

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1034 of 2017**

- Teerath Rathore, S/o Late Sukhnandi Rathore, Aged About 25 Years, R/o C-Sector, Quarter No. M/203, Bijuri, Police Station Bijuri, District Anuppur, Madhya Pradesh

---- Appellant**Versus**

- State of Chhattisgarh, Through District Magistrate Korla, District Korla, Chhattisgarh

---- Respondent

For Appellant	:	Shri Pragalbha Sharma, Advocate
For Respondent/State	:	Shri Vikas Shrivastava, PL
For Objector	:	Shri Amit Singh, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey**Judgment On Board by Hon'ble Shri Justice Manindra Mohan Shrivastava**25.02.2019**

1. Learned counsel for the appellant seeks to withdraw the application filed under Section 320 (2) (5) of Cr.P.C.
2. With the consent of both the parties we heard the matter finally.
3. We find that the appellant has been convicted for the offence under Sections 493 of the I.P.C. along with Section 3(1)(w-ii) read with Section 3(2)(V) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989.
4. The allegation against the appellant, as contained in the FIR, is that the appellant had entered into affair with the prosecutrix and, later on, they got married. The appellant having enjoyed the company and sexual relationship with the prosecutrix, later on, denied saying that

he does not recognize his marriage with the prosecutrix. This led to filing of report, investigation and charge-sheet. Appellant was tried for offences Under Section 493 of I.P.C., and Section 3(1)(w-ii) read with Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The learned Trial Court found that, though, the appellant has not committed the offence Under Section 376 of the IPC, is not proved, the conduct of the appellant is criminal in as much as he by deceit, made prosecutrix to believe that she is lawfully married to him and cohabited with her. Since the prosecutrix belonged to Scheduled Caste, the learned Trial Court also held the appellant guilty of commission of offence under Section 493 of the IPC and Section 3(1)(w-ii) read with Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

5. The submission of the learned counsel for the appellant is that none of the offences are made out from complete reading of the statement of prosecutrix (PW-1). He would further argue that the prosecutrix, who is major, had clearly stated that she and the appellant had love affair, thereafter, they performed marriage and started living together as husband-wife, but, later on, the appellant started disowning marital relationship and then disputed that he was not married to the prosecutrix. He would argue that mere refusal of marital status and discharge of marital obligation without anything more, no case under Section 493 of the IPC would make out. The other submission is that gist of criminal act as defined under Sections 3(1)(w-ii) read with Section 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, presupposes that the sexual act was committed without the consent of the prosecutrix. The evidence of the prosecutrix itself shows that everything was done with the consent of the prosecutrix.
6. On the other hand, learned State counsel would submit that the conviction of the appellant had taken place because the learned Trial Court found that even though, initially, the appellant entered into an affair with the prosecutrix and married and after that they started living together as husband-wife, later on, the appellant disowned

marriage and refused to discharge his marital status.

7. Learned counsel appearing for the complainant victim would argue that victim had to approach to the Police and lodge report against the appellant, because the appellant, started disowning the marriage and discharge marital obligation, but now their dispute have been completely resolved and they are living together as husband-wife and she does not further want any action against the appellant, and therefore, she had also supported the application under Section 320(2)(5) of Cr.P.C for compounding of the offense.
8. The evidence of the prosecutrix (PW-1) is that she met with the appellant 3-4 years before and since then, they had developed their relationship and entered into love affair. The appellant expressed to marry her, thereafter, they had physical relationship which continued for a long time. Finally, they got stamp paper prepared evidencing their marriage on 28/04/2014 and the appellant performed marriage with her by smearing vermilion accepting the prosecutrix as his wife and he himself as her husband. She further states that after Court marriage, the appellant and the prosecutrix had resided together for about 8 to 9 months in appellant's grand-parents house, thereafter, they shifted to another house where they lived for 7-8 months. She further states that, later on, the appellant collected back the stamp-paper evidencing marriage between them and then he changed his behavior and started saying that he did not marry her and, thereafter, the report was lodged in the police station and the appellant came to police station and stated that he would perform marriage in Arya Samaj Temple and, thereafter, they started living together but the appellant again denied performance of marriage. In his cross examination, it has been elicited that the sexual relationship between appellant and prosecutrix was with consent and she has also admitted that appellant is her husband.
9. On the face of this evidence of the prosecutrix herself, none of the offence, as alleged against the appellant, are made out on a plain reading of the provisions contained under Section 493 IPC and Section 3(1)(w-ii) of the SC/ST Act. The consent between the parties is writ-large and clearly admitted by the prosecutrix herself. It is not a

case that on a deceit that the appellant is the husband, sexual favour was sought from the prosecutrix. The evidence of the prosecutrix itself shows that they had an affair and even before marriage they had entered into sexual relationship which was long standing and then both of them married also, but the dispute arose when the appellant started resiling from his marital obligation and recognizing his martial relationship. We, therefore, find that none of the offenses alleging against the appellant are made out from the evidence of the prosecutrix. We have also taken note of the submission made by learned counsel for the appellant and learned counsel for the complainant both that during the pendency of this case, both have started living together as husband-wife. There is no dispute which led to moving application under Section 320(2)(4) of Cr.P.C. which, however, was withdrawn during the course of the argument and the matter was argued on merits itself.

10. The conviction of the appellant is accordingly set aside.
11. In view of the above, the appeal is allowed. The conviction of the appellants under Sections 493 of the I.P.C. along with Section 3(1) (w-ii) read with Section 3(2)(V) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989 is set aside and he is acquitted of the charges levelled against him. The appellant is on bail, his bail bonds shall stand discharged.

Sd/-
(Manindra Mohan Shrivastava)
 Judge

Sd/-
(Rajani Dubey)
 Judge