

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 365 of 2018**

- State Of Chhattisgarh Through- Police Station Saragaon, District- Janjgir-Champa, Chhattisgarh. ---- **Petitioner**

Versus

- Laxmi Narayan Yadav S/o Mahadev Yadav Aged About 22 Years R/o- Saragaon Bhatapara Ward No. 1 Police Station Saragaon, District- Janjgir-Champa, Chhattisgarh. ---- **Respondent**

For State/Petitioner : Shri Vaibhav A. Goverdhan, P.L.

Hon'ble Shri Pritinker Diwaker and
Hon'ble Shri Sanjay Agrawal, J.J.
Order On Board

09.04.2018**Per Pritinker Diwaker, J.**

1. Present petition, seeking leave to appeal, has been filed under Section 378(3) of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C.'), to assail the impugned judgment and order dated 11.10.2017 passed in Special ST No.23/2016 by the Special Judge under Atrocities Act, Janjgir Champa (C.G.), whereby the Court below has acquitted the respondent of the offence under Sections 376 (2)(n) of IPC and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter refer to as the 'Atrocities Act').

2. As per prosecution case, on 22.06.2016 a written report (Ex.P1) was lodged by the prosecutrix (PW1) alleging in it that in year 2015, she was being subjected to physical relation by respondent on the pretext of marriage. She has alleged that on the pretext of marriage the respondent subjected her to physical relation on several occasions as a result of which she is carrying six months pregnancy.

3. Based on this written report (Ex.P.1), an FIR (Ex.P.2) was registered against the respondent/accused under Section 376 of IPC and accordingly the respondent was taken into custody. The trial Court has framed charge under Sections 376 (2)(n) of IPC and 3(2)(v) of the Atrocities Act.

4. So as to hold respondent guilty, the prosecution has examined as many as 08 witnesses. Statement of respondent was recorded under Section 313 Cr.P.C., in which, he denied all the circumstances appearing against him and pleaded innocence and false implication.

5. By the impugned judgment, the trial Court acquitted respondent mainly on the ground that the prosecution has failed to collect the evidence to connect the respondent in the alleged offence.

6. Counsel for the State/petitioner submits that the trial Court has erred in law in acquitting the respondent.

7. We have heard learned counsel for the State and perused the record carefully.

8. In the Court, prosecutrix has turned hostile and has stated that she was having an affair with the respondent and that she had physical relations with him on her own wish and sweet will. She also admitted in Court statement that she has performed marriage with the respondent and out of their marriage a child was born.

9. Undisputedly, there is inordinate delay in lodging the FIR(Ex.P2). This apart, the prosecutrix in her Court statement has specifically admitted physical relations with the respondent of her own sweet will as there was affair between them and that she has also

performed marriage with him. After considering the statement of the prosecutrix and other evidence available on record, the trial Court was justified in acquitting the respondent of the aforesaid charge giving him benefit of doubt.

10. After considering the material available on record as well as the elaborate judgment impugned passed by the Court below and being very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, this Court is of the opinion that the judgment impugned acquitting the respondent /accused of the offence under Sections 376 (2)(n) of IPC and 3(2)(v) of the Atrocities Act is just and proper and does not call for any interference. Accordingly, the leave as sought for by the petitioner for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed at the admission stage.

Sd/-

Sd/-

(Pritinker Diwaker)
Judge

(Sanjay Agrawal)
Judge