

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 166 of 2002**

Smt. Cresensiya Kujur W/o Yujin Kujur, House No. 1079, Block 3,
Jamnipali Yamuna Korba, P.S. Darri, District Korba (CG)

---- Applicant

Versus

1. Rajendra Kumar alias Rajeev Jogi S/o Mangaldas Jogi, Caste Satnami aged 26 years, R/o A.B. 2183 Narmada Vihar N.T.P.C. Darri (original resident of Jarhabhata, Bilaspur) Korba, District Korba.
2. State of Chhattisgarh through S.O. Darri District Korba

---- Respondents

Acquittal Appeal No. 342 of 2010

The State of Chhattisgarh

---- Appellant

Versus

Rajendra Kumar alias Rajeev Jogi S/o Mangaldas Jogi, aged 26 years,
Caste Satnami, R/o A.B. 2183, Narmada Vihar, N.T.P.C. Darri, Dist.
Korba, Chhattisgarh (originally resident of Jarahabhata, Bilaspur)

---- Respondent

For Applicant	:	None
For State	:	Ms. Madhunisha Singh, Panel Lawyer
For Respondent/Accused	:	Ms. Pritha Ghoshal, Advocate

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V JUDGEMENT

Per P. Sam Koshy, Judge

Reserved on : 28 /07/2016

Delivered on : 17.08.2016

The present Criminal Revision 166/02 and Acquittal Appeal 342/10 have been filed challenging the judgment of acquittal dated 21.02.2002 passed by the Additional Sessions Judge, Korba in S.T. No.451/01 whereby the accused Rajendra Kumar stands acquitted

from the charges under Sections 450, 376 and 506 (I) of IPC.

2. The prosecution case in brief is that the prosecutrix in the instant case on 06.09.2001 filed an FIR at Police Station Darri, District Korba alleging that about two weeks back when her husband had gone to NTPC on night duty, the accused rang the bell of her house. When the prosecutrix opened the door, the accused forced her inside the house and in spite of her protection and resistance, he forcefully entered the house and ravished her. It was further alleged by the prosecutrix in her complaint that while the accused was trying to ravish her, she had raised an alarm but as her children were in deep sleep, they did not wake up. However, one of her nieces namely Mandakini woke up and saw the accused committing sexual intercourse with her. It was also alleged by the prosecutrix that the accused tried to persuade her niece Mandakini from disclosing this fact to anybody particularly to the husband of the prosecutrix and on the next date the accused had also paid Rs. 600/- to the said Mandakini for not disclosing the incident that she had seen to anybody. However, after about two weeks the prosecutrix since could not withstand the guilt and therefore reached to the Police Station Darri and lodged a complaint against the accused on which the Police authorities registered an FIR as Crime No. 136 of 2001. Thereafter the prosecutrix was sent for medical examination and the matter was put to trial before the Court of the Additional Sessions Judge, Korba and the case was registered as S.T. No. 451 of 2001.

3. After conclusion of the trial, the Court below reached to the conclusion that the over all evidence which has been adduced by the prosecution reflects her to be a consenting party and thus,

acquitted the accused-respondent from the offence under Sections 450, 376 and 506 (I) of IPC.

4. The present Criminal Revision has been preferred by the prosecutrix and the Acquittal Appeal has been filed by the State both challenging the same judgment of acquittal dated 21.02.2002.

5. There was no representation on behalf of the applicant/complainant. We, therefore, asked the State counsel to address on behalf of the applicant also. Assailing the impugned judgment counsel appearing for the State submitted that the Court below has mis-directed itself in not properly appreciating the evidence of the prosecutrix. It was contended that the Court below has also committed an error of law while disbelieving the prosecutrix as well as the prosecution witnesses. Likewise, it was the contention of the State counsel that the Court below ought to have given due weightage to the statement of the prosecutrix and should not have awarded acquittal in a mechanical manner to the accused-respondent.

6. Counsel appearing for the accused-respondent on the other hand opposing the Revision petition as well as the acquittal appeal submitted that the Court below has rightly considered the evidence which has come on record and reached to the conclusion that it is a clear case of consent in the course of having physical relationship between the accused and the prosecutrix. Counsel for the respondent-accused submitted that there is no scope of interference in the impugned judgment where the Court below has threadbare considered all the contentions and averments which have come during the course of evidence before the trial Court.

7. Having considered the rival contentions put forth by the

counsel on either side and on perusal of the records and the submissions made during the course of arguments what is an admitted position is that though the FIR is of 06.09.2001 but the actual date of incident is said to be about more than 2 weeks back from the date of lodging of the FIR which itself establishes the fact that the exact date was not known to the prosecutrix while lodging the FIR. From the record it is also reflected that the delay in lodging the FIR has also not been satisfactorily explained by the prosecution. Further, from the evidence of the prosecutrix it reflects that it was not for the first time that the prosecutrix had met the accused on the date of incident. Rather she had been in contact with the accused for quite sometime and that the accused used to frequently call upon the prosecutrix while her husband would not be available at home. A plain reading of the statement of the prosecutrix also gives a picture of the same to be highly improbable for the reason that the person who would have been victim of a forceful sexual assault, her conduct and behaviour after the incident would have been entirely different unlike the prosecutrix in the present case who in spite of the fact that the accused-respondent had been making indecent approach to the prosecutrix for last many days but there was no objection on the part of the prosecutrix nor she had informed this either to her family members or to the Police Authorities. This itself forces us to draw an inference that the prosecutrix also did not have any objection on the advance made by the accused. The conduct of the prosecutrix subsequent to the date of incident also raises great amount of suspicion as to whether she had in fact really objected the accused firstly entering the house and secondly from committing the offence on the date of incident. From the record and the statement of the

prosecutrix it also reflects that the two of them used to meet outside the residence also whenever the prosecutrix used to go to bank, computer classes etc.

8. The prosecutrix in her evidence herself states that it is only after the facts was brought to the notice of her husband they decided to lodge an FIR and in the process, substantial period had elapsed. Further, the evidence of PW-2 Mandakini also does not reflect that at the moment when PW-2 had seen the prosecutrix and the accused in a compromising position, there was any sign of protest or resistance on the part of the prosecutrix. The medical report also does not support the case of the prosecution in as much as the doctor did not find any fresh sign of injury on the body of the prosecutrix which could have occurred while she was protesting the respondent-accused upon his trying to ravish her.

9. In the light of the aforesaid discrepancies in the prosecution story as well as the statement of the prosecutrix it cannot be said that the Court below has committed an error of law or illegality or infirmity while reaching to the conclusion that the prosecution has not been able to establish the offence against the accused-respondent beyond all reasonable doubts.

10. Thus, the Criminal Revision filed by the prosecutrix and the Acquittal Appeal preferred by the State being totally devoid of merit, deserve to be and are accordingly dismissed. As a consequence, the impugned judgment of the Court below stands affirmed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE