

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 922 of 2015

- Vijay Yadav, S/o Durjan Yadav, aged about 35 years, R/o Bathenapara, Dhamtari, Post Office and Police Station - Dhamtari, District- Dhamtari, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through The District Magistrate, Dhamtari, District- Dhamtari, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Shivendu Pandya, Advocate.
For State/Respondent	:	Shri Priyanshu Gupta, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

01/03/2021

1. This appeal has been preferred against the impugned judgment dated 13/05/2015 passed in Special S.T. No.6/2015 by the Special Judge, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Dhamtari, District – Dhamtari, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
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U/s 376 of the I.P.C.	R.I. for 10 years and fine of Rs.100/- with default stipulations.
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2. In the present case, at the time of incident age of the victim/prosecutrix (PW-1) was about 30 years and she was mentally weak lady. According to case of the prosecution, on 14/2/2015, Aunt of the prosecutrix namely Dashoda Bai (PW-2) lodged a report to the effect that parents of the prosecutrix had died and she used to reside with her. Prosecutrix became pregnant due to physical relationship made with the appellant. On being asked by her aunt and other village ladies, prosecutrix told that prior to 7-8 months, appellant came to her at around 9:00-10:00 pm and forcibly took her to his house, and committed illicit act with her by pressing her mouth with one hand. Appellant also threatened the prosecutrix not to reveal the alleged act committed by him. Thereafter, appellant again committed the illicit act with her 2-3 times. Due to which she got pregnant. On the basis of the said report, offence was registered. Prosecutrix was medically examined by Dr. Smt. Madhuri Wankhede (PW-4). Her report is Ex.P-4. Statement of prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 8 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication.
3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence,

this appeal.

4. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. Referring to the statement of the prosecutrix, it appears that prosecutrix was consenting party. Since, age of the prosecutrix was around 30 years and she was consenting party, no offence can be made out against the appellant. It is further submitted that trial Court has convicted the appellant only on the ground that at the time of incident prosecutrix was mentally weak and the consent given by her is not legal. He further states that there is no medical report of the prosecutrix which shows that she was mentally weak. Therefore, conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supports the impugned judgment and opposes the arguments advanced by the Counsel for the appellant. He submits that Dashoda Bai (PW-2) and Dr. Smt. Madhuri Wankhede (PW-4) in their statements have deposed that prosecutrix was mentally weak. Above statements of these witnesses were not duly rebutted during cross-examination. Thus, without medical evidence, it was duly proved that prosecutrix was mentally weak. Hence, the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the record minutely.

7. Prosecutrix (PW-1) has deposed in her Court statement that on the date of incident, when she was standing near her house, appellant came there and took her to his house and committed sexual intercourse with her and told her not to disclose the fact to anyone. During her cross-examination, she has admitted the fact that she has not stated anything about the alleged act to anyone. She has further admitted that, after the alleged incident, appellant had committed sexual intercourse with her 2-3 occasions and she had not made any complaint about this to anyone. Looking to the admissions made by the prosecutrix, it appears that she was consenting party in the alleged act and all the alleged act committed by appellant thereafter, were done with her consent.
8. Now, the only question remains that whether the consent of the prosecutrix was legal consent. There is no any medical report submitted by the prosecution before the trial Court in this regard but Aunt Dashoda Bai (PW-2) has deposed that prosecutrix was mentally weak since her childhood days. Dr. Smt. Madhuri Wankhede (PW-4) has also categorically deposed that at the time of medical examination, it was found that prosecutrix was not in normal state of mind. The statements of above witnesses were not duly rebutted during their cross-examination in any manner. Therefore, non-production of any medical report regarding mental condition of the prosecutrix is not fatal and it will not have any adverse effect. Thus, from the evidence adduced by the prosecution, it is well-established that at the time of alleged incident, mental condition of the prosecutrix was weak. Therefore, if the alleged act was committed with prosecutrix with her consent, then also her consent is not legal. Therefore, findings of the

trial Court is in accordance with the evidence available on record.
Thus, in my considered view, the trial Court has rightly convicted the
appellant.

9. Consequently, the appeal has no merit and is, therefore, dismissed.

Sd/-
(Arvind Singh Chandel)
Judge