

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 122 OF 2016

State of Chhattisgarh, through Station House Officer, Police Station
Balrampur, District Balrampur-Ramanujganj (C.G.)

... Petitioner

Versus

Devbal Ghasi, S/o Parsuram Ghasi, age 22 years, R/o Village
Pachawal, Police Station Balrampur, District Balrampur-Ramanujganj
(C.G.)

... Respondent

For Petitioner-State : Mr. B. Gopa Kumar, Deputy Advocate General.

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

Order on Board

Per NAVIN SINHA, C.J.

28/01/2016

1. I.A. No. 1 of 2016 has been filed to condone delay of 26 days.
2. The State assails acquittal of the Respondent under Section 376, 450 IPC, by the Additional Sessions Judge, Ramanujganj, dated 20.8.2015 in Sessions Trial No. 204 of 2013.
3. Learned Counsel for the State submits that in such cases the evidence of the Prosecutrix carries great weight and can alone be the basis for conviction. The Prosecutrix in the present case specifically named the Respondent as having forcibly taken her away from her house and sexually assaulted her. Acquittal was therefore not justified.
4. We have considered the submissions.
5. According to the allegations, the Respondent forcibly dragged the Prosecutrix out of her house on 27.3.2013 at 10 o'clock in the night. Her mother-in-law was inside the house as were the children of the Prosecutrix. There is no evidence that the Prosecutrix protested as in that event the others inside the house would have definitely heard her

cries for help. If the Prosecutrix was dragged out of her house and taken into the fields where mud mound existed, the Trial Judge has rightly held that there would have been some external injuries on the person of the Prosecutrix. Likewise, the Trial Judge has also noticed the contradictory statements made by the Prosecutrix in her evidence-in-chief and in cross-examination. The Prosecutrix states at times that she was dragged out of the house and at other times that the Respondent carried her over his shoulder. The Trial Judge has rightly concluded that if the Prosecutrix was dragged by her feet or carried on the shoulder, in either event it was not possible for the Respondent to have simultaneously kept his hands on her mouth to prevent her from shouting. The complaint was lodged the next day in the afternoon though the husband of the Prosecutrix had come back to the house in the night itself. The medical examination was done three days later on 30.3.2013. The seizure of the underwear of the Respondent and the clothes of the Prosecutrix, to our mind, is an absolutely irrelevant consideration because certainly they would have had a bath and changed their clothes. It is not the case of the prosecution that they were wearing the same clothes and did not have a bath. In any event, no forensic report is available with regard to the alleged stains on the clothes.

6. PW-2, Ramcharitar, the husband of the Prosecutrix, has acknowledged that before he reached the police station the Respondent was already there. In cross-examination, it has also been acknowledged that earlier in the evening, PW-2, Ramcharitar, had assaulted the Respondent with *lathi* and for which he had gone to lodge police report whereafter the Prosecutrix reached with her husband to lodge a complaint. We find no error in the conclusion of the Trial Judge

that the prosecution has failed to establish the allegations. There is no merit in this application for leave to appeal.

7. Delay is condoned and the application for grant of leave to appeal is dismissed.

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.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge