition, the facts of the present case is distinguishable from the case cited by the counsel for the appellant.

14. Looking to the entire case and the evidence adduced by the prosecution, in my considered view, the trial Court has rightly convicted the appellant and the same require no interference.
15. In the result, I do not find any merit in this appeal. The appeal is dismissed.
16. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge