

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 210 of 2010**

- State Of Chhattisgarh.

---- Appellant**Versus**

1. Prem Singh, aged about 22 years, son of Shri Laxman, occupation: Agriculturist R/o Hamatwahi, Police Station: Durgkondal, District Kanker C.G.
2. Brahaspati Mandal, son of Shri Gokul Mandal, aged about 30 years, R/O Aansul Khar, Police Station Bhanupratappur, District Kanker, C.G.

---- Respondents

For Appellant/State
For Respondents

Shri Rajendra Tripathi, P.L.
Ms Aparajita Gaikwad Advocate
appears on behalf of Ms Renu
Kochar, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****by Hon'ble Shri Ram Prasanna Sharma J.****23/02/2018**

1. This Acquittal Appeal is preferred against the judgment dated 16th October, 1998 passed by Additional Sessions Judge, Kanker, Sessions Division Baster, in Sessions Trial No.302/1997, wherein the said Court has acquitted both the respondents for charge of commission of rape on prosecutrix and for causing miscarriage of the foetus of prosecutrix

causing her death.

2. As per the prosecution, Respondent Prem Singh was having an affair with prosecutrix and made her pregnant which was for 6 months, the respondent by threatening the prosecutrix took her to Respondent Brahaspati, who administered one injection and thereafter her condition deteriorated and she succumbed to death. The matter was reported to Police Station, Durgkondal and after investigation charge sheet was filed. On completion of the trial, the trial Court acquitted the respondents as mentioned above.

3. Learned counsel for the State submits that :

- though the prosecutrix is not available for statement but from the statement of her mother and other circumstantial evidence charge of rape is established against the Respondent Prem Singh.
- as per version of Ramadhin (PW-6), Respondent No.2 administered an injection to the prosecutrix and thereafter her condition deteriorated and that is the cause of her death which has been ignored by the trial Court.
- the trial Court has also ignored other material evidence available on record.

4. On the other hand learned counsel for the respondent submits that finding arrived by the trial Court is based on material placed on record and the same is not liable to be disturbed while invoking jurisdiction of appeal.
5. First question for our consideration is whether respondent Prem Singh committed rape on prosecutrix. Prosecutrix has died, therefore, she was not available for recording evidence. Amroiti PW-3 is the mother of the prosecutrix. As per her version, the Respondent Prem Singh used to visit her daughter frequently and some time she tried to prevent him but he did not pay heed to her words and also did not marry with the prosecutrix. She further deposed that when prosecutrix was pregnant for 6 months, she was taken to one Doctor and there she became unconscious.
6. From the evidence of this witness, it is clear that there was long cohabitation between the prosecutrix and respondent Prem Singh and as per postmortem report and other documents age of the prosecutrix is 18 years.
7. The law prevailing at the time of commission of this offence commands that intercourse with consent of any woman above 16 years of age is not rape. In the present case, admittedly, age of the prosecutrix was 18 years and looking to the evidence, it is not established that Respondent Prem Singh committed intercourse with her, without her consent or against her will.

8. Finding arrived by the trial Court regarding Acquittal under Section 376 (1) of the IPC is thus based on proper marshaling of the evidence and we are in agreement with the same.
9. Second point for our consideration is whether the Respondent No.2 caused death of the prosecutrix with intent to cause her miscarriage and whether Respondent Prem Singh was acting with him in furtherance of common intention in causing miscarriage.
10. Ramadhin (PW-6) is Village Kotwar. He was present in the hospital of Respondent No.2 when Respondent Prem Singh, prosecutrix and her mother reached there. It was further deposed by him that respondent Prem Singh told the Doctor that prosecutrix is suffering from pain and thereafter Respondent No.2 administered her with injection but no injection is seized during investigation and there is no expert opinion whether the said injection caused miscarriage or not. As per version of Sanmotin PW-2, Respondent Brahaspati gave three tablets to the prosecutrix but it is not clear from her evidence whether prosecutrix consumed those tablets or not.
11. Though tablets were seized from Brahaspati but when there is no connecting piece of evidence regarding consumption of any tablets by the prosecutrix, the seizure is inconsequential. As per version of Dr. A.R. Goda PW-5, miscarriage could be caused naturally and it is not opined that whether it is caused due to any injection or medicine. Other witnesses are the

persons who assisted during investigation. On an over all assessment of evidence adduced by the prosecution, it is not established that any of the respondent participated in causing miscarriage of the prosecutrix which caused her death. Finding arrived at by the trial Court on this count is not liable to be interfered as the same is just and proper.

12.As a sequel, the appeal, sans merit, is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Akhilesh