

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 162 of 2009

- Jyoti Taide, D/o Narayan Taide, aged about 21 years, R/o Dixit Colony, Kosha Nagar, PS Supela, Bhilai Nagar, Tahsil and District – Durg, C.G.

---- Appellant

Versus

- Sunil Dambare, S/o M.K. Dambare, aged about 28 years, R/o Dixit Colony, Kosha Nagar, PS Supela, Bhilai Nagar,, Tahsil and District – Durg, C.G.
- State Of C.G., Through PS Supela, District – Durg, C.G.

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For Appellant	:	Smt. Kiran Jain, Adv.
For Respondent/State	:	Shri Subhash Yadav, Dy. G.A.

DB : Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Rajani Dubey

Order On Board by Hon'ble Shri Justice Prashant Kumar Mishra

15.05.2019

1. Being aggrieved by the dismissal of a criminal complaint, the complainant has preferred this Acquittal Appeal to assail the legality and validity of the judgment passed by Eighth Additional Sessions Judge, (FTC), Durg, acquitting the respondent No.1, from the charges under Section 420, 406 and 376 of the IPC.
2. Facts of the matter, as gathered from the material on record, would reveal that appellant and accused had an affair leading to engagement for marriage and in the said course both the parties got engaged by exchange of rings, and thereafter, they got married in *Gandharva* form in a local temple, and eventually applied for marriage before the Marriage Officer under the Special Marriage Act 1954. However, according to the appellant, the accused did not appear before the Marriage Officer and thus he committed cheating, criminal breach of trust and rape upon her person on promise to marry.

3. There is no dispute about the fact that the complainant was more than 18 years of age when they develop affair and intimacy some time in the year 1996 - 1997. It is also not in dispute that during their interaction at personal level they became physical with the consent of each other and at that point of time, the appellant did not resist physical relation on the ground that such relation cannot be maintained prior to marriage. Merely because the marriage did not fructify at a later point of time, an offence under Section 376 would not be made out when both the parties agreed for sexual relations with eyes wide open and being aware of the consequences of the same. Had it been a case where the prosecutrix would be minor being less than 18 years of age, the entire legal position would be different. However, when both the parties are major and had a love affair at the time when they develop physical relations, an offence under Section 376 is not made out.
4. Moreover, Gajendra Verma (PW-1), a clerk in the office of concerned Collector has stated on the strength of record, available in the office of Marriage Officer, that on the date the parties were supposed to appear before the Marriage Officer for performing marriage, they did not turn up. Thus, appellants assertion that it was the respondent who did not turn up for the marriage with appellant, is not correct.
5. For all the above stated reasons we are satisfied that the trial Court has not committed any illegality or perversity while acquitting the accused of the charges under Section 420, 406 and 376 of the IPC. There is no substance in this appeal which falls and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Rajani Dubey)
Judge