

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: Honorable Mr. Justice Prashant Mishra &
Hon'ble Mr. Justice Ram Prasanna Sharma**

ACQA No. 33 of 2013

- Laxmi Paikra D/o Shri Shivcharan Sai Aged About 20 Years R/o Village Mathpahad, Ps Bagbhar, Distt. Jashpur Chhattisgarh

---- Appellant.

Versus

1. Vijay Kumar Yadav S/o Madhusudhan Yadav aged about 28 Years R/o Village Ludeg, PS Pathalgaon, Distt. Jashpur C.G.
2. The State of Chhattisgarh Through Ps Bagbhar, Distt. Jashpur C.G. , District : Jashpur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Rishi Mahobia, Advocate
For respondent No.1	:	None
For respondent No.2t/State	:	M. Wasim Miyan, Panel Lawyer

Oral Judgment**(11-05-2018)****Per Ram Prasanna Sharma, J.**

This acquittal appeal is preferred against the judgment dated 7-2-2013 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jashpur in Special Criminal Case No. 30 of 2011,

wherein the trial Court has acquitted the respondent No.1 for commission of offence under Section 376(1) of IPC, 1860 and Sections 3(i)(xii) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") and Section 146 read with Section 196 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988").

2. In the present case, prosecutrix is PW/9. As per prosecution case, prosecutrix is a member of Scheduled Tribe whereas respondent No.1 is not a member of Scheduled Caste or Scheduled Tribe. It is alleged that since 5-7-2009 respondent No.1 made promise to prosecutrix that he would marry her, but denied to marry her. On 16-6-2011 a report was lodged by the prosecutrix against respondent No.1 in the Police Station. The matter was investigated and during investigation, statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') were recorded. After investigation, charge sheet was filed against the respondent No.1. The respondent No.1 pleaded innocence and thereafter the trial was conducted. After examination of the witnesses, statement of the respondent No.1 was recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondent No.1 as aforementioned.

3. Learned counsel for the appellant would submit that

version of the prosecutrix and other witnesses established the guilt of respondent No.1, but the trial Court came to conclusion on the basis of surmises and conjectures which is liable to be set aside.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Prosecutrix (PW/9) is aged 20 years and she was major on the date of incident. As per version of this witness, on 5-7-2009 she was waiting for Bus near the shop of the respondent No.1 to go to her home. When the Bus came, she boarded the Bus and at the same time respondent No.1 also boarded the Bus and took her forcefully from the Bus. He made her seated on his motor-cycle and they reached to village Chiknipani. As per version of this witness, respondent committed sexual intercourse with her. She further deposed that from 5-7-2009 respondent committed intercourse with her many times on the pretext of marriage and when she asked him to marry her on 11-5-2011 respondent assured to marry her at village Kotibera, but when they reached to village Kotibera respondent denied to marry her on 16-6-2011. In her cross examination she admitted that she did not raise any alarm at the first instance when she alighted the Bus alongwith the respondent (para 17). She further deposed that she made physical relation with the respondent frequently and relation

between them continued for two years.

6. Now the point for consideration is whether respondent committed sexual intercourse with prosecutrix without her consent or against her will.

7. From the statement of the prosecutrix, it is clear that she made physical relation with respondent for two years and from her statement it is not established that the act is performed without her consent or against her will, therefore, offence under Section 376 of IPC is not established.

8. Section 3(1)(xii) of the Act, 1989 applies when a person being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe uses that position to exploit her sexually to which she would not have otherwise agreed. For establishing the position to dominate, fiduciary relation has to be established like guardian and ward, teacher and student, master and servant, patient and doctor and so on. No fiduciary relation is established as both prosecutrix and respondent appear to be common people of the locality. In absence of fiduciary relation, dominating position of respondent No.1 is not established. It is established that physical relation was maintained by them for a long time with consent, therefore, offence under Section 3(1)(xii) of the Act, 1989 is not established.

9. Section 3(2)(v) of the Act, 1989 applies only when any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more is committed. In the present case, no such commission of offence is established. As per record, the respondent was having insurance policy of the vehicle in question, therefore, offence under Section 146 read with Section 196 of the Motor Vehicles Act, 1988 is also not established.

10. Considering all the facts and circumstances of the case, we are of the view that the finding arrived at by the trial Court is based on relevant facts and proper marshaling of the evidence and it cannot be said that the finding of the trial Court is based on irrelevant facts or extraneous matter, therefore, it would not be proper for us to disturb the finding recorded by the trial Court.

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

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)

Raju