

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 228 of 2012**

1. State of Chhattisgarh through District Magistrate, District Durg, CG

---- Appellant**Versus**

1. Saurabh Nahta S/o Padamchand Nahta, aged about 29 years, Occupation – Computer Business, R/o B-16, Kushabhau Thakre Awasiya Parisar, New Rajendra Nagar, Raipur, District Raipur, CG

---- Respondent

For Appellant/State:

Shri Vivek Sharma, GA

For Respondent/accused:

Smt. Foujia Mirza, Advocate

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****Order On Board by Pritinker Diwaker, J****17/09/2015**

This appeal has been filed by the State against the judgment dated 31.7.2012 passed by the Special Judge, Durg in Special Case No. 23/2010 acquitting the accused/respondent of the charges under Sections 376 (1), 496 IPC and section 3(2)(V) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act").

2. Prosecution case in short is that on 1.8.2009 a written report Ex. P-7 was lodged by the prosecutrix (PW-5) aged about 25 years at the relevant time alleging therein that in the year 2004 when studying in college student, she came into contact with the respondent/accused. As alleged, one day when the respondent/accused was all alone, he called the prosecutrix to his

house on the pretext of being unwell and after she went there, he committed forcible sexual intercourse with her. When she told him to report the matter to the police, the respondent/accused apologized to her and on the promise of marriage he continued to have sex with her till she lodged the written report. In between November 2007 and December 2008 she accompanied the accused/respondent to various places such as Barnavapara (Raipur) Delhi and Manali and stayed there in a hotel as husband and wife. It is alleged that whenever she asked the respondent/accused for marriage, he avoided the same on one pretext or the other and ultimately she disclosed about her relationship with the respondent/accused to his mother but she was shown the door on the ground of caste difference. Based on this report, FIR Ex. P-8 was registered against the respondent/accused on 19.8.2009 under Section 376 IPC and 3 (1) (XII) of the Special Act. After investigation, the challan was filed by the police under Sections 376, 496 IPC and 3 (1) (XII) and 3 (2) (v) of the Special Act. Charge however was framed against him under Sections 376, 496 IPC and 3 (2)(V) of the Special Act.

3. To hold the accused/respondent guilty the prosecution has examined 09 witnesses in support of its case. Statement of the accused/respondent has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has acquitted the accused/respondent of the charges levelled against him and therefore this is the appeal by the State thereagainst.

5. Counsel for the appellant/State submits that the Court below has committed an error of law in acquitting the respondent/accused of the charges levelled against him ignoring the evidence adduced by the prosecution. According to him, the Court below has not taken into account the fact that from the very beginning the respondent was sexually exploiting the prosecutrix on the promise of marriage and when she persisted on fulfilment of the promise, he refused for the same.

6. On the other hand counsel for the respondent/accused supports the judgment impugned and submits that the Court below has been justified in recording the acquittal on the basis of material available on record and there is no infirmity in the same. She submits that even if the entire case of the prosecution is taken as it is, the conviction cannot follow as the fully grown up prosecutrix aged about 25 years at the relevant time had throughout been the consenting party to the act of the respondent/accused. According to the counsel for the accused/respondent, the accused never promised the prosecutrix for marriage, rather her conduct in visiting various places along with the accused without informing her parents and staying in hotel speaks a lot about her promiscuity.

7. Heard counsel for the parties and perused the material on record.

8. Prosecutrix (PW-5) has stated the same thing in her court statement as also in the written report that after being called by the accused to his house pretending to be unwell, she was first subjected to sexual intercourse by the respondent/accused in the year 2004 against her wishes and when she told him of lodging the report he promised her for marriage and tendered apology for his

act. She however has admitted that she visited various places with the accused/respondent without informing her parents and that during their visit they used to stay in hotel. According to this witness, on being questioned by her parents as to where she used to go, she informed them that she had gone to attend the seminar. She has stated that before making physical relations for the first time, the accused had not promised her to marry. Dr. Ujjwala Dewangan (PW-1) is the witness who medically examined the prosecutrix and gave report Ex. P-1 stating that she was habitual to sexual intercourse. Pannalal Goswami (PW-3) – the father of the prosecutrix has stated that in May 2009 the prosecutrix told him about her affair with the respondent/accused for about 4-5 years and on being asked for marriage, he refused for the same. Dr. A.K. Mishra (PW-7) is the witness who medically examined the accused/appellant and gave his report Ex. P-11 stating that he was capable of having sex. RD Maurya (PW-9) is the investigating officer who has duly supported the case of the prosecution.

9. Evidence on record clearly goes to show that there was an affair between the prosecutrix and the accused for about 5 years and during this period both had physical relations many a time but no complaint whatsoever was filed by the prosecutrix. Record also shows that at the time of sexual intercourse for the first time the prosecutrix was a grown up woman aged about 25, and that during subsistence of their affair, she visited various places along with the respondent/accused, stayed in hotel for number of days without raising any hue and cry and eventually when the accused did not show his readiness for marriage, report was resorted to. All this factual scenario makes this Court to hold that the prosecutrix was a consenting party to the act of the respondent and being so the

Court below has been quite justified in recording the finding of acquittal on the basis of evidence before it. There is no illegality in the judgment giving acquittal. Even otherwise, as regards appeal against the finding of acquittal, it is a settled position of law that if on the basis of material on record two views can be drawn then the preference has to be given to the one favouring the accused.

10. On viewing the evidence as above and being conscious to the settled legal position, this Court finds no substance in the appeal and accordingly the same is dismissed. Judgment impugned is affirmed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S.Uboweja)
Judge