

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 859 of 2017**

- Smt. Urmila Yadav W/o Shri Manoj Yadav, Aged About 38 Years R/o Shiv Nagar, Kewadabadi Bus Stand, Raigarh, Police Station City Kotwali, Tahsil & District Raigarh, Civil & Revenue District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. Manoj Yadav S/o Shri Brahmdeo Yadav, Aged About 42 Years R/o Brahman Bigha, Police Station Gurwa, Gaya, Bihar, At Present Shiva Nagar, Kewadabadi Bus Stand, Police Station City Kotwali, Tahsil & District Raigarh, Chhattisgarh.
2. State of Chhattisgarh Through Police Station Kotwali, District Raigarh, Chhattisgarh.
3. District Magistrate, Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Applicant :Mr. Manoj Kumar Sinha, Advocate

For Respondent No.2/State :Mr. Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Shama

Order on Board**Per Pritinker Diwaker****31-08-2017**

1. The instant petition has been preferred by the applicant/prosecutrix assailing the judgment of acquittal dated 22-09-2016 passed by the Additional Sessions Judge (FTC), Raigarh, District Raigarh in Sessions Trial No. 38 of 2016

acquitting the respondent No.1 of the offence under Sections 376, 506 and 323 of the IPC.

2. As per prosecution case, prosecutrix (PW/2) was called by the accused and when she entered into his house, he caught her and after gagging her mouth committed forcible sexual intercourse with her. Further case of the prosecution is that while she was in the room of the accused, his daughter knocked at the door and thereafter she returned to her house and narrated the entire incident to her mother-in-law and then the report was lodged.
3. In the court, prosecutrix (PW/2) has not supported the prosecution case and has been declared hostile. She has categorically stated that she was never compelled by the accused nor her mouth was gagged by him. She has also stated that she was never subjected to forcible sexual intercourse by the appellant and even no threat was given to her.
4. Considering the statement of the prosecutrix (PW/2), the Court below has arrived at a conclusion that accused is liable to be acquitted.
5. In this petition a ground has been raised by the prosecutrix that she was forced to make incorrect statement in the Court and in fact, she was subjected to forcible sexual intercourse. It has been argued that even in 164 Cr.P.C., statement prosecutrix has made allegation against the accused and in

view of the said statement alone, the accused is liable to be convicted. Learned counsel has further argued that on 4-2-2017 prosecutrix has written a letter to the Collector that she was compelled to give incorrect statement before the Court.

6. We have gone through the impugned judgment as also the material available on record.
7. From the record it appears that on 19.2.2016 a written report was made by the prosecutrix alleging therein on 11.2.2016 she was subjected to forcible sexual intercourse by the accused and was also beaten by him. However, in the Court she did not support the prosecution case and turned hostile and on being cross-examined by the prosecution denied all the suggestions put to her by it. Likewise, other important witnesses of the prosecution being PW-3 Manoj Yadav, PW-4 Kalavati Yadav and PW-5 Ku. Dipti Yadav, have also not supported the prosecution case and turned hostile. This apart, medical report also did not support the prosecution case. Thus, considering all these things, the trial Court was left with no other option but to record a finding of acquittal in favour of the accused and hence acquitted him of all the charges by the judgment impugned.
8. The main ground for filing this petition is that earlier the prosecutrix had made incorrect statement before the trial Court on account of there being an agreement between the parties that after acquittal, the respondent/accused along with

his family would leave Raigarh for his native place District-Gaya (Bihar) but after acquittal the respondent/accused is again threatening and abusing her and is harassing her physically as well as mentally. In these circumstances, she has filed this petition for direction of *de novo* trial against the respondent/accused.

9. True it is that ordinarily the evidence of the prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of rape, the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.
10. Thus, keeping in mind the aforesaid principles of law and regard being had to the facts and circumstances of the case, the conduct of the prosecutrix during trial and subsequent thereto as also the medical evidence which is at complete variance with the prosecutrix version, we are of the view that

the judgment of acquittal passed by the trial Court is based on proper appreciation of the overall evidence and suffers from no legal flaw. Even otherwise it is settled legal position while entertaining appeal against acquittal the Court must keep in mind that if the evidence led by the prosecution give rise to two views one favouring the accused and other the prosecution, the one favourable to the accused should normally be maintained unless the same appears to be based on faulty appreciation of the evidence or arrived at by taking into consideration the irrelevant things keeping aside the relevant ones.

11. In this view of the matter, we do not find any merit in the present petition, the same is therefore liable to be dismissed and is dismissed as such.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge

Raju