

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1464 of 2019

- State of Chhattisgarh Through Police Station Nawagarh District Bemetara Chhattisgarh.

---- Petitioner

Versus

- Dilip Sahu S/o Patanga Sahu Aged About 40 Years R/o Village Saakin, Thana Navagarh, District - Bemetara Chhattisgarh.

---- Respondent

For Petitioner-State :- Shri K.K. Singh, GA

Hon'ble Shri Prashant Kumar Mishra, J

Hon'ble Shri Gautam Chourdiya, J.

Order on Board

By

Prashant Kumar Mishra, J

01/07/2019

1. This application seeking leave to appeal against the judgment of acquittal dated 28.03.2019 rendered by the Additional Sessions Judge, Bemetara in Session Trial No.08/2017 is listed in default. However, the default having already been removed, learned State counsel would argue the matter on admission.

2. The prosecutrix, a married lady aged about 28 years, was subjected to forcible sexual intercourse after committing lurking house trespass by the accused at about 9:30 pm on 23.10.2016. In the first FIR filed by her brother-in-law (Jeth) in the same night i.e. intervening night of 23rd and 24th October, 2016, the allegation was confined to commission of lurking house trespass with intention to commit offence punishable with imprisonment. Case diary statements of the prosecutrix as well as informant Rohit Pal were recorded on 24.10.2016 itself, wherein they confirmed the incident involving lurking house trespass only. Subsequently, second FIR was lodged on 01.12.2016 alleging commission of offence of forcible sexual intercourse. The prosecutrix was sent for medical examination which was conducted by PW-8 (Dr. Nidhi Meshram), who accorded a negative opinion mentioning that there is no sign of recent rape or sexual intercourse. Finding of rape was otherwise not possible for the simple reason that the medical examination was conducted after 8 days of the incident.
3. When she was examined in Court as PW1, she initially stated in Para 7 of the cross examination that the accused did not make any physical relation with her. Though, she answered the question made by the Court, alleging commission of rape but then again she admitted that at the

beginning no FIR alleging commission of rape was lodged against the accused. She denies that after first FIR her statement was recorded by the Police but the record contains her first statement under Section 161 of Cr.P.C. in which she would allege commission of offence under Section 457 only and not under Section 376 of IPC. In her deposition elsewhere she would admit holding of Panchayat meeting and attention coupled with manhandling between members of both the families. She also admits that both the families are not in talking terms for last 2 years. Thus, in the back drop of their constrained relations and the first FIR in which there was no allegation of commission of rape, the learned Trial Judge has not committed any error in acquitting the accused. There is no scope for granting leave to prefer an appeal against acquittal.

4. Accordingly, application for leave to appeal deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge