

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 72 of 2015**

1. State of Chhattisgarh through Police Station, Podi, District Korea, CG

---- Appellant**Versus**

1. Rakesh Kumar Sahu son of Nandlal Sahu, aged about 24 years, R/o Ujiyarpur, Police Station Podi, District Korea, CG

---- Respondent

For Appellant/State:	Shri Adil Minhaj, PL
For Respondent/accused:	Ms. Sharmila Singhai, Adv.

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board by Pritinker Diwaker, J

14/09/2018

This appeal has been filed by the State against the judgment dated 08.08.2014 passed by Special Judge (Atrocities), Korea (Baikunthpur) in Special Sessions Trial No. 16/2014 acquitting the accused/respondent of the charge under Sections 376 IPC and 3 (1) (B-ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as "Special Act").

2. Facts of the case in brief are that on 18.12.2013 FIR (Ex.P-5) was lodged by the prosecutrix (PW-2) alleging that on 23.10.2013 at about 8 AM when she was returning from the house of her maternal grandmother, respondent/accused met her on the way and asked her to accompany him assuring of keeping her as his wife. It is alleged that she accompanied as asked for and stayed in his house for a period of two months and during this period they

both had physical relations but ultimately he did not keep of his promise of marriage. On 11.12.2013 she left his house for Pratappur and when she was returning from there on 17.12.2013, she met her mother and then the report was lodged. Based on this report, offences under Sections 376 IPC and 3 (1) (xii) of the Special Act were registered against the respondent/accused. Court below then framed the charge against the respondent/accused accordingly.

3. So as to hold the accused/respondent guilty, prosecution has examined 09 witnesses in support of its case. Statement of the accused/respondent has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence and false implication in the case.

4. After hearing the parties and appreciating the evidence on record the Court below has acquitted the accused/respondent of the charges levelled against him and therefore, the State has preferred this appeal against the judgment of acquittal.

5. Counsel for the appellant/State submits that the Court below has committed an error of law in acquitting the respondent/accused of the charges levelled against him by ignoring the evidence adduced by the prosecution.

6. Counsel for the respondent/accused however supports the judgment impugned and submits that while recording the finding of acquittal, the Court below has taken note of the evidence on record in proper perspective and there is no infirmity in the same warranting interference by this Court.

7. Heard counsel for the parties and perused the material on

record.

8. Prosecutrix (PW-2) has stated that on the date of incident when she alone was returning from the house of her maternal grandmother, accused/respondent met her near Darritola station and asked to accompany him. When she first refused to accompany, respondent/accused told to keep her as his wife and believing his say, she proceeded with him to his house. On that evening her mother came to the house of the accused/respondent to take her back but he did not let her go. She is stated to have stayed in the house of accused/respondent for about a week and during this period physical relations were made between the two. Here there are contradictions between the versions of the prosecutrix narrated in the FIR as well as in the Court because in the FIR she has disclosed that she remained with the accused for two months but in the Court she has stated that she stayed with him for about a week. According to her, one morning she got up early and left the house of the respondent/accused on the pretext of going for answering the call of nature. Thereafter, she went to the police station along with her mother and lodged the report. Manmohan (PW-1) father of the prosecutrix has stated that he was informed by his wife that as the accused/respondent had threatened the prosecutrix, she started living with him. According to him, the prosecutrix lived in the house of the respondent/accused for about two months. Dr. Madhurima Painkra (PW-3) is the witness who medically examined the prosecutrix and gave her report Ex. P-7 stating that she did not notice any internal or external injury on her and that she was habitual to sexual intercourse.

9. Material available on record including the evidence of the

prosecutrix (PW-2) goes to show that the prosecutrix – a major lady aged about 19 years at the relevant time was a consenting party to the act of the respondent/accused. Had it not been so, there was ample opportunity for her of raising hue and cry and getting rid of the respondent/accused on the very first day. However, instead of doing that, she kept quiet for a period of two months and submitted herself to him for physical relations, and that when he did not marry her as promised, she chose to lodge the report. Being a major lady at that time she should have thought over the consequences before accompanying the accused, staying with him for a sufficient long time and permitting him of making physical relations with her. Medical evidence also does not support the case of the prosecution. Court below thus appears to have been fully justified in recording the finding of acquittal on the basis of evidence before it. There is no illegality or infirmity in the judgment awarding acquittal in favour of the respondent/accused. Even otherwise, as regards appeal against the finding of acquittal, it is a settled position of law that if on the basis of material on record two views can be drawn then the preference has to be given to the one favouring the accused.

10. On viewing the evidence adduced by the parties and being conscious to the existing legal position referred to above, this Court finds no substance in the appeal and accordingly the same is dismissed. Judgment impugned is affirmed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge