

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 304 of 2010**

- State Of Chhattisgarh, Through the SHO, P.S. Pathariya, District Bilaspur (CG)

---- Petitioner**Versus**

- Panchu Sahu, S/o Hariram Sahu, Aged about 32 years, Village Lohda, P.S. Pathariya, District Bilaspur (CG)

---- Respondent

For Appellant/State
For Respondents

Mr. Wasim Miyan, Panel Lawyer
Mr. Vimlesh Bajpayee, Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Judgment On Board By****Ram Prasanna Sharma, J.****20/3/2018**

1. Heard.
2. This appeal is preferred against the judgment dated 29.9.2007 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (CG) in Sessions Trial No.28/2007, wherein, the said Court acquitted the respondent under the charges under Sections 376, 450 and 506 (B) of Indian Penal Code, 1860.
3. In the present case, the prosecutrix is PW-3. As per the version of the prosecution, on 21.10.2006, the husband of the

prosecutrix went to work in a flour mill. At about 3:00 am, on 22.10.2016, the respondent entered into the house of the prosecutrix, threatened her and thereafter, committed sexual intercourse with her without her consent and against her will.

4. On report, the matter was investigated and after completion of the trial, the trial Court acquitted the respondent, as mentioned above.
5. Learned counsel for the State submits as under :
 - (i) The statement of the prosecutrix is corroborated by the statement of her husband and again, it is corroborated by the medical evidence, but the trial Court ignored the same against the settled principle of law.
 - (ii) The prosecution witnesses are natural and truthful; they have given the true version of the occurrence and; the case is consistent with the other evidence, but the trial Court came to a wrong conclusion on the basis of surmises and conjectures.
 - (iii) The trial Court gave weightage to minor contradictions and insignificant discrepancies against the settled principle of law.
6. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshalling of evidence requiring no interference by this Court in its appellate jurisdiction.
7. The respondent was charged for commission of offence of rape.

Since the act was committed in secrecy, the evidence of the prosecutrix must be of sterling quality inspiring confidence of the Court.

8. The prosecutrix is aged about 22 years and is married. As per the version of the prosecutrix, the respondent entered into her house after midnight. Thereafter, when the respondent entered into the room of the prosecutrix, she asked him to let her first go to the washroom and while she was saying this, simultaneously, the respondent was caught holding her hand. Therefore, from her statement, it is clear that she did not resist during the process of intercourse and also did not cry for help from anyone. It is further clear from her statement that the other members of the family were present in the same house but she did not call them for help. For this, she deposed that due to fear, she did not cry but her version is not inspiring confidence, because, at the time of the incident, she was at her own house and number of family members were there in the same house, therefore, there was no reason for her to be fearful.
9. The explanation given by the prosecutrix for her fear is not acceptable looking to the unacceptable reason. Medical evidence adduced by the prosecution also does not help because the prosecutrix is a married lady residing with her husband. There is no serological report regarding origin of semen and therefore, the same is not connecting piece of evidence against the respondent. It has also come in the

evidence of the prosecutrix (para 41) that there is rivalry between the uncle of the respondent and her father-in-law since they stood against each other in the Panchayat Elections. At the time of elections, some members including the respondent canvassed for the uncle of the respondent and some members canvassed for the father-in-law of the prosecutrix.

10. Looking to the over all statements, the trial Court opined that it may be a case of consent and the finding arrived at by the trial Court cannot be termed as based on irrelevant facts. The other piece of evidence adduced by the prosecution is corroborative piece of evidence but no independent finding can be arrived at with the help of other evidence. When the trial Court has based its finding on relevant facts on record and the same is not based on any extraneous substance, it would not be proper for us to disturb the finding arrived at by the trial court.

11. For the foregoing, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)