

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQUITTAL APPEAL NO. 238 OF 2015

Ku. Saraswati Nag, D/o Shri Loknath Nag, aged about 27 years, R/o Village Panarapara Jagdalpur, Police Station Kotwali, Jagdalpur, District Bastar (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through : Station House Officer, Police Station Kotwali, Jagdalpur, District : Bastar (C.G.)

2. Golu @ Tribhuwan Singh Thakur, S/o Kavinath Thakur, aged about 23 years, R/o Village Samalur, District Dantewada, Chhattisgarh, Present Address : Panara Para, Behind : Mata Mandir, Near River Jagdalpur, District : Bastar (C.G.)

... Respondents

For Appellant	:	Mr. Y.C. Sharma, Advocate.
For Respondent No.1-State	:	Ms. Smita Ghai, Panel Lawyer.

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

Judgment on Board

Per NAVIN SINHA, C.J.

09/12/2015

1. The present appeal assails acquittal of Respondent No.2 from the charge under Section 376 IPC and Sections 3(1)(xii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act').

2. Learned Counsel for the Appellant submitted that acquittal was not justified in the nature of the evidence and the facts and circumstances of the case. But for the false assurance of marriage held out by Respondent No.2, the Appellant would not have surrendered herself physically to Respondent No.2. On each occasion that she surrendered herself voluntarily it was because of the false assurance by Respondent No.2 that he would marry the Appellant. The Appellant

belongs to the Scheduled Tribe and was not worldly wise. It was her tribal status that was exploited by Respondent No.2. It was acknowledged that physical relation was established forcefully for the first time only.

3. We have heard the Counsel for the State also.

4. Admittedly, the Appellant was 27 years of age and Respondent No.2 was 23 years of age. They were both adults and neighbors. The First Information Report was lodged on 17.3.2015, one and half years after physical relations were established for the first time with no explanation for this long silence when during intervening period she not only went around with him in public places on a motorcycle, to his aunt's house opposite hers, where physical relations were repeatedly established without protest, in the park where physical relations were again established without any protest in a public place. The evidence also has it that Respondent No.2 would call the Appellant to his aunt's house in the absence of the aunt and the Appellant would voluntarily go to the house aware of the fact that there were no one in the house. It is indeed peculiar as rightly observed by the Trial Judge that she went around with Respondent No.2 on the motorcycle when she had all the opportunities for her protest being observed by public. Physical relation was established in the park, surely any protest from her would have invited public attention and in absence of which obviously the relationship had been consensual. It is also an important fact that Respondent No.2 was lesser in age than the Appellant by approximately 4 years. The Trial Judge during cross-examination noticed that the Appellant acknowledged that she did not tell any body about the repeated physical relationship. PW-8, mother of the

Appellant, has deposed that she had explained to her daughter that because they belong to different social background marriage did not appear feasible notwithstanding which physical relations continued to be established and that she was well aware of the same for approximately one year. Respondent No.2 was a regular visitor to their house as also deposed by PW-9, the sister of the Appellant. We see no reason to come to any different conclusion that the prosecution was initiated when for one reason or the other, Respondent No.2 declined to marry the Appellant for whatever be the reason.

5. We did not find any evidence led by the Appellant that Respondent No.2 never had the intention to marry the Appellant right from the very beginning. Moreover, we find no evidence at all under Section 3(1)(xii) of the Act led by the Appellant that Respondent No.2 was able to sexually exploit her specifically and exclusively because of her tribal status as he was in position to dominate her will. On the contrary, the entire action suggests voluntary act on the part of the Appellant and therefore Section 3(2)(v) of the Act has no application.

6. We are of the considered opinion that the appeal is wholly frivolous and is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge