

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1163 of 2016

- Nilmani Paikra D/o Bamda Ram W/o Madan Singh Paikra, Aged about 24 years, R/o Village Manpur, Police Station Shankargarh, District Balrampur Chhattisgarh

---- Petitioner

Versus

- Basant Yadav S/o Tuyil Yadav Aged About 48 Years R/o Village Navapara Shankargarh, District Balrampur Ramanujganj Chhattisgarh
- Lalit Yadav S/o Basant Yadav Aged About 29 Years R/o Village Navapara Shankargarh, District Balrampur Ramanujganj Chhattisgarh
- State Of Chhattisgarh Through : Police Station, Station House Officer, Shankargarh District Balrampur Ramanujganj Chhattisgarh

---- Respondents

For Petitioner	: Shri Shakti Raj Sinha, Advocate
For Respondents 1 & 2	: None present
For Respondent No.3/State	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/01/2017

Present petition filed under Section 378(3) Cr.P.C. has been filed to assail the impugned judgment and order dated 08.08.2016 passed by Special Judge, Ambikapur in S.T. No. 105/2009 whereby the court below has acquitted respondents 1 & 2 of the offences under Sections 506 (2), 363/34, 366/34, 376(2)(G) and 368/34 IPC and 3(1)(X) and 3(2)(v) of SC/ST (Prevention of Atrocities) Act.

2. As per prosecution case, on 18.05.07, FIR Ex.P-1 was lodged by the prosecutrix (PW-1) alleging that on 19.02.07, respondent No.2 Lalit took her on his motorcycle to his house at Navapara and there she was subjected to rape by respondent No.2 and respondent No.1 who is the father of

respondent No.2, gave shelter to him. She has alleged that she was assured of marriage by the respondents and after about 4 days, she was taken by the respondent No.2 on a motorcycle to Vinayakpur and there also she was subjected to physical relation. According to the prosecutrix, she also visited village Gumla (Jharkhand) where she stayed for several days in the house of sister and brother-in-law of the respondent No.2. Based on this FIR, offence under Sections 363, 366, 376 and Sections 3(1)(X) and 3(2)(v) of SC/ST (Prevention of Atrocities) Act. After framing of the charge in relation to the above offence, prosecution has examined ten witnesses. Statement of the accused/respondents 1 & 2 were also recorded under Section 313 Cr.P.C. in which they pleaded their innocence and false implication in the case.

3. By the impugned judgment, the trial Judge has acquitted both the accused/respondents mainly on the following grounds :

i) that the prosecution has failed to prove that the prosecutrix was minor.

ii) that the prosecutrix remained in the company of the accused/respondent No.2 for months together without offering any protest.

iii) that the prosecutrix was a consenting party

It is this order which has been assailed by the prosecutrix.

4. Counsel for the applicant submits that the trial court has erred in law in acquitting the respondents in particular respondent No.2. He submits that even assuming that the prosecutrix was major, offence under Section 376 IPC is at least made out against the respondent No.2.

5. On the other hand, State counsel has duly assisted this Court.

6. The findings recorded by the trial court is based on correct appreciation of evidence. Apparently, the prosecutrix appears to be a consenting party where she roamed along with the respondent No.2 to several places and thereafter after an inordinate delay of about three months she lodged the report. There is no conclusive evidence showing the

prosecutrix to be minor and from the evidence adduced by the prosecution it appears that she was a major lady. It appears that almost on the same set of evidence two separate complaints were made against the accused/respondents and vide judgment and order dated 28.04.08 in S.T. No. 61/08, respondent No.2 was acquitted against which appeal was preferred by the State government and the revision which was preferred by the applicant were dismissed by this Court vide order dated 02.01.2012.

7. Thus after hearing counsel for the parties and considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal/revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate/revisional Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondents/accused of the offences under 506 (2), 363/34, 366/34, 376(2)(G) and 368/34 IPC and 3(1)(X) and 3(2)(v) of SC/ST (Prevention of Atrocities) Act is just and proper and does not call for any interference. Accordingly, the leave as sought for by the applicant for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge