

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.681 of 2017

Judgment Reserved on : 10.9.2021

Judgment Delivered on : 24.9.2021

Chaitanya @ Chaita, son of Chitranjan Sarkar, aged about 32 years, resident of Village P.V. 119 (Alwar) Kapsi, P.S. Pankhajur, District Kanker, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station Pankhajur, District Kanker, Chhattisgarh

--- Respondent

For Appellant	:	Shri Varindra Pratap Singh, Advocate
For Respondent	:	Shri Aakash Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 3.1.2017 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the PoA Act'), Uttar Bastar Kanker in Special Case No.43 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 4 years and fine of Rs.500 with default stipulation
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500 with default stipulation
	Both the jail sentences are directed to run concurrently

2. According to the prosecution case, at the relevant time, the prosecutrix (PW1) was aged about 13 years. On 1.6.2015, her parents had gone to Village Murawandi to attend a marriage ceremony and the prosecutrix and her younger brother and sister, namely, Umendra and Parmeshwari, aged about 8 years and 5 years, respectively had stayed at home. On 6.6.2015, i.e., the date of incident, at about 8 p.m., when the prosecutrix was preparing food, the Appellant entered their house, caught her hands and began to drag her inside a room of the house. Umendra and Parmeshwari tried to intervene, but the Appellant beat them and caused them to run away from there. Allegedly, he committed forcible sexual intercourse with the prosecutrix there. When Umendra and Parmeshwari saw that he was inside with the prosecutrix, they bolted the door from outside and went to the house of Gokul (PW3) and slept there in the verandah. In the next morning, at about 4 a.m., when Gokul (PW3) woke up, they told him about the incident. He went to the spot, but, by that time, the Appellant had fled from there after breaking down the window of the house. When the parents of the prosecutrix returned home, she narrated them about the incident. Thereafter, a written complaint (Ex.P4) was filed by the mother of the prosecutrix. 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 Appellant. The Trial Court framed charges against him under Sections 450 and 376(1) of the Indian Penal Code, Sections 3(1)(a)(1) and 3(2)(v) of

the PoA Act and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the Pocso Act').

3. To bring home the offence, the prosecution examined as many as 15 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness was examined in his defence.
4. On completion of the trial, the Trial Court acquitted the Appellant of the charges framed under Sections 3(1)(a)(1) and 3(2)(v) of the PoA Act and Section 4 of the Pocso Act, but convicted and sentenced him as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Appellant has been wrongly convicted by the Trial Court without there being clinching and sufficient evidence on record. Statement of the prosecutrix (PW1) is suspicious. In her Court statement, she categorically admitted that the Appellant had caught her hands and attempted to commit forcible act with her. Her medical report (Ex.P3) also shows that her hymen was intact. No injury, bleeding, redness or swelling was found in her private part nor was there any injury on any other part of her body. Therefore, the act committed by the Appellant falls within the ambit of Section 376 read with Section 511 of the Indian Penal Code only. The Appellant is in jail since 9.6.2015. He has no criminal antecedent. Therefore, it is prayed by Learned Counsel that his conviction under Section

376(1) of the Indian Penal Code may be altered to Section 376 read with Section 511 of the Indian Penal Code and his jail sentence may be restricted to the period already undergone.

6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and minutely perused the record of the Trial Court including the statements of the witnesses.
8. In her Court statement, the prosecutrix (PW1) deposed that on the date of incident, her parents had gone to Village Murawandi and she was at home along with her younger brother and sister, namely, Umendra and Parmeshwari (both not examined). She was preparing food. At that time, the Appellant entered their house, caught her hands and dragged her towards inside the house. He tore her clothes and underwear as well. He caused her to fall down and thereafter he entered his private part inside her private part. She further deposed that he beat her younger brother and sister and caused them to run away from there. Both of them went out and bolted the door of the house from outside. She further deposed that the Appellant stayed at their house for the whole night and in the next morning he ran away after breaking down the window of the house.
9. Gokul (PW3), supporting the above statement of the prosecutrix (PW1), deposed that in the morning at about 5 a.m., when he woke

up, he saw Umendra and Parmeshwari, the younger brother and sister of the prosecutrix in front of his house. On being told by them about the incident, he went to the spot and saw that the window of the house was broken down and clothes of the prosecutrix were torn. She told him that the Appellant had broken down the window and run away. Villager Mangtaram (PW4) also deposed in similar fashion.

10. Dr. Ujjwala Dewangan (PW6) examined the prosecutrix on 9.6.2015. Her report is Ex.P3. She deposed that at the time of examination of the prosecutrix, she did not find any injury in her private part. Her hymen was intact. She did not find any bleeding or swelling in her private part. She opined that it was not possible to state that any sexual intercourse was done with the prosecutrix.
11. On a minute examination of the above evidence, it is clear that it is not in dispute that the prosecutrix (PW1) was inside her house along with her younger brother and sister. It is also not in dispute that in the early morning at about 5 a.m., her younger brother and sister met with Gokul (PW3) and when Gokul (PW3) went to the spot, he saw that the window of the house of the prosecutrix was broken down and her clothes were torn. She told him that the Appellant had entered her house and committed forcible act with her and thereafter run away. Though according to the statement of the prosecutrix the Appellant had entered his private part inside her private part, the medical report (Ex.P3) shows that her hymen was intact and no injury, bleeding, redness or swelling was present in her private part and no injury was present even on any other part of

her body. As opined by Dr. Ujjwala Dewangan (PW6), she was unable to state that any sexual intercourse was done with the prosecutrix. Even in the vaginal slides of the prosecutrix and on her underwear, no semen was found. In paragraph 4 of her cross-examination, the prosecutrix (PW1) categorically admitted the fact that in the night, the Appellant had caught her hands and attempted to commit forcible act with her. Looking to her above admission and her medical report (Ex.P3), it appears that the Appellant attempted to commit sexual intercourse with her, but there is no evidence on record to show that he penetrated his penis into her vagina to any extent and, therefore, the act committed by him falls within the ambit of Section 376 read with Section 511 of the Indian Penal Code.

12. As an outcome of the above discussion, conviction of the Appellant under Section 450 of the Indian Penal Code is affirmed, but his conviction under Section 376(1) of the Indian Penal Code is altered to Section 376 read with Section 511 of the Indian Penal Code.
13. As regards sentence against conviction of the Appellant under Section 450 of the Indian Penal Code, rigorous imprisonment for 4 years and fine of Rs.500 imposed upon him by the Trial Court are affirmed.
14. Against conviction of the Appellant under Section 376 read with Section 511 of the Indian Penal Code, having regard to the fact that he is in jail since 9.6.2015 and is facing the */s* since then and also keeping in view the fact that he has no criminal antecedent, I am

inclined to restrict his jail sentence to the period already undergone by him with imposing a fine of Rs.500 payable within a period of one month from today. Ordered accordingly. In default of payment of the fine, he shall be liable to undergo simple imprisonment for a period of 10 days. If any amount has already been deposited towards fine, same shall be adjusted against the fine imposed today.

15. Consequently, the appeal is partly allowed in the terms aforestated. The Appellant is in jail. On compliance of the fine sentence, he be released forthwith.

Sd/-
(Arvind Singh Chandel)
JUDGE