

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.218 of 2015**

Saroj Gupta W/o Kailash Gupta aged about 32 years R/o Village Bazar Para
Police Station Lakhanpur Civil and Revenue District Surguja Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Lakhanpur District Surguja Chhattisgarh
2. Dashrath Chourasiya S/o Jagmohan Chourasiya aged about 35 years R/o Village Juna Police Station Lakhanpur Civil and Revenue District Surguja Chhattisgarh

---- Respondents

For Appellant	:	Shri Kishore Narayan, Advocate.
For State/Respondent No.1	:	Smt. Smita Ghai, Panel Lawyer.

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

Judgment on Board**Per Navin Sinha, Chief Justice****04/01/2016**

1. The present appeal assails acquittal of the Respondent No. 2 dated 28.8.2015 of the charge under Sections 458 and 376 IPC in Sessions Trial No.132 of 2014 by the Additional Sessions Judge (F.T.C.) Surguja (Ambikapur).
2. Learned Counsel for the Appellant/prosecutrix submitted that acquittal of Respondent No.2 of the serious charge was not justified. Earlier also he had misbehaved with the Appellant for which she had instituted a prosecution under Section 354 IPC but was wrongly advised to compound the allegations. Time and again it has been held in cases like the present nature that the evidence of the prosecutrix is entitled to a great credibility and conviction can be based on the same alone. The delay in lodging of the FIR has adequately

been explained because of the threats by the Respondent No.2 leading the prosecutrix to wait for return of her husband after which the complaint was made.

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

4. According to the allegations, the prosecutrix was alone at home watching Television when the Respondent No.2 came to her house at about 8.00 P.M. and called out the name of her husband, after which he simply walked in. We find it a little strange considering normal human behaviour that the Appellant was all alone at home and had kept her front door open at 8.00 P.M. in the night for anyone to walk in endangering her own safety and security. It is not the case of the Appellant that after Respondent No.2 called out the name of her husband, she opened the door for him in good faith. This fact becomes relevant in the background of the money dispute between the parties since earlier with regard to payment for vegetables in respect of which the Appellant acknowledges having filed a case under Section 354 IPC against the Respondent and then compounded the same.

5. According to the Appellant, after Respondent No.2 violated her on 24.10.2014 at about 8.00 P.M., she did not inform anyone and only the next morning she went and told PW-3, her sister-in-law. During the trial, PW-3 Savita Gupta did not support the prosecution charge. The Trial Judge at paragraph-21 has more than adequately discussed that if the houses of Sudama, Ganesh and Dheerendra were next to that of the prosecutrix, there has to be some reason why they did not hear any cries for help. Moreover, if the same evening at 8.30 P.M., she went to her tenant Anil for calling up her husband, it is indeed very surprising that she did not tell Anil anything about the occurrence even if she was unable to establish contact with her husband as his phone was switched off.

6. The medical examination of the Appellant, a married woman was done four days later and she acknowledges having washed her undergarments also. The delay in the circumstances was exclusively attributable to her alone. The delay of three days in lodging the F.I.R. also remains unexplained in the facts and circumstances of the case.

7. In the circumstances, we find no reason to interfere with the merit acquittal of Respondent No.2 by the Trial Judge holding that the prosecution had failed to prove the charges.

8. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE