

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****ACQA No. 166 of 2011**

- State Of Chhattisgarh, Through District Magistrate, District Raigarh C.G.

**---- Petitioner****Versus**

- Goverdhan Prasad, S/o Paluram Pradhan, Aged about 25 years, Occupation Agriculturist R/o Village Budhipara, Salheona, P.S. Chakradharnagar, Tahsil & District Raigarh C.G.

**---- Respondent**


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For Appellant  
For Respondent

Shri Rajendra Tripathi, P.L.  
Ms Indira Tripathi, Advocate.

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**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****by Hon'ble Ram Prasanna Sharma J.****16/03/2018**

1. This Acquittal Appeal is directed against the Judgment dated 12<sup>th</sup> August, 2010 passed by the 4<sup>th</sup> Additional Sessions Judge, Fast Track Court, Raigarh, in Sessions Trial No.95 of 2009, wherein the said Court acquitted the respondent for charges under Section 376 (1) and 506 Part 2 of IPC, 1860.
2. As per the prosecution case, on 02.08.2009 at about 10:30 A.M., prosecutrix was cutting some vegetable in her house and at the same time respondent entered into her house

closed the door, pressed the mouth of the prosecutrix and dragged her into cot and thereafter committed sexual intercourse with her, against her will and without her consent. The prosecutrix informed about the incident to her father on 15.08.2009 and thereafter the matter was reported to Police Station Chakradharnagar. After completion of trial, the trial Court acquitted the respondent as mentioned above.

3. Learned counsel for the State submits as under:-

- The trial Court erred in disbelieving the statement of the Prosecutrix PW-1 which is fully corroborated by the statement of Dr. Divya Kiran Toppo and again it is supported by the version of father and mother of the prosecutrix.
- There is delay in reporting the matter but the explanation offered by the witness is plausible one but the trial Court overlooked the same and came to wrong conclusion.
- The prosecutrix was aged below 16 years at the time of incident and therefore, she would not be consenting party, as per the law of the land but the trial Court overlooked the same and passed an order which is not sustainable.

4. On the other hand, learned counsel for the defence submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence and not liable to be interfered with.

5. In the present case, the date of incident is 02.08.2009,

in house situated at Gudipara Salheona. The prosecutrix did not inform to anyone till 15.08.2009 about the incident. As per version of the prosecutrix in para 21 of her statement that if her father and mother would not have asked about prize won by her she would not have disclosed about incident took place on 2.8.2009 to her. She further deposed that she did not cry at the time of incident. No injury mark was found in her body as per the report of the medical expert.

6. Place of incident is the house of the prosecutrix and the reason assigned for delay in lodging the report is due to the fear of the respondent. When the incident took place in the house of the prosecutrix, there is nothing like fear to state the same to members of the family and neighbours just after the incident. Therefore, reason stated by this witness is not inspiring confidence of the Court.
7. The offence was committed in secrecy and therefore version of the prosecutrix should be of sterling quality to inspire confidence of the court. But in the present case, the prosecutrix did not inform to anyone about the incident even after 15 days of the incident and again she did not resist or cry at the time of incident.
8. Looking to her conduct, the trial Court opined that it is a case of consent and offence under Section 376 or 506 is not made out. Smt. Gandharvi Bhoi PW-2 is the mother of the prosecutrix and Aniruddh Bhoi PW-3 is father of the prosecutrix both have not stated date of birth of the prosecutrix. Dr. Divya Kiran Toppo PW-14, who is a Radiologist opined, after examination of the prosecutrix, that her age is between 15 to 17. As per settled law, variation of 2 years of either side of report

of Radiologist, in this way, the age of the prosecutrix comes out between 15 to 19 years and therefore, it cannot be said that she was below the age of 16 years. Intercourse with the consent of a girl aged above 16 years was not an offence at the time of incident, as per law prevailing at the time of incident i.e. 02.08.2009.

9. So far offence under Section 506 of IPC is concerned, it is stated by the prosecutrix that the respondent threatened her to kill and again he threatened to kill her father but from the evidence it is not established that respondent was determined to execute his threat on the spot. There is only word to threat but there is no substance to execute the same on an over all assessment of the evidence, the trial Court opined that case of the prosecution is not established and we have no reason to disturb the same.
10. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma

