

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 480 of 2010**

- State Of Chhattisgarh, Through the Police Station Janakpur, District Korea (CG)

---- Petitioner**Versus**

- Aditya Narayan Tiwari S/o Vanshdhari Prasad Tiwari, aged about 33 years, R/o Kudratola, PS Janakpur, Tahsil Bharatpur, District Korea (CG)

---- Respondent

For Appellant/State
For Respondent

Mr. Bhaskar Pyasi, Panel Lawyer
Mr. Mahendra Dubey, Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Order On Board By****Prashant Kumar Mishra, J.****23/2/2018**

1. Heard.
2. The State has preferred this appeal to assail the legality and validity of the impugned judgment of acquittal rendered by the

Special Judge (Atrocities), Korea at Baikunthpur (CG), acquitting the accused/respondent of the charges under Section 376 of IPC and under Section 3(2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Act, 1989.

3. The prosecution case, as projected in the charge sheet, was that on 4.3.2009, at about 7-8 p.m., the prosecutrix was proceeding towards the house of her friend Taramati to attend the marriage through the back side of her house. When she was on her way, the accused/respondent caught hold of her, dragged her to some distance, felled her beneath a mango tree, upturned her petticoat and thereafter, committed forcible sexual intercourse. When the prosecutrix threatened that the incident would be informed to her mother, the accused slapped her, for which, she sustained swelling on her cheeks. Because of the incident, the prosecutrix did not attend the marriage and straightway went to the house of her maternal uncle Vanshrakhan, where his son Karan Singh (PW-3), a boy aged about 13 years, was sleeping. The prosecutrix also went asleep beside Karan Singh . On the next morning, the prosecutrix went back to her house and informed the incident to her mother Ramkali (PW-7), Village Kotwar Ramnaresh Panika and Panch Khubchand Baiga. The prosecutrix along with Ramkali, her mother and Jawohar Singh, her brother-in-law (*Jija*) went to Police Station Janakpur and lodged written report. The prosecutrix and the accused were medically examined; report of FSL was obtained and; case diary statements of witnesses were

recorded. In course of trial, the prosecution examined 9 witnesses. The accused abjured the guilt but did not examine any defence witnesses.

4. After marshalling the evidence available on record, the trial Court has held that the prosecution case is doubtful and the prosecution has not succeeded in proving the guilt of the accused beyond all reasonable doubts.
5. We have heard learned counsel for the parties and perused the record.
6. The prosecutrix and her sister Sita Bai were married on the same day, but both of them deserted their husband and started residing in their parental house. Their mother Ramkali (PW-7) is a member of Janpad Panchayat, Janakpur. From the statement of the prosecutrix (PW-1), it is also revealed that her sister Sita Bai had applied for appointment as Aanganbadi worker within the same Janpad Panchayat, where here mother is a member. Wife of the accused had also applied for the said post and when the recruitment process was going on, the accused objected to the candidature of Sita Bai on the ground that the children of an office bearer of the Janpad Panchayat cannot be appointed as Aanganbadi worker. Even otherwise, Sita Bai being only VII standard pass, was less qualified than the wife of the accused, who is X standard pass. It has also come in the evidence that when the accused raised objection in the meeting of the Janpad Panchayat, an altercation took place between him and Jawohar

Singh (PW-2), who is the second husband of Sita Bai.

7. In the above background, the prosecutrix alleges that she was subjected to sexual intercourse at about 7 - 8 p.m. on 4.3.2009 and immediately after the incident, she reached the house of her maternal uncle Vanshrakhan. However, Karan Singh, son of Vanshrakhan, would state in his case diary statement Ex.D/2 that the prosecutrix reached his house at about 1:00 a.m. In his Court statement, Karan Singh has not stated about the exact time when the prosecutrix reached his house as, according to him, he went asleep at about 9:30 p.m., which means till 9.30 p.m. the prosecutrix had not reached Vanshrakhan's house. In the Patwari map -Ex.P/8 proved by PW-4 Chhattarsai Nagdev (Patwari), the distance about various locations are mentioned indicating that the distance between the house of the prosecutrix and the accused is 1 km and the distance between the house of the prosecutrix and other houses in the village is about 100 metres. Thus, even if distance between the house of the prosecutrix and house of Vanshrakhan is not mentioned, its distance would be about 100 metres. If the prosecutrix was subjected to sexual intercourse in between 7-8 p.m. and immediately thereafter went to the house of Vanshrakhan, she should have reached there by 8.30 p.m. However, as per the Court statement of PW-3 Karan Singh, the prosecutrix did not reach his house till 9.30 pm and as per his case diary statement, she reached there at 1:00 am.

8. The prosecutrix states that she was proceeding to attend the marriage in the house of her friend Taramati in a nightie, whereas, PW-3 Karan Singh would state that on the date of the incident, the prosecutrix was wearing Salwar Kameez. The medical report about commission of rape is also not definite because the prosecutrix is a married lady habitual to sexual intercourse.
9. Ramkali (PW-7), who is the mother of the prosecutrix, states that the prosecutrix started from the house at about 8:30 p.m. to attend the marriage in her friend's house and that she was informed about the incident at about 8:00 a.m. on the next morning. She also admits about the dispute concerning the candidature of her elder daughter Sita Bai and the wife of the accused. She further admits that the house of her brother Vanshrakhan is at a distance of 1 ½ furlong, which would be about 200 metres. She also states that on the date of the incident, her daughter was wearing Salwar Kameez, which is contrary to the statement of the prosecutrix that she was wearing a nightie.
10. In view of the previous animosity between the parties concerning the appointment of Aanganbadi worker and for the reason that the mother of the prosecutrix is an elected member of Janpad Panchayat, along with the material contradictions in the prosecution case, the trial Court has rightly held that it would not be safe to convict the accused for committing the

offence under Section 376 of IPC .

11. We are in full agreement with the judgment rendered by the trial Court.

12. The acquittal appeal, being bereft of any substance is liable to be and is hereby dismissed.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Ram Prasanna Sharma)

Shyna