

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****ACQA No. 247 of 2010**

- State of Chhattisgarh

---- Appellant**Versus**

- Ratan Singh S/o Aajuram Sahu aged about 34 years r/o. Village Pawantara, Police Station Sahaspur Lohara, District Kawardha (CG)/

---- Respondent

For Appellant/State	Mr.Rajendra Tripathi, Panel Lawyer
For respondent	Mr. Praveen Dhurandhar, Advocate

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Judgment**Per Ram Prasanna Sharma, J****(8-2-2018)**

1. This acquittal appeal is preferred against the judgment dated 2-4-2003 passed by the Additional Sessions Judge (FTC), Kawardha, District Kawardha (CG) (for short, "the trial Court"), Sessions Division Rajnandgaon (CG) in Sessions Trial No. 103 of 2002 wherein the said Court acquitted the respondent from the charges of commission of offence under Sections 450, 376(1) and 506 Part II of IPC.
2. As per prosecution case, date of incident is 11-4-2002 and place of incident is the house of prosecutrix situated at village Pawantara. It is alleged that the husband of the prosecutrix went to see "Kunwar Achharia Mela" on the said day and prosecutrix was sleeping in her

house. Two daughters of the prosecutrix were also sleeping in the same room. It is alleged that respondent entered into her house and caught hold her hand and breast and when she woke up, he pressed her mouth by his hand and threatened to kill her and thereafter committed sexual intercourse with her without her consent and against her will. When husband of the prosecutrix returned early morning, the respondent concealed himself in another room of the house and when prosecutrix shouted, residents of the locality gathered there. The matter was reported to Police Station Sahaspur Lohara and investigated by the authorities. After completion of the investigation, charge-sheet was filed against the respondent to which he did not plead guilty and trial was conducted. After examination of prosecution witnesses, statement of respondent under Section 313 of Cr.P.C., was recorded and after hearing both the parties, the trial Court acquitted the respondent as mentioned above.

3. Learned State counsel submits as under:

- i) The trial Court committed error of fact in disbelieving the statement of prosecutrix (PW/1), Radhelal (PW/2), Narayan Lal (PW/3), Shantilal (PW/8) who have stated the factual scenario of the case.
- ii) Opinion of Dr. R.K. Bhuarya proves the factum of sexual intercourse which was overlooked by the trial Court.
- iii) The trial court failed to appreciate the opinion of Dr. Neeta Karnavat and other witnesses whose statements were recorded during investigation which ought not to have been disbelieved.

4. On the other hand, learned counsel for the respondent would submit that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be disturbed while invoking jurisdiction of the appeal.
5. We have heard learned counsel for the parties and perused the record.
6. Sexual offences are committed in secrecy and in offences relating to sexual assault, statement of prosecutrix must be of sterling quality inspiring confidence of the Court. Other witnesses adduced by the prosecution are not the real witnesses of the incident but of corroborative nature, therefore, the case of the prosecution is usually based on the statement of prosecutrix. In the instant case, prosecutrix is a married woman aged about 25 years. She deposed in para 6 that her earlier marriage was solemnized at Bhilai and after leaving her first husband she returned to her parental house. She deposed that her present husband Radhelal brought her to village Dhanora and from Dhanora they shifted to village Pawantara. As per version of this witness, her husband Radhelal is a Barber by profession. Respondent is the Secretary of Panchayat. As per version of the prosecutrix, her husband left for Mela at about 8 pm and after his leaving the home, respondent entered into her house and caught hold of her hand and breast and then she woke up and when she tried to raise alarm he pressed her mouth and threatened to kill her and thereafter committed intercourse with her. As per version of her husband Radhelal (PW/2), he returned to home at about 4.00 a.m. As per version of prosecutrix, when her husband returned, she was in

compromising position with the respondent and when she heard her husband's steps, then she pushed the respondent.

7. PW/7 Likhan Lal unfolded a different story. As per version of this witness, there was some ritual of marriage in the house of Narayan Lal (PW/3) in his village and there one Manohar Joshi informed him at about 11.00 pm that respondent had entered into the house of prosecutrix. He further deposed that when Radhelal, husband of the prosecutrix returned from Mela, he entered into the house and asked his wife as to whether anyone entered into the house, but she replied that no one had come in the house. He further deposed that one meeting was organized outside the house of the prosecutrix where prosecutrix admitted that she was having affair with respondent for the last three years.
8. From the statement of the witnesses of the prosecution, it is established that when husband of the prosecutrix left his house at 8.00 pm for Mela, thereafter respondent had entered into her house and he stayed in the house of prosecutrix till next morning. From the statement of the prosecutrix, it is established that she pushed the respondent only when her husband entered into the house in the morning and the same is indicative of consensual act between the prosecutrix and the respondent. Version of PW/7 Likhan Lal is corroborating the affair between prosecutrix and the respondent.
9. Looking to the facts and circumstances of the case, the trial Court opined that it is a case of consent and when it is a case of consent, provision of Section 114 of Indian Evidence Act, 1872 is not attracted. When it is a consensual act, it cannot be held that respondent

entered into the house of the prosecutrix with intention to cause annoyance to her or for committing any offence and committed offence under Section 450 of IPC. When both were having affair, there was no determination to execute any threat to commit offence under Section 506 Part II of IPC.

10. On overall assessment of the evidence, we are of the view that the finding arrived at by the trial Court is based on cumulative effect of relevant facts and the same is not liable to be reversed or modified.
11. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Raju