

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 325 of 2010**

State of Chhattisgarh, Police Station, Kanker District Kanker,
(Chhattisgarh)

---- Appellant**Versus**

Soni @ Dhyanendra Sharma, S/o Kishore Sharma, aged about
18 years, R/o Village Dudh Nadi Colony, Kanker District Bastar
(Chhattisgarh)

--Respondent

For Appellant/State	: Shri Bhaskar Payashi, Panel Lawyer
For Respondent	: None

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****Per Prashant Kumar Mishra, J.****15/05/2018**

1. The State has preferred this Acquittal Appeal to assail the impugned judgment rendered by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act, 1989'), Bastar at Jagdalpur (CG) in Sessions Trial No.70/2004 wherein the said Court has acquitted the respondent of the charges under Section 376 (2) (f) of the IPC and Section 3 (1) (xii) of the Act, 1989.

2. As per prosecution case, the accused and the prosecutrix are the residents of same locality. The F.I.R. was lodged at 15.30 hrs. on 7.12.2003 alleging that at about 4.30 pm on 6.12.2003, the accused requested the prosecutrix to carry one oil container to a

quarter of Forest Department. However, after 15 minutes the prosecutrix returned weeping and informed her mother that she has been subjected to sexual intercourse by the accused. On the basis of positive medical opinion vide Ex. P3 and the case diary statements of the witnesses mainly the prosecutrix and her mother, Smt. Rajim Bai (PW2), the respondent was sent for trial. At the end of duly conducted trial, the trial Judge has acquitted the accused from both the charges.

3. We have heard learned counsel for the appellant and carefully scrutinized the evidence available on record.

4. On due consideration and re-appreciation of evidence, we are convinced that the trial Judge has rightly acquitted the accused of the aforementioned charges.

5. It is to be seen that the basic prosecution case, as reflected in the F.I.R., is of commission of rape by the accused. However, in her deposition, the prosecutrix has stated in para 9 that the accused had only tried to bring down her underwear and no sooner he initiated the process, she shouted, whereupon her mother came and slapped the accused. The prosecutrix would depose in para 11 that in the evening, mother of the accused had visited their house and asked her mother about well being to which her mother stated that her daughter (prosecutrix) is alright otherwise, she would have reported the matter to the Police Station. Appreciating further the statement made by the prosecutrix in para 15, it is to be seen that on the next day, their family consulted one Rikhiram who works in Kanker Court and it

was he who informed that if report is lodged, the prosecutrix will get Rs.25,000/- from the government. It is for this reason, the F.I.R. was lodged belatedly after about 22 hrs. even though the distance between the place of occurrence and Police Station is only 1 km.

6. In addition to the statement of the prosecutrix, her mother has also stated that although her husband came back at about 11.00 pm, but she did not disclose the incident to him out of fear. On the contrary, the prosecutrix has stated that her father came back from office at about 8.00 pm and that the incident was disclosed by her (the prosecutrix) to her father on the next morning. There is no explanation offered as to why the F.I.R. was not lodged immediately in the morning itself. On the basis of admission by the prosecutrix, the delay becomes fatal for the prosecution because it is coupled with the suggestion by Rikhiram during the course of the day on 7.12.2003 that if report is lodged, they will get Rs.25,000/-.

7. In our considered view, the judgment rendered by the trial Court is perfectly on the basis of material available on record and the finding does not suffer from any perversity.

8. The Acquittal Appeal has no substance. It deserves to be and is hereby dismissed.

Sd/

JUDGE

(Prashant Kumar Mishra)

Sd/

JUDGE

(Ram Prasanna Sharma)