

(2023) 01 CHH CK 0073
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 161 Of 2014

Raju @ Rajesh Patel

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2), 437A

Indian Penal Code, 1860 — Section 376, 493

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(xii), 3(2)(v)

Citation : (2023) 01 CHH CK 0073

Hon'ble Judges : Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench : Division Bench

Advocate : Anil Gulati, Ruchi Nagar

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 04.01.2014 passed by learned Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Koriya, Baikunthpur, in Special Sessions Trial No.05/2011, by which, the appellant herein has been convicted for the offences under Sections 376, 493 of I.P.C. and Sections 3(1)(xii) & 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the SC/St Act") and sentenced as under :

Conviction

:

Sentence

U/s. 376 of I.P.C.

:

R.I. for 10 years with fine of Rs.1000/-, and in default of payment of fine, further R.I. for 6 months.

U/s. 493 of I.P.C.

:

R.I. for 10 years with fine of Rs.1000/-, and in default of payment of fine, further R.I. for 6 months.

U/s. 3(1)(xii) of SC/ST (Prevention of Atrocities) Act

:

R.I. for 5 years with fine of Rs.1000/-, in default of payment of fine, further R.I. for 6 months.

U/s. 3(2)(v) of SC/ST (Prevention of Atrocities) Act

:

Life imprisonment with fine of Rs.1000/-, in default of payment of fine, further R.I. for 6 months.

2. Case of the prosecution, in short, is that the appellant committed sexual intercourse with major victim continuously from six months prior to 23.10.2010 near B.C.M. Forest Nala and other places against her will and without her consent knowing fully well that she is a member of Scheduled Tribe and the said act is punishable under Section 376 of I.P.C. and under the provisions of Section 3(1)(xii) and Section 3(2)(v) of the SC/ST Act. Further case of the prosecution is that the appellant took the victim being a major girl, on the pretext of marriage, to B.C.M. Forest Nala, Pokhari Dafai Lal Ground and Sidhbaba Forest continuously six months prior to the date of FIR i.e. 23.10.2010 and committed sexual intercourse against her wish & will and without her consent and thereby committed the offence under Sections 376 & 493 of I.P.C. and under Sections 3(1)(xii) and 3(2)(v) of the SC/ST Act. On the report of the victim, the FIR was registered vide Ex.P-1 and the victim and appellant were medically examined vide Ex.P-8 and seized slides were sent for FSL, but the FSL report was not brought on record. Thereafter, on due investigation, the appellant was charge-sheeted for the aforesaid offences, which was ultimately committed to the Court of Sessions for trial in accordance with law, in which the accused abjured his guilt and entered into defence stating that he has been falsely implicated and he has not committed any offence.

3. In order to bring home the offence, prosecution examined as many as 13 witnesses and exhibited 17 documents and the appellant-accused in support of his defence has neither examined any witness nor exhibited any document. Article A-1 and A-2 were also brought on record.

4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant herein for the offences as mentioned in the opening paragraph of the judgment, against which the present appeal has been preferred.

5. Learned counsel for the appellant submits that the victim being major was consenting party and no ingredients of Section 493 of I.P.C. and Section 3(1)(xii) of the SC/ST Act are available in the evidence brought out by the prosecution and therefore, no offence under the aforesaid penal provisions are made out, as such, appellant is liable to be acquitted.

6. Learned State counsel submits that the appellant has rightly been convicted for the aforesaid offences, as the prosecution has been able to bring home the offences beyond reasonable doubt and therefore, the appeal deserves to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. Firstly the appellant has been convicted for the offence under Section 376 of I.P.C. on the premises that continuously from six months prior to 23.10.2010, the date of FIR, the appellant committed sexual intercourse against the will & wish of the victim and without her consent. In order to prove the offence, the victim has been examined as PW-1.

9. The victim (PW-1), aged about 20 years, on the date of offence, in the examination before the Court, has stated that on the pretext of marriage, the appellant had committed sexual intercourse with her on different places continuously from six months. However, in the cross-examination, she has clearly stated that she is close to the appellant, as they were known to each other and they used to talk on the mobile phone and even in para 6 of the statement before the Court, she has clearly stated that firstly the sexual intercourse was done without her consent, thereafter, twice sexual intercourse was done with her consent. As such, the victim being major woman and in view of para 6 of her statement, she was a consenting party and the incident is six months prior to the date of offence, which has been continued for six months till the date of lodging of FIR i.e. 23.10.2010, as such, delay in lodging the FIR has not been explained by the prosecution. Further, the father of the victim namely Balkaran (PW-2) has stated that his daughter has informed that she has love affair with the appellant which has also not been explained by the prosecution. However, the reason given that the appellant has committed sexual intercourse on the pretext of marriage has also not been proved by the prosecution except self-serving statement of the victim (PW-1), as such, the victim being major was consenting party on the date of offence. In medical report also, no sign of forceful sexual intercourse has been shown and even no FSL report has been brought on record connecting the appellant for the crime in question, as such, the learned trial Court has

committed grave error in convicting the appellant for the offence under Section 376 of I.P.C.

10. Next, the appellant has been convicted for the offence under Section 493 of I.P.C. Section 493 of I.P.C. reads as under :

"493. Cohabitation caused by a man deceitfully including a belief of lawful marriage. - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

11. The Supreme Court in the matter of Ram Chandra Bhagat v. State of Jharkhand (2013) 1 SCC 562, laid down the ingredients of offence under Section 493 of I.P.C. and it has been held in para 7 as under :

"Upon perusal of Section 493 of the IPC, to establish that a person has committed an offence under the said Section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the afore-stated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore- stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception.

12. In the present case, admittedly, the victim and appellant were not married to each other, but there is no evidence on record to show that the appellant has induced the victim who is not lawfully married to him, to believe that he is married to her and as a result of the aforesaid representation, the victim should believe that she was lawfully married to the appellant and there should be cohabitation or sexual intercourse as a result of the deception. As the ingredients of offence under Section 493 of I.P.C. is absolutely missing in the instant case, the trial Court is unjustified in convicting the appellant under Section 493 of I.P.C.

13. Similarly, the appellant has been convicted for offence under Section 3(1)(xii) of the SC/ST Act, which provides that (i) the offender must be a person who is not a member of Scheduled Caste or Scheduled Tribe, (ii) he be in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe; (iii) the said position was used to exploit the woman sexually, to which she would not have otherwise agreed. In the instant case, the ingredients of offence under Section 3(1)(xii) are absolutely missing, therefore, the trial Court is absolutely unjustified in convicting the appellant for the offence under Section 3(1)(xii) of SC/ST Act.

14. Since the offence under Section 493 of I.P.C. has not been proved, therefore,

the charge under Section 3(2)(v) of SC/ST Act would also fail. Accordingly, the conviction and sentence of the appellant for offences under Section 376 & 493 of I.P.C. and also for offence under Sections 3(1)(xii) & 3(2)(v) of SC/ST Act are hereby set aside. The appellant is acquitted of the aforesaid offences. The appellant is on bail, he need not surrender; however, his bail bonds shall remain in operation for a period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.

15. Accordingly, the criminal appeal is allowed.