

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 29 of 2013

(Arising out of judgment/order dated 24/11/2012 in Case No. 81/2011 of the learned First Additional Sessions Judge, Rajnandgaon District Rajnandgaon)

State of Chhattisgarh through Police Station Manpur, District Rajnandgaon (C.G.).

--- APPELLANT

Versus

Saoji Ram Gond, S/o. Sukhdeoram Gond, Aged 55 years, R/o. Near Police Station Manpur, District Rajnandgaon (C.G.).

---- RESPONDENT

For the Appellant :- Mr. Arvind Dubey, Panel Lawyer

For the Respondents :- Mr. Rakesh Kumar Thakur, Advocate

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

Order on Board By
Prashant Kumar Mishra, J.

10.01.2018

1. In this acquittal appeal, the appellant would challenge the judgment of acquittal rendered by the trial Court acquitting the accused from the charges under Sections 376 and 506 B of the IPC.
2. The prosecutrix is a widow lady, aged about 45 years. The incident happened at about 12.00 PM on 21.06.2011 for which FIR was lodged within an hour. According to the prosecution, at the time of

occurrence the prosecutrix was cleaning utensil in her house, then the appellant entered her house, lifted her in his arms, took her to the bedroom of her house and committed forcible sexual intercourse with the prosecutrix.

3. The chemical examination of the seized under garments and the vaginal smear were tested positive. The prosecutrix informed about the incident to PW-1 (Kashiram) and PW-2 (Manhgi Bai) and they too have supported the prosecution. However, the trial Court acquitted the accused on the ground that taking into consideration her conduct and silence at the time of occurrence she appears to be a consenting party.
4. We have seen the entire record. After studied scrutiny of the statement of the prosecutrix, we too have formed an opinion that it is a case where the prosecutrix appears to be a consenting party. On the date of incident itself the prosecutrix had accompanied the accused and his wife to visit nearby village where the accused's daughter resides. While they returned, accused's wife stayed back at her daughter's house, however, the accused and the prosecutrix together came back to their village. When they reached the village the accused requested her that there is nobody in his house and she should come. However, the prosecutrix did not go the accused's house. He reached the prosecutrix's house in an inebriated condition but still the accused was able to lift the prosecutrix aged about 45 years and took her to another room and committed rape. During the entire process the prosecutrix did

not raise alarm. She has stated that the accused gaged her mouth which appears to be contradictory and not believable because as per her own statement the accused lifted her in his arms, therefore, the accused was not in a position to gag her mouth.

5. On reading paragraph-2 of examination-in-chief itself it would appear that immediately after the incident, neighbours reached her house, therefore, in such situation the FIR was lodged.
6. Considering the entire evidence particularly the statement of the prosecutrix, we are not in a position to hold that the findings recorded by the trial Court that the prosecutrix was a consenting party suffers from any perversity. There being no manifest error or illegality in the impugned judgment, this acquittal appeal has no substance it deserves to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma