

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**DB: Hon'ble Shri Prashant Kumar Mishra,**
Hon'ble Shri Ram Prasanna Sharma, JJ**ACQA No. 331 of 2010**

- State of Chhattisgarh

---- Appellant**Versus**

- Tekchand S/o Bhaulal Verma Occupation Cultivator r/o. Village .
Kanhari Dabri Ps Lalbag, Rajnandgaon

---- Respondent

For Appellant/State	Mr. A.S. Kachhawaha, Addl. Advocate General
For respondent	None

Judgment on Board**30-4-2018****Per Ram Prasanna Sharma, J**

1. This acquittal appeal is preferred against the judgment dated 26-2-2001 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Rajnandgaon (CG) in Special Case No. 36 of 2000 wherein the said Court has acquitted the respondent for commission of murder of one child namely Pradeep aged 1 1/2 years.
2. As per case of the prosecution, respondent committed rape on Kumari Bai (PW/8) and due to said incident she conceived and

gave birth to a baby boy namely Pradeep. It is further case of the prosecution that respondent wanted to eliminate the child as he is unwanted and on the date of incident when the mother of Pradeep was fetching water from well the respondent reached there, used abusive language against her and thereafter threw the child into the well who died thereafter. The incident was reported and investigated. After completion of investigation charge-sheet was filed against the respondent. Respondent did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statement of respondent under Section 313 of Cr.P.C., was recorded and after hearing both the parties, the trial Court acquitted the respondent as mentioned above.

3. Learned State counsel submits as under:

- i) Kumari Bai (PW/8) is eye-witness of the incident and her version remained firm before the trial Court and the same is corroborated by independent witnesses, therefore, the finding arrived at by the trial Court is not based on proper marshaling of evidence but the same is based on conjectures and surmises.
- ii) The trial Court failed to appreciate the evidence adduced by the prosecution in its true and correct perspective and came to a wrong conclusion.
- iii) Minor omissions and contradictions are immaterial and there is ring of truth in the statements of the prosecution witnesses,

therefore, the finding of the trial Court is perverse.

- iv) Version of medical expert is also corroborating piece of evidence but the trial Court overlooked the same while evaluating the evidence as a whole.

4. To substantiate the charge, prosecution has examined as many as 14 witnesses. To nullify the charge, defence side has examined three witnesses.
5. Kumari Bai (PW/8) is the witness of the incident. As per version of this witness she conceived because respondent committed intercourse with her. She further deposed that after marriage her husband left her at village and had gone to Nagpur for livelihood. She also stayed at Nagpur with her husband and thereafter she is residing at village Kanhardabri for the last 4 – 5 years. From the evidence of this witness, it is established that she gave birth to a child namely Pradeep who is deceased.
6. From the evidence of this witness, it is clear that the child was not born out of wedlock but he is an illegitimate child of herself and the respondent. As per version of this witness 20-25 persons namely Brijlal, Harichand, Kalibai, Jaitribai, Hemlal husband of Phagubai and others were present at the time of incident and the child Pradeep was in her lap, but he fell down because of assault made by the respondent and thereafter

respondent threw the child into the well. Version of this witness is contradicted by version of Kalibai (PW/4). As per version of this witness, no one was present except her when child was thrown into the well by the respondent.

7. Defence side has examined Manbodhi (DW/1), Tep Chandra (DW/2) and Chhotelal (DW/3). All the three witnesses have deposed that the appellant told Kumari Bai that the said child is not his child and why she is naming him and just thereafter Kumari Bai threw the child into the well. PW/3 Brijlal, PW/6 Harichandra, Lalaram (PW/7) though examined by the prosecution, but they have not supported the case of the prosecution. In the record of the trial Court, there is evidence of Kumari Bai (PW/8), Kali Bai (PW/4), Manbodhi (DW/1), Tep Chandra (DW/2) and Chhotelal (DW/3) regarding the incident. Version of Kumari Bai is contradicted by version of Kalibai (PW/4) that 25 persons were present on the spot. As per version of Kalibai (PW/4), she alone was present at the time incident. Though Kumari Bai and Kalibai stated that it is respondent who threw the child into well, but all the defence witnesses have deposed that it is Kumari Bai who threw the child into well.
8. It is admitted position that the child is illegitimate child of Kumari Bai and the respondent. Looking to the statement of defence witnesses, it is not safe to hold that the respondent is author of

the crime. The finding arrived at by the trial Court is based on relevant facts of the case and cannot be termed as based on irrelevant or extraneous matter. It is settled position of law that if looking to the state of evidence, two views are possible, then the view which is favourable to the accused should be preferred. It would not be proper for us to interfere with the finding recorded by the trial Court.

9. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju