

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1606 of 2018**

Chandrakanta Sahu D/o Shri Ishwarlal Sahu Aged About 26 Years R/o
Village Ganjar, Police Station Bagbahara, District Mahasamund
Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through Station House Officer, Police Station Bagbahara, District Mahasamund Chhattisgarh
2. Keju Chakradhari S/o Nainsingh Chakradhari Aged About 35 Years R/o Village Tupakbora, Police Station Bagbahara, District Mahasamund Chhattisgarh

--- Respondents

For Appellant	:	Ms. Aditi Singhvi, Advocate
For State	:	Mr. Adil Minhaj, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order****17/09/2018****Per Manindra Mohan Shrivastava, J.**

1. Heard on application under Section 378(3) of Cr.P.C. for grant of special leave to appeal.
2. Learned counsel for the appellant argued that the acquittal of respondent accused from the allegations of commission of offence under Section 376, 495, 417, 186, 294 and 506-B of IPC is competently illegal and contrary to evidence on record. It is argued that in view of definition of 'rape' as defined under Section 375 read with Section 4th explanation. Notwithstanding that the appellant had a long affair and even married respondent, a case was made out because the marriage was solemnized by keeping the appellant in dark and she did not know that the respondent was already married. It is next submitted that the first wife of respondent namely Hema Chakradhari has been examined as defendant witness No.1 and she has admitted that though there was no marriage but they were living together and even if she left the respondent, on the basis of presumption, it ought to be

held that she was legally wedded wife of the respondent. The accused failed to discharge his burden that there was no marriage between him and Hema Chakradhari (DW1) and that she was not his married wife. Therefore, judgment of acquittal is liable to be interfered with.

3. Learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court in the case of **Bhupinder Singh Vs. Union Territory of Chandigarh, 2008 (8) SCC 531, Challamma Vs. Tilaga and others, 2009 (9) SCC 299.**

4. We have heard learned counsel for the appellant and perused the records.

5. Learned Trial Court on the basis of the prosecution evidence particularly, the evidence of the prosecutrix/ the appellant has recorded a finding that the appellant and the accused had a long drawn relationship since 2013 and that later on, marriage was also solemnized between them on 8th of December, 2016 and therefore, the allegation of commission of rape is not made out because during their relationship prior to marriage, they had entered into sexual intercourse and no complaint was made by the prosecutrix in this regard but on the other hand, she married the respondent. It has also been found that the story of appellant that she had no notice or knowledge of respondent being a married person is liable to be disbelieved because despite such information having been received, no report was immediately lodged in the police station but the appellant, herself, started residing with the respondent as his wife in Village-Mohanda and that it is improbable that despite long association with the respondent, the appellant would not know about his relationship with Hema Chakradhari though she was sarpanch of village Tupakbora and appellant having come to live with the respondent would not know about character and the antecedent though she was visiting Tupakbora in connection with Government work and Gram Sarpanch work and discharging Government duties and function in association with Village Sarpanch Hema Chakradhari. On above consideration, the learned trial Court has held that the prosecution failed to prove that appellant was not knowing about the earlier relationship of the respondent.

6. The finding recorded by learned trial Court is based on evidence and it

cannot be said that despite reading of the entire evidence, such view could not be taken or that the finding is completely perverse or contrary to evidence on record. As the appellant does not deny her long relationship with the respondent for three years culminating in marriage and the allegation of rape is in connection with the sexual intercourse performed prior to marriage, we do not find it to be a fit case to grant leave to appeal, therefore, the application for grant of special leave to appeal is rejected.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Rekha