

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 111 of 2016**State Of Chhattisgarh through - District Magistrate Distt. Surajpur
Chhattisgarh---- **Petitioner****Versus**Nitesh Kumar Tiwari, S/o Devi Prasad Tiwari Aged About 25 Years
R/o Jamdi (Main Road Mandirpara), P.S. Jhilmili, Distt. Surajpur
Chhattisgarh-----**Respondent**For Appellant/State:
PanelShri Uma Kant Singh Chandel,
Lawyer.**Hon'ble The Chief Justice**
Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****Per Navin Sinha, Chief Justice****03/02/2016**

1. State assails acquittal of the Respondent from the charge under Sections 450 and 376 IPC dated 7.11.2015 by the 1st Additional Sessions Judge, Surajpur in Sessions Trial No.3/2015.
2. Learned Counsel for the State submits that in cases of the present nature, the evidence of the prosecutrix carries great weight. If her evidence is otherwise truthful and convincing, conviction can be founded on basis of the same without necessarily seeking corroborative evidence. Even if physical relations had been established more than once, that will not exclude the applicability of Section 376 IPC if threat was held out on each occasion. The prosecutrix has deposed that three months prior to the institution of the First Information Report on 14.5.2014, the Respondent had forcibly entered her house at night, threatened her with a knife and

physically violated her. It cannot be construed as consent if the surrender was due to fear. The delay in lodging the First Information Report has been explained by the prosecutrix that she was scared as the Respondent had threatened and simultaneously was holding out promises of marriage. When he failed to fulfill the promise and refused to marry her, and she conceived, the matter was reported to the police.

3. Dr. Rashmi Kumar, PW-8 by Exhibit P-7 has confirmed the pregnancy of the prosecutrix. Vinay Kumar, PW-2, father of the prosecutrix has deposed that his wife Parvathi Soni, PW-4 had told him that the prosecutrix had been violated by the Respondent three months earlier and because of which she had become pregnant. The Respondent had threatened to ruin them after they had lodged the First Information Report. Parvathi Soni, PW-4, the mother of the prosecutrix also stated that the prosecutrix had told her of having conceived from the Respondent. The prosecutrix herself had deposed that when she had gone to the toilet at night, the Respondent had jumped into her courtyard and sexually assaulted her as also promised to marry her at the point of knife. After she conceived and asked him to marry her, he had threatened to kill her. When she was fed up of the antics of the Respondent, she complained to her parents and they went to the Office of the Collector to lodge a report, who advised them to go to the police station. The acquittal was therefore not justified.

4. We have considered the submissions on behalf of the State and have been taken through the judgment of acquittal.

5. While a wrong acquittal contrary to law certainly needs to be challenged and interfered to uphold the rule of law, simultaneously an order

of acquittal is not to be likely interfered with unless there has been gross mis-appreciation of evidence, incorrect appreciation of evidence, lack of consideration of evidence, findings were perverse or no reasonable person would have arrived at such conclusion on basis of the same evidence. But for these grounds, an order of acquittal may not be easily interfered with.

6. The prosecutrix was 21 years old. She was married to one Yogesh Soni on 27.6.2012. She did not get along with her husband and therefore left the matrimonial home and started living with her parents barely one month after the marriage. She had not been divorced from her husband. The Respondent lived across her house.

7. According to the prosecution, the Respondent jumped into her house and established physical relations for the first time on the threat of a knife. If the prosecutrix was a married woman living in her parents' house and the Respondent violated her in her own house at night, there is no suggestion by the prosecution that she had protested or even attempted to protest. Assuming for the sake of argument that the Respondent may have shown her a knife, nothing precluded her from telling her parents next morning or even the next week rather than keeping quite for three months and in this period acknowledging that she had repeated physical association with the Respondent. It is little difficult to believe that for these three long months, the Respondent established relations with her each time at the point of a knife and she surrendered each time without protest or informing her parents or sister Geeta Soni, PW-9, who were living with her in the same house.

8. According to the prosecutrix, the Respondent first violated her physically three months prior to 10.5.2014. She lodged the prosecution

only after she discovered that she was pregnant and the Respondent refused to marry her. But the prosecutrix has herself acknowledged that her menses had stopped as far back as 19.2.2014 before she lodged the First Information Report on 14.5.2014. She was therefore fully aware much earlier than the lodging of the First Information Report that she was pregnant. The prosecutrix further acknowledged regular physical relations with the Respondent stating that she had lost count.

9. Apparently, the prosecutrix would not have made this disclosure even but was compelled to do so when her mother saw her vomiting on 1.5.2014. We would not be very wrong in our conclusion that the prosecutrix was a young woman aged 21 years. She left her matrimonial home barely within one month and returned to her parents' house. The Respondent was her neighbour. These factors alone are sufficient for us to arrive at a conclusion along with other attending facts and circumstances as discussed, it was a voluntary consenting relationship now sought to be given the nature of Section 376 IPC after the Respondent refused to marry an already married woman. There is no allegation by the prosecutrix that the Respondent was aware of her marital status and had still forced himself upon her though it was sought to be urged by the prosecution at the trial, without any supporting evidence and has therefore rightly been rejected by the Trial Court holding that Section 497 IPC had no application in the facts of the case.

10. Today itself, the present is the second case where we are compelled to observe that the State is required to be a little circumspect in filing applications for leave to appeal questioning acquittal. In Cr.M.P No.154/2016, we have already extracted the following passage dated 28.1.2016 from Cr.M.P. No.122/2016 which is as follows:-

“8. Before we part with the case, we consider it appropriate to observe that an appeal against an acquittal is a serious matter not to be treated casually. An allegation of sexual abuse under Section 376 IPC casts serious aspersions on the character of the person made accused and affects his reputation. An acquittal may not necessary be sufficient to resurrect a tarnished reputation. A private litigant pursuing the matter disputing an order of acquittal is a different matter and will have to be dealt with appropriately under the provisions of the Code of Criminal Procedure and if circumstances so warrant by invoking the appropriate provisions of the Code regarding false implication and malicious prosecution. The State undoubtedly is the guardian of public interest and has a bounden duty to prefer appeals in cases of acquittal where it is considered prudent to do so in the larger public interest. But the State also has a duty to be more circumspect in preferring appeals after proper examination of orders of acquittal. We are not satisfied that the circumspection required by the State in preferring the present application was duly followed, burdening this Court unnecessarily. We expect the State to be more circumspect in filing acquittal appeals before this Court. Our observations cannot be construed and need not to be considered as any restraint on the discretion of the State to prefer criminal appeals. All we say is that it requires a more cautious approach with due application of mind in the facts of each case.”

11. We therefore find no merit in this application for leave to appeal and it is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE