

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 48 of 2012**

1. Priti Prajapati D/o Late Puna Ram Prajapati, R/o Vinoba Nagar , P.S. Tarbahar , Distt. Bilaspur C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh S/o Ramji Pandey , R/o Village Bhelwa Tikri Manjhipara Police Chowki Belgahana , P.S. Kota , Distt. Bilaspur C.G.
2. Sandeep Kumar Pandey S/o Ramji Pandey , R/o Village Bhelwa Tikri Manjhipara Police Chowki Belgahana , P.S. Kota , Distt. Bilaspur C.G.

---- Respondents

For Appellant	:	Mr. K.K. Singh, Advocate.
For respondent No.1 /State	:	Mr. Rajendra Tripathi, Panel Lawyer
For respondent No.2	:	None

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

Oral Judgment**Per Ram Prasaanna Sharma, J****5-1-2018**

1. This acquittal appeal is directed against the judgment dated 2-8-2011 rendered by the Sessions Judge, Bilasur.(for short, "the trial Court") Sessions Division Bilaspur (CG) in Session Trial No. 150 of 2009 wherein the trial Court acquitted the respondent No.2 from the charges under Sections 376 and 506 of IPC.
2. As per prosecution case, respondent No.2 is maternal uncle of

prosecutrix (PW/1). Prosecutrix is a student girl aged about 18 ½ years. In the Hindi month of Kartik, at about 9.00 pm., respondent called prosecutrix for providing books, threatened her and took away her into his room and then closed the door, removed her clothes and thereafter committed rape on her. In the morning at about 3.00 a.m., respondent No.2 left the prosecutrix near her house. After reaching the house, prosecutrix narrated about the incident to her younger sister who narrated the same to her mother. Next day of the incident respondent No.2 took the victim to Raipur where both of them resided for three months. During the aforesaid period respondent No.2 made false assurance to marry her and developed physical relation with her. On 11-4-2009 respondent No.2 left the victim at Raipur and performed his marriage with another girl and threatened the victim to kill.

3. The matter was reported at Police Station, Women Cell, Bilasur. After registration of first information report, Police swung into action and started investigation. Both parties were medically examined. Certain articles were seized and sent for chemical examination. After completion of investigation, charge sheet was filed against the respondent No.2. The respondent No.2 pleaded innocence and thereafter the trial was conducted. After examination of the witnesses, statement of the respondent No.2 was recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondent No.2 as aforementioned.

4. Learned counsel for the State submits as under:

(i) As per ration card age of the victim is 14 years and on the date of incident she was minor, therefore, finding of the trial Court that the prosecutrix was major at the time of incident, is not in the fitness of factual matrix of the case.

(ii) When consent is obtained on false assurance of marriage, same is not consent as defined in Section 90 of the IPC and the offence was established against the respondent No.2, therefore, the finding of the trial Court is not sustainable.

(iii) The trial Court was not justified in giving too much weightage to the minor omissions and contradictions appeared in the prosecution evidence.

5. We have heard learned counsel for both parties and perused the record of the trial Court.

6. It is admitted by the prosecutrix that she lodged the report as per Ex. P/1 and in the said report her age is mentioned as 18 ½ years. In first information report (Ex.P/2) age of the prosecutrix is mentioned as 18 ½ years. Date of birth register or school register or any medical expert's opinion is not obtained in the present case regarding age of the prosecutrix. When prosecutrix is relying on documents Ex.P1 and P/2, the same is binding on prosecution and from these documents, prosecutrix is not minor.

7. Prosecutrix (PW/1) deposed that respondent No.2 is her maternal

uncle and was having books of class 10th which were required to her and she visited the house of respondent No.2 for taking the books. As per her version, when she reached the house of respondent No.2, he closed the door of the house and thereafter committed rape on her. She further deposed that respondent No.2 assured her for marriage and upon his assurance she left for Raipur with respondent No.2 where they resided for three months. She further deposed that on 11-4-2009 respondent No.2 left Raipur for two days, but did not return and performed his marriage with another girl in some other place and thereafter first information report was lodged as per Ex. P/1 in Police Station Women Cell, Bilaspur. From the statement of the prosecutrix and documents Ex.P/1 and P/2, it is established that she was major on the date of incident. As per her statement in para 16, she was working as Nurse in Sugam Hospital, before the incident.

8. Now the point for consideration is whether any promise was made to the prosecutrix and whether consent was given by her in consequence of misconception of fact. From the statement of prosecutrix, it is not clear that when they have made physical relation for the first time, the respondent has made any promise to marry her. As per version of the prosecutrix after first physical relation, the respondent made promise to marry her. From the statement of prosecutrix, it is not clear that as per promise of the respondent what was the probable date for marriage. From her statement, it is clear that the report is not lodged after first physical

relation that shows her consent before any promise to marry. The prosecutrix consents to an act of sexual intercourse not on promise of marriage and made to indulge in such activity is an act of promiscuity on her part and not an act induced by misconception of fact, therefore, Section 90 of the IPC is not attracted in the circumstances of the present case, because first relation was made without such promise and there is nothing on record to assure that from very inception the respondent never really intended to marry her. Failure to keep the promise on a future uncertain date may be on account of variety of reasons and could not always amount to misconception of fact right from the inception.

9. In the surrounding circumstances of the case, it would not be safe for us to conclude that it is not a consensual sex. When prosecutrix is not minor she is legally competent for consensual sex and same is not offence under Section 376 IPC.
10. Now the point for consideration is whether the offence under Section 506 Part II of IPC is made out or not. It is said that respondent No.2 used some threatening words. Whether such words are sufficient to constitute the offence under Section 506 Part II of IPC. In our view, for commission of such offence it has to be established that the culprit was determined to execute his threat at the time of incident. Mere using of some words are not sufficient because in words there is fury, but there is no substance which creates any material. In view of the evidence adduced by the prosecution, mere words do not constitute the offence and the trial Court was right in acquitting the

respondent No.2 for the said charge.

11. In view of the above, the finding recorded by the trial Court is based on legally admissible evidence though it can be re-appreciated, but looking to the facts and surrounding circumstances of the case, the same is not liable to be interfered with invoking jurisdiction of the appeal.

12. Accordingly, the appeal fails and is hereby dismissed.

**Sd/-
Judge
(Prashant Kumar Mishra)**

**Sd/-
Judge
(Ram Prasanna Sharma)**

Raju