

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 334 of 2010

State of Chhattisgarh through Police Station A.J.K. Jagdalpur
District Central Bastar (C.G.)

--- APPELLANT

Versus

Mohan S/o. Rajpal, Aged about 23 years, R/o. Village Madhpal,
Patarpara, P.S. Nagarnar, Tahsil Jagdalpur, District Central
Bastar (C.G.).

---- RESPONDENT

For the Appellant :- Mr. Bhaskar Payashi, Panel Lawyer
For the Respondent :- Mr. Subhash Yadav, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Ram Prasanna Sharma, J.

27. 02. 2018

1. This acquittal appeal is directed against the judgment dated 23.06.2004 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (for short 'Act 1989' Bastar at Jagdalpur, in Session Trial No. 399/2003, wherein the said Court has acquitted the respondent for charge under Sections 363,366,376(i) of the IPC and Section 3 (1)(xii) of the Act 1989.
2. In the present case, date of incident is 04.06.2003. To establish the charge under Section 363 of the IPC, it has to be proved

that on the date of incident the prosecutrix was minor below 18 years of the age as per Indian Majority Act 1875. Birth certificate of prosecutrix is not produced before the trial Court. No school certificate was produced to establish her date of birth. Neela (PW-3) is the mother of the prosecutrix and Jhitru (PW-2) is the father of the prosecutrix. Both of them have not stated about the date of birth of the prosecutrix. For establishing the age of the prosecutrix, she was examined by Dr. Govind Singh (PW-6), who deposed on the basis of ossification test that the age of the prosecutrix is between 16 to 19 years. From the statement of this witness itself the prosecutrix was major on the date of incident and she was not minor, therefore, the question of taking her from lawful guardianship of her parents does not arise and charge of kidnapping must fail.

3. Second point for consideration is whether the respondent committed intercourse with the prosecutrix without her consent and against her will. As per version of prosecutrix (PW-1), the respondent called her on which she went with him to some other village where she stayed with the respondent and there he committed intercourse with her. From the statement of the prosecutrix (PW-1) it is clear that in the said place mother of the respondent was present but she did not disclose her about the incident. Again, when the matter was investigated by the Police and she was brought from the custody of the respondent she did not disclose the incident to her mother and father. As per version of Neela (PW-3) and

Jhitru (PW-2) the prosecutrix did not inform them about sexual intercourse committed by respondent.

4. The prosecutrix (PW-1) has not disclosed the incident to her parents and mother of the respondent, therefore, it cannot be held that the incident of intercourse was without her consent or against her will. As she is proved to be major, intercourse with her consent does not fall under Section 375 of the IPC which defines the rape. There is no iota of evidence to establish that offence is committed on the basis of caste. From the statement of the prosecutrix she visited certain places with the respondent upon his calling and it is not done on the basis of caste but because of their being opposite sex, therefore, in absence of any evidence, offence charged under the Special Act is not established.
5. On overall assessment of the entire evidence, the finding arrived at by the trial Court is based on relevant fact and it is not based on irrelevant and extraneous material, therefore, it would not be proper for us to reverse the finding of acquittal.
6. For the foregoing, the acquittal appeal fails and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Ram Prasanna Sharma