

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 1135 of 2015**

State Of Chhattisgarh Through : The Station House Officer, Police Station
AJK Jagdalpur Kotwali, District - Bastar Chhattisgarh

---- Petitioner**Versus**

Golu @ Tribhuwan Thakur S/o Kavinath Thakur Aged About 23 Years R/o
Samlur, District Dantewada, Presently R/o Panarapara, Mata Mandir, Police
Station Kotwali, Jagdalpur, District - Bastar Chhattisgarh

-----Respondents

For Petitioner/State:

Smt Smita Ghai, Panel Lawyer.

For Respondent No:

None.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Navin Sinha, Chief Justice****12/1/2016**

1. The present application has been filed for leave to appeal against acquittal of the charge under Section 376 IPC read with Section 3(1)(xii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the Special Court, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Bastar at Jagdalpur in Sessions Trial No.42/2015.

2. Learned Counsel for the State submits that acquittal was not justified as the prosecutrix had specifically deposed that but for the promise of marriage held out by the Respondent, she would not have consented for physical relations. The consent having been obtained by mis-representation

and deceit, was not a consent at all and therefore the Trial Judge ought to have convicted the Respondent. It is apparent that the Respondent who did not belong to the Scheduled Tribe, knowingly exploited the status of the prosecutrix as belonging to the Scheduled Tribe.

3. We have considered the submissions on behalf of the State. According to the allegations, physical relations were established repeatedly between the prosecutrix and the Respondent spread over a period of one year and six months. On his invitation, she would voluntarily visit the house of his Aunt where the Respondent would stay fully conscious of the fact that he had invited her at a time when there was no other person present in the house which was therefore convenient for both of them to establish physical relations. The prosecutrix had voluntarily accompanied him in full awareness of the dismal likelihood of marriage because the Respondent did not belong to her Scheduled Tribe status as also the fact that her mother Sushila Nag, PW-8 had also cautioned her that marriage seemed as a distinct impossibility because of the same. The evidence further is that the prosecutrix herself disclosed that she would travel with him sitting pillion on the motorcycle passing through public places without any protest and when physical relations were established in a park, a public place, she did not protest, as any protest by her at that point of time would definitely have invited public attention. All this clearly go to suggest that it was a consensual physical relationship on each occasion between two consenting adults. Last but not the least, the prosecutrix was elder in age to the Respondent by four years.

4. There is absolutely no evidence under the latter act that the Respondent exploited and took advantage of the prosecutrix because of her

Caste status.

5. We find no reason to interfere with the order of acquittal.
6. The Petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya