

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 235 of 2015**

State of Chattisgarh, Through Station House Officer, Police Station AJK Korba,
District Korba, Chhattisgarh.

---- Appellant**Versus**

Tejeshwar Kashyap S/o Sukhsagar Kashyap, Age 26 years, R/o Khairbathath
Tilkeja, P.S. Kotwali, District Korba, Chhattisgarh.

---- Respondents

For Appellant : Shri B.Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****11/08/2015**

1. The present application for leave to appeal has been filed assailing the order of acquittal dated 3.1.2015 of the Respondent under under Section 376(1) IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ordered by Special Judge (SC/ST Act), Korba, in Special Sessions Case No. 15 of 2012.
2. Learned Counsel for the State submits that the Learned Trial Court has not properly appreciated the evidence of the Prosecutrix that she had surrendered herself to the Respondent on his promise to marry her . If he had not held out such a promise, she would not have consented for physical relationship. If consent was obtained by deceit and she was exploited because she belonged to the Scheduled Caste, offence under the Penal Code and the latter Act was made out.
3. We have considered the submissions on behalf of the Appellant/State.
4. An order of acquittal should not lightly be interfered with unless there has been complete misappreciation of evidence leading to miscarriage of

justice. If two views are possible, then also that beneficial to the accused has to be taken.

5. According to the prosecution case, the Respondent and the Prosecutrix were well known to each other. The Prosecutrix was 23 years of age. She was staying in the hostel while undergoing ITI training and the Respondent would accompany her to the Computer Center. They first established physical relationship in the forest when she went along with the Respondent willingly. It is not the case of the prosecution that the Prosecutrix had protested on the first occasion let alone on the repeated occasions when physical relationship was established or that she ever prevented him from doing so. The Prosecutrix has also acknowledged in cross-examination that in the hostel, she would inform that she was going home but would go on errands with the Respondent. She has further acknowledged that her marriage was being negotiated elsewhere by the family members as she had not informed them about her relationship with the Respondent. The Prosecutrix further acknowledged that she was educated and knew the difference between good and bad and that physical relations are established in the society to which she belonged after marriage and not before. On basis of the same, the Learned Trial Judge, in our opinion, has rightly arrived at the conclusion that the Prosecutrix was well aware of her own conduct and consequences of the same but continued to maintain physical relationship clandestinely and voluntarily with the Respondent leading to the conclusion that no offence under Section 376 IPC was made out.

6. We therefore find no reason to interfere with the order of acquittal based on proper appreciation of evidence including that of the Prosecutrix.

7. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE