

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 437 of 2007**

- Ku. Esther Rani, D/o Victor Ekka, aged about 24 years, R/o Balrampur, District Sarguja (C.G.).

---- Applicant**Versus**

1. Mukhtiyar @ Mukhtar Ansari, S/o Meharab, aged about 24 years, R/o village & P.S. Balrampur, District Sarguja (C.G.)
2. The State of Chhattisgarh, Through : S.H.O. - Balrampur, District Sarguja (C.G.)

---- Respondents

For Applicant : Shri Aditya Chopra, Advocate
 For Respondent/State: Ms. K. Tripti Rao, P.L.

**Hon'ble Shri Justice Manindra Mohan Shrivastava &
 Hon'ble Smt Justice Rajani Dubey**

Judgment on Board**12/11/2018**

1. This revision has been filed by the Prosecutrix/applicant being aggrieved by the judgment of acquittal dated 30.06.2007 passed by Special Judge/Additional Sessions Judge (constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sessions Division Sarguja, District Ambikapur, in Special Sessions Trial No.90/2005 by which the learned Trial Court has acquitted the accused/respondent No.1 of the alleged commission of offences under Sections 3 (2) (v)

of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') alternatively 376 (1) IPC and 3 (1) (x) of the Act and 294 IPC.

2. The prosecution case on the report of the Prosecutrix was that the Prosecutrix, a major, had an affair with accused/respondent No.1 (hereinafter referred to as 'accused') and it is alleged that the accused kept on sexually exploiting the Prosecutrix on the false pretext of marrying her, but later on, he did not marry. The Prosecutrix also became pregnant. Finally, the Prosecutrix lodged a report in the police station against the accused alleging that accused had long standing sexual relation on the false pretext that the accused had been telling her to marry but he did not marry and in fact he was already married and, therefore, it is a case where the Prosecutrix was subjected to rape.
3. The learned trial Court, after scrutiny of the evidence on record, found that the Prosecutrix was not under any misconception of fact. She had been voluntarily living along with the accused as his wife and the evidence on record showed that she had been living for fairly long time with the accused and also that the cause of dispute between the parties was something else and, therefore, it could not be said to be a case of misconception of the facts on the part of the Prosecutrix.
4. Relying upon the Supreme Court decision in the case of

Karthi alias Karthick v. State represented by Inspector of Police reported in **2013 (12) SCC 710**,

learned counsel for the applicant would submit that present is the case where the evidence on record proves that the Prosecutrix was sexually exploited by the accused on the false pretext of marriage which was never performed by him. He would submit that this, in the peculiar facts and circumstances of the case, cannot be said to be a case of free consent but consent obtained by deceit and fraud, therefore, it would amount to rape.

5. There is no representation by the accused despite notice served upon him.
6. Learned State counsel would submit that this Court may appreciate the evidence on record and decide the matter appropriately.
7. Prosecutrix (PW/1) has stated in her evidence that ever since August, 2002, the accused was having sexual intercourse with the Prosecutrix. She has stated that she was given lure of marriage. This witness has further deposed that she along with the accused, were residing in a house and there she was having sexual intercourse with the accused. This witness has further deposed that along with them, the Prosecutrix's friend Basanti was also residing in the rented accommodation. She further states that they were studying and the accused was also

working as a Driver. In para 3 of her evidence, she has clearly deposed that they were residing together as husband and wife, though, she was repeatedly asking for formal marriage which was being avoided and in the meantime she became pregnant. According to further evidence of this witness, she was advised to go for abortion, which was refused. In cross-examination, this witness, however, admits that on 22.09.2003 she had executed an affidavit of their marriage before Shri Uma Shankar Yadav, Notary. Upon further cross-examination, she states that before marriage, she had lived with the accused only for one year and thereafter, she resided for another two years in discharge of marital obligation. The fact that the earlier marriage of accused was fully known to the Prosecutrix is divulged from her own statement in the cross-examination that the time when she had love affair with the accused, there used to be quarrel between her and the wife of accused Wajda Khatun.

8. The evidence of the Prosecutrix (PW/1) clearly proves that the Prosecutrix was a major, had not only entered into an affair with the accused, knowing fully well that he was a married person but she was also asserting her relationship with accused and quarreling with the wife of accused. Not only this, she has admitted on affidavit, solemnization of marriage between them, which was also executed by her and she states that she had been

residing with the accused for one year before marriage and thereafter for two years after their relations became like husband and wife. The evidence of the Prosecutrix indicates that, though, informally, the applicant and the accused had entered into a nuptial knot in respect of which both of them had executed an affidavit.

9. Ku. Basanti (PW/2), who is said to be residing along with the accused and the Prosecutrix, has also stated that the accused and the Prosecutrix (PW/1) were residing as husband and wife and the Prosecutrix was insisting on marriage. In her cross-examination, she admits that the Prosecutrix and the accused both resided for about 2-3 years like husband and wife.
10. Smt. Saroj Ekka (PW/3), mother of the Prosecutrix, has also stated regarding relationship between the Prosecutrix and the accused, and that he (accused) used to come frequently to their house and stayed with them but was avoiding to perform marriage. In para 8 of her cross-examination, however, she admits that the Prosecutrix and the accused both resided at Ramanujganj and Ambikapur for about four years as husband and wife.
11. Father of the Prosecutrix namely Victor Ekka (PW/4) has clearly admitted in para 8 of his cross-examination that when he came to know about the execution of an affidavit regarding marriage between his daughter and

the accused, he advised her daughter that as the accused is already married, she should ask for separate house and a cash of Rs. 1 Lac and he further admits that when this demand was denied, a report was lodged.

12. Ku. Pushpa Ekka (PW/7) has stated in her cross-examination that her sister (Prosecutrix) and the accused had married and they resided as husband and wife at Ramanujganj. She has also stated that the accused was willing to give her sister a house and sewing machine.
13. The evidence on record proves that the Prosecutrix and the accused had an affair and later on, though informally, they had entered into relationship of husband and wife and started living as husband and wife only. The evidence of Prosecutrix further shows the genesis of the dispute was that the Prosecutrix was insisting for separate house and a cash of Rs. 1 Lac because the accused was already married. This also proves that the fact of appellant already married was fully known to the Prosecutrix.
14. The aforesaid evidence clearly shows that there was no misconception of fact on the part of the Prosecutrix and in-fact, it is clear from the prosecution evidence and the Prosecutrix admission that the parties had already executed an affidavit of them having become husband and wife and they were residing like husband and wife but the

dispute arose because of the subsistence of first marriage and refusal of demand to have separate house and cash.

15. In the aforesaid facts and circumstances of the case, the decision cited by learned counsel for the revisioner is clearly distinguishable and the law laid down by the Supreme Court in the case of **Uday V. State of Karnataka** reported in **2003 (4) SCC 46**, would become applicable. In the aforesaid decision, it was held as under:-

“4... According to the prosecutrix, whenever she talked to the appellant about the marriage, he assured her that he would marry her after completion of the construction of the house, and that it would be a registered marriage. This state of affairs continued till she discovered that she was pregnant. She told the appellant about the pregnancy but he assured her that she should not worry and that he will marry her after some time. The suspicion of her mother was aroused during the 6th month of pregnancy and she was, therefore, compelled to disclose everything to her mother. She told the appellant about her having disclosed everything to her mother, and the appellant again assured her that he would take her to some other place and get married. Gradually when others came to know about the affair and her pregnancy, her brother, PW 3 enquired of the appellant as to whether he would marry her. The appellant told her brother that he would marry her, but this fact should not be revealed to his (appellant's) parents. In the 8th month of pregnancy the appellant asked her to be ready to go with him and it was planned that they would leave early in the morning. The appellant did not turn up but the cousin of the appellant informed her that the appellant had gone to Sangli. Eight days later when the appellant returned from Sangli, her brother again asked the appellant as to whether he would marry her. The appellant told her brother to keep her at some other place and that he would bear her maintenance expenses and after her

delivery and completion of the construction of his house, he would marry her. This suggestion was not acceptable to the prosecutrix and her brother and this angered the appellant. Next day when her brother wanted to meet the appellant he did not come out of his house. Thereafter followed a quarrel between the female members of the two families. Since the appellant did not marry her as promised, she lodged the complaint with the police on 12-5-1989 which was recorded by PW 10, PSI. She gave birth to a child on 29.05.1989. On 13.05.1989 she was examined by the doctor, PW 14 who gave the opinion that the prosecutrix was about 18-20 years of age. In cross-examination questions were put to her about her intimacy with other boys which she denied."

16. In the result, we do not find any illegality or infirmity in the impugned judgment of acquittal of accused warranting interference by this Court in exercise of inherent jurisdiction.

17. The Criminal Revision is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE