

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 06 of 2001

- Krishna Kumar, S/o Bhagwat Prasad Mishra, Aged 30 years, Resident of Near Bus Stand Masturi, P.S. Masturi, Distt. Bilaspur (C.G.)

---- Appellant

Versus

- The State of Chhattisgarh

---- Respondent

For Appellant	:	Mr. U.K.S. Chandel, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 22/07/2015

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 21.12.2000 passed by the Special Judge (Atrocities) Bilaspur, in Special Criminal Case No.41/2000, whereby the trial Court has convicted the appellant under Sections 493 & 376 (1) of the IPC and sentenced him to undergo R.I. for 7 years and to pay fine of Rs.500 on each count-, in default of payment of fine, to undergo additional R.I. for 3 months. Both the sentences are directed to run concurrently.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

- 3) Brief facts of the case as projected by the Court below, are that on 9-10-1999 the prosecutrix (PW/5) (name not mentioned) who is a grown up lady lodged a written complaint against the appellant at Special Police Station, SC & ST Welfare, Bilaspur, stating therein that in the year 1997 she and appellant became close friends, they had developed relationship, they fell in love with each other. In the month of February, 1998 appellant put vermilion on her forehead, deceitfully inducing a belief of lawful marriage, he cohabited her and thereafter when she demanded him for legal marriage, then the appellant denied to marry her stating that he belonged to Brahmin Caste whereas she belonged to Harijan Caste.
- 4) After investigation Police collected evidence and found correctness of incident, thereafter filed charge-sheet before the Special Court, SC & ST (Prevention of Atrocities) Act, 1989, at Bilaspur.
- 5) In order to prove the guilt of the accused/appellant, the prosecution had examined as many as nine witnesses. Statement of the accused was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
- 6) After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.

- 7) Learned counsel appearing for the appellant vehemently argued that case of the prosecution is substantially based on the evidence of the prosecutrix and her evidence is not cogent, reliable and trustworthy. He further submits that there was inordinate delay in filing the first information report and no explanation was offered by the prosecution as to how the delay occurred in lodging the FIR and there is no medical evidence in support of her case, therefore, conviction under Sections 493 and 376(1) of the IPC cannot be sustained and the appellant be acquitted of the charges.
- 8) *Per contra*, learned counsel appearing for the State has supported the judgment and opposed the appellant's argument.
- 9) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 10) Admittedly, the case is based on the evidence of prosecutrix. Now, I shall examine the evidence on the basis of which the appellant was convicted.
- 11) Firstly, I see the conduct of the prosecutrix in Court, she came to Court on 3rd November, 2000 and refused to give statement in the case, Court advised her repeatedly, but she was not ready to give statement and on same day she did not give any statement in that case. Thereafter, Court had fixed next date for taking her statement and again she was examined on 02.12.2000. Prosecutrix (PW-5) deposed that after introduction with the accused, they became close and fell in love with each

other, one day accused proposed for marrying with her. When she asked the appellant, the appellant told her that he would talk with his parents. Thereafter, one day accused put vermilion on her forehead and said that since that day he was made her husband which she also accepted. Thereafter, they had developed physical relation with each other. She lived with accused for one year and thereafter, when he refused to legally marry with her, then she lodged complaint (Ex.P/3) against him.

- 12) In her cross-examination, she admitted that on the date of incident she was already married with someone, she also admitted that divorce did not take place till that day, she was also unable to say on which month vermilion was put on her forehead, she also admitted this fact that she was living for one year as a wife of accused and also admitted that after 09.10.1999, she was continuing in physical relation with the accused. On 09.10.1999, she lodged a complaint against the accused before Special Police Station, SC & ST Welfare, Bilaspur and thereafter also developed physical relation with the accused. Her above mentioned conduct clearly shows that she is voluntarily without any inducement having physical relation with accused, her conduct also shows that she was a consenting party in sexual intercourse, there is no evidence that accused had promise prosecutrix that he would marry her, no evidence of deceitfully inducing to prosecutrix by accused, there is no believable evidence that any day accused put vermilion on

her forehead, prosecution failed to explain inordinate delay of 1½ years in lodging the first information report, there is no medical evidence about sexual intercourse with prosecutrix, above mentioned conduct and evidence shows that her testimony does not inspire confidence, believable and trustworthy.

- 13) Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the evidence, I am of the considered opinion that conviction was not proper and as such the accused/appellant is entitled for acquittal. The trial Court while convicting and sentencing the appellant, has committed grave error in holding guilty of the appellant under Sections 493 & 376 (1) of IPC, therefore, the impugned judgment of conviction and order of sentence passed by the trial Court deserves to be set aside.
- 14) Accordingly, the appeal is allowed and impugned judgment and order of sentence passed by the trial Court is set aside. The accused/appellant is acquitted of the charges under Sections 493 & 376 (1) of IPC.
- 15) Appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE