

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 484 of 2019**

- Durgesh Netam D/o Late Shri Sainik Lal Netam, aged about 37 Years
Occupation - Shiksha Karmi, R/o Banstal Hospital Ward, In Front Of
Buddha Vihar, Raipur, District - Raipur Chhattisgarh.

----Appellant**Versus**

1. State of Chhattisgarh, Through Police Station Gole Bazar, District - Raipur Chhattisgarh.
2. Avnish Netam S/o Balram Netam Aged About 30 Years R/o Banstal Hospital Ward, in front of Buddha Vihar, Police Station Gole Bazar Raipur, District - Raipur Chhattisgarh.

---- Respondents

For Appellant	Shri Suddep Johari, Advocate.
For Respondent No.1/State	Shri K.K. Singh, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Prashant Kumar Mishra****10/07/2019**

1. This appeal under Section 372 of CrPC has been filed against the judgment dated 02.03.2019 passed by Additional Sessions Judge (FTC), Raipur, C.G. in ST No.67/17 whereby the respondent no.2/accused has been acquitted of the charge under Section 376(2)(n) of IPC.
2. Allegation against the accused is that he repeatedly committed sexual intercourse with the prosecutrix, aged about 33 years, on the promise of marriage.
3. Learned counsel for the appellant would refer to Section 375(4) of IPC and paras 12 & 13 of the recent judgment rendered by the Hon'ble Supreme Court in the matter of **Anurag Soni vs. State of Chhattisgarh {Criminal Appeal No.629 of 2019 (Arising**

Out of SLP (Criminal) No.618/2019 decided on 09.04.2019} to argue that the present is a case where the appellant consented for sexual intercourse on promise to marry by the accused, therefore, offence under Section 376(2)(n) is made out.

4. Learned counsel for the State would support the impugned judgment.
5. We have heard learned counsel for the parties and perused the deposition of the prosecution witnesses as also the impugned judgment.
6. In her examination-in-chief the prosecutrix says that the accused proposed her in the year 2006, however, the statement is not that the accused proposed to marry her in 2006. According to the lady, after this proposal, their love affair grew thick and fast. She says that the accused assured her of marriage and subsequently, they performed marriage in a local temple and thereafter their physical relation continued. She would further say that since marriage in temple may not be legal, she requested the accused to perform marriage in the Court or in the Arya Samaj Temple but the accused did not oblige and subsequently he would tell the appellant that her mother is not agreeing for the marriage. She would also admit that the accused happens to be her distant cousin and both of them belong to the same *Gotra*. Thus, from the very beginning she was aware that marriage with the accused may not materialize because of their belonging to the same *Gotra*. The marriage was otherwise not permissible under

Section 5(v) of the Hindu Marriage Act, 1955 which provides that marriage between the Hindus may be solemnized only if the parties are not *Sapindas* of each other, unless custom or usage governing each of them permits of a marriage between the two. Instead of producing evidence that *Sapinda* marriage is permissible in their social custom, the prosecutrix would speak the contrary in para 12 of her deposition by submitting that President of their Caste Panchayat had informed her that their marriage is not possible because they are of same *Gotra*.

7. PW-2 Horilal Chediya is the State President of the Netam Community to which the prosecutrix and the accused belong. According to this witness, the prosecutrix and her family had approached him in respect of her marriage with the accused whereupon he informed them that their relation is that of brother and sister, therefore, being *Sagotra* their marriage is not possible.
8. The deposition of the prosecutrix would further reveal that their affair continued from 2006 to 2015 and they started having physical relationship from 2007 onwards. Thus, the prosecutrix continued physical relation for about 8 years without lodging any complaint in the hope that the accused will marry her. It is not a case where the prosecutrix is a minor. From her conduct, it appears that she was a consenting party to the relationship including the sexual intercourse with the accused. She also says that they had married at a local temple.
9. In view of the above evidence, it appears that the prosecutrix and

the accused being brother and sister developed fancy for each other and started having an affair which boiled into physical relation but their marriage was not possible because they were *Sagotra* and the President of the Caste Panchayat refused to allow them to marry. Thus, there is no element of deception by the accused from the very beginning.

10. As such, in the given facts and circumstances of the case and the evidence available on record, offence under Section 376(2)(n) of IPC is not made out against the accused.

11. Considering the entire evidence on record, it does not appear that the view taken by the trial Court is a perverse and illogical view. The same emanates from the overall evidence on record. It is a well settled principle of law that in case of appeal against acquittal, the scope is very limited and interference can only be made if the finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. However, in the present case, no such circumstance is there warranting interference by this Court.

12. In the result, the acquittal appeal being bereft of any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge