

(1) (3)

IN THE HIGH COURT OF JUDICATURE AT
BILASPUR (C.G.)

CRIMINAL REVISION NO. 34 /2004

APPLICANT

: Geeta Tirki aged about 23
years D/o- Hiraram, R/o-
Rajpur Jhingo, Ambikapur
District Sarguja (C.G.)

VERSUS

NON-APPLICANTS

- 1 State of C.G. through P.S.
Sc/st Kalyan Thana
Ambikapur, Dist. Sarguja (CG)
2. Santosh Sharma aged about 30
years S/O Yadunath Sharma,
R/o Village- Ranai, P.S.-
Patna, District-Koria. At
present R/o-Shitla ward
Ambikapur, District Sarguja
(C.G.)

CRIMINAL REVISION U/S 397/401 OF THE CODE OF
CRIMINAL PROCEDURE 1973.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram: Hon'ble Mr. T.P.Sharma &
Hon'ble Mr. C.B. Bajpai, JJ.

Criminal Revision No.34 of 2004

APPLICANT

Geeta Tirki

Vs

NON-APPLICANTS

1. State of Chhattisgarh
2. Santosh Sharma

Mr. F.S. Khare, Advocate for the applicant.

Mr. R. Dubey, Panel Lawyer for the respondent/State.

ORDER
(27.01.2015)

T.P. Sharma, J.

1. By this revision the applicant has challenged the legality and propriety of the judgment dated 31.12.2003 passed by the learned Special Judge under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ambikapur, Sarguja in Special Sessions Trial No.34/2002 whereby while acquitting the respondent No.2 from the charges under Sections 506 & 376 of the Indian Penal Code (for short 'the IPC') and Section 3 (2) (v) & 3 (1) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), the trial Court has convicted him under Section 323 of the IPC and sentenced to pay fine of Rs.600/-, in default to undergo R.I. for 02 months.
2. As per case of the prosecution, the prosecutrix (PW-5), name not mentioned in the impugned judgment, a deserted lady, was residing separately. Respondent No.2 came into her contact and thereafter on the promise of marriage, he committed intercourse with her for about five years. He has taken Rs.10,000/- from the prosecutrix. He had committed the offence on the ground of her caste and also assaulted her. The prosecutrix made written complaint vide Ex.P-10 on the basis of which FIR was registered and the prosecutrix was examined by Dr. N.K. Pandey (PW-7) vide Ex.P-7 and by Dr. Shakuntala Khalkho (PW-1) vide Ex.P-1 who noticed that the prosecutrix was habitual to intercourse. Respondent No.2 was examined by Dr.

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Khalkho (PW-1) vide Ex.P-1 who noticed that the prosecutrix was habitual to intercourse. Respondent No.2 was examined by Dr. Ghanshyam Singh (PW-3) vide Ex.P-9 who found him capable to commit intercourse. Statements of witnesses were recorded under Section 161 of Cr.P.C.

3. After completion of investigation, charge-sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who, in turn, committed the case to the Court of Special Judge for trial. In order to prove guilt of the respondent No.2, the prosecution has examined as many as 07 witnesses. Statement of respondent No.2 was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence & false implication in the crime in question.
4. After providing opportunity of hearing to the parties, the trial Court while acquitting the respondent No.2 from the charges under Sections 506 & 376 of the IPC and Sections 3 (1) (xii) & 3 (2) (v) of the Act of 1989, convicted and sentenced him as mentioned in para-1 of this order.
5. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
6. This is criminal revision at the instance of private party. The State having right to file appeal against the judgment of acquittal has not chosen to file appeal against the judgment of acquittal. Although the revisional Court is competent to set aside the judgment of acquittal, as held by the Supreme Court in the matter of K. Chinnaswamy Reddy v. State of A.P.¹, but this jurisdiction should be exercised by the High Court only in exceptional cases. While dealing with same question, the Supreme Court in the matter of Bindeshwari Prasad Singh v. State of Bihar² has held that in revision against acquittal at the instance of a private party, the Court would not re-appreciate evidence.
7. Admittedly, the scope of revision at the instance of a private party against the judgment of acquittal is limited and is required to be exercised in exceptional cases.
8. In the light of aforesaid preposition of law we have to examine the

¹ AIR 1962 SC 1788

² AIR 2002 SC 2907

evidence adduced on behalf of the prosecution.

9. As per evidence of the prosecutrix (PW-5), on the promise of marriage the respondent No.2 was committing intercourse with her for the last about five years. He had also taken money from her. He had assaulted her. As per Ex.D-1, her previous statement, respondent No.2 married with the prosecutrix in a temple and as such she is wife of respondent No.2. Evidence of the prosecutrix clearly revealed that she was consenting party and was residing with the respondent No.2 as his wife. Respondent No.2 had not committed any offence on the ground of caste of the prosecutrix. Therefore, by acquitting the respondent No.2 of the charges under Sections 506 & 376 of the IPC and Sections 3 (1) (xii) & 3 (2) (v) of the Act of 1989, the trial Court has not committed any illegality. This is not the case where only one view convicting respondent No.2 for the aforesaid offence was possible.
10. Consequently, the revision being devoid of merit is liable to be and hereby dismissed.

**Sd/-
T.P. Sharma
Judge**

**Sd/-
Chandra Bhushan Bajpai
Judge**