

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 377 of 2017**

- State Of Chhattisgarh Through District Magistrate, Kanker, Chhattisgarh.

---- Petitioner

Versus

1. Mansingh Aanchala S/o Bahadur Singh Aanchala Aged About 21 Years R/o Ghumsimunda, Police Station Antagarh, District Kanker, Chhattisgarh.
2. Dinesh Kumar, S/o Suklal Mandavi, Aged About 20 Years R/o Village Ghumsimunda, Police Station Antagarh, District Kanker, Chhattisgarh.

---- Respondents

For Petitioner : Shri Vivek Sharma, Govt. Advocate

ORDER**Per P. Diwaker, J****30/06/2017**

1. Heard on admission.
2. This petition has been filed by the State under Section 378 (3) Cr.P.C. seeking grant of leave against the accused persons to file Acquittal Appeal assailing the judgment and order dated 22.12.2016 passed by the Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989], Bastar, Kanker in Special Case No. 68/2015.
3. Brief facts of the case are that on 22.9.2015, FIR Ex. P/1 was lodged by the prosecutrix, PW1, aged about 18 years, alleging in it that she is a student of B.A. 1st year, on 10.9.2015, at about 12.00 in the midnight when she had gone to attend the nature's call, the accused persons reached there,

forcibly took her on their motorcycle near the River and there they stayed till 5.00 O'clock early in the morning. She has further alleged that from the River, the accused persons took her to Narayanpur and from Narayanpur in a Bus they had gone to Kondagaon and then Makdi and from Makdi to village Kalibeda. She has further alleged that at Makdi she stayed in a hired house and there accused Mansingh established forcible physical relations with her. She further alleged that on 21.9.2015, she was traced by her brother and other family members and then she was brought to her home. Based on this FIR, offence under Sections 366, 376/34 IPC read with Section 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the 'Atrocities Act') was registered against the accused persons.

4. After filing of the charge sheet, the Trial Judge has framed charge against accuse No.1 under Sections 366, 376(1) IPC and Section 3 (2) (v) of the Atrocities Act, whereas, accused No.2 was charged under Section 366 IPC. So as to hold the accused persons guilty, prosecution has examined as many as 14 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C., in which, they pleaded innocence and false implication in the crime in question.

5. By the impugned judgment, the Trial Judge has acquitted both the accused persons of all the offences, hence, this petition seeking grant of leave to file Acquittal Appeal.

6. Learned counsel for the State submits :

i. That the trial Court has erred in law in acquitting the respondents;

- ii. That on the basis of the evidence adduced by the prosecution, in particular, statement of the prosecutrix, offence as alleged has been made out against both the accused persons;
- iii. That ingredients of Section 366 are apparently made out against the accused persons; and

7. Undisputedly, age of the prosecutrix is above 18 years. As per her own statement, she accompanied the accused persons on their motorcycle and had gone to various places without raising any objection or protest. Further she lived with accused No.1 in an unknown village for 11 days and during this period, she did not raise any hue and cry and thus, it can be safely held that she was a consenting party. This apart, at the time of commission of the offence, the prosecutrix was carrying pregnancy of about 3 months and that also goes against her. Considering all the aspects of the case, Trial Judge has come to the conclusion that the offence as alleged has not been made out against the accused persons.

8. The view taken by the trial Court is one of the possible view. It is well settled position of law that when two views are possible and the view taken by the trial court is in favour of the accused, the appellate court ordinarily should not interfere in the said order of acquittal.

9. The Supreme Court in case of Sudershan Kumar Vs. State of Himachal Pradesh reported in (2014) 15 SCC 666 in paragraphs 31 and 32 held as under :

31. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the

accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled [Dhanapal v. State](#) which is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 37, propositions laid down in an earlier case are taken note of as under:

"39. In *Chandrappa v. State of Karnataka*, this Court held: (SCC p. 432 para 42),

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

32. Thereafter, in para 39, the Court curled out five principles and we would like to reproduce the said para hereunder:

"39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
2. The power of reviewing evidence is wide and the appellate court can re- appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

10. In *Dilawar Singh v. State of Haryana*, (2015) 1 SCC 737, the Supreme Court reiterated the same in paragraphs 36 and 37 as under :

36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

36. In *Chandrappa v. State of Karnataka*, the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under: (SCC p.432 para 42)

“42....(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in

favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in *State of Rajasthan v. Shera Ram*.

11. The Supreme Court also held in para 19 in the matter of *State of Karnataka Versus Suvarnamma And Another*, (2015) 1 SCC 323 as under :

19. In appeal against the acquittal, if a possible view has been taken, no interference is required, but if the view taken is not legally sustainable, the Court has ample powers to interfere with the order of acquittal.

12. If the above principle as laid down by the Supreme Court are applied in the present case, it is apparent that the order passed by the trial Court cannot be interfered by this Court.

13. In the facts and circumstances of the case, we find no substance in the present petition. Same is accordingly dismissed at the motion stage itself.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Ram Prasanna Sharma)
Judge