

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 646 of 2019

- State Of Chhattisgarh, Through Station House Officer, Police Station Bagicha, District Jashpur, Chhattisgarh

---- Petitioner

Versus

- Abdul Mohsin @ Salim Shekh @ Salim Khan, S/o Muntu Shekh, Aged About 29 Years, R/o Chandpur, Ghoghra Mod, Police Station Nawoda, District Murshidabad (West Bengal)

---- Respondent

And

CRA No. 982 of 2018

- Abdul Mohsin @ Salim Shekh @ Salim Khan, S/o Muntu Shekh, Aged About 31 Years, R/o Chandpur, Ghoghra Mod, P. S. Navoda, District Murshidabad (West Bengal)

---- Petitioner

Versus

- State Of Chhattisgarh Through The Police Station Bagicha, District Jashpur, Chhattisgarh

---- Respondent

For State
For Accused

Shri Vikas Shrivastava, PL
Shri Utkal Pradhan, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Shri Gautam Chourdiya

Order On Board by Prashant Kumar Mishra J.

11/09/2019

1. ACQA No.646/2019 and CRA No.982/2018 would arise out of the same judgment, whereunder the Trial Judge has convicted the accused under Sections 363 & 366 of the IPC and Section 6 of

the POCSO Act, 2012, however, he has been acquitted for the offence under Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short 'the Act, 1989').

2. While granting leave to appeal on 28.08.2019, record of the Trial Court was not available, as the same was tagged with CRA No.982/2018 preferred by the accused. Today, both the matters are listed together and the record of the Trial Court is available.
3. We have perused the record to find out whether the necessary ingredients attracting commission of offence under Section 3 (2) (v) are available or not. As per the prosecutrix, she was working as a labourer at some construction place, where the accused was working as a *Munshi*. When the prosecutrix demanded her wages, the appellant stated that if she accompanies him, the wages shall be paid to her. She was taken to Ranchi, Bangalore and Gurgaon. They stayed together for several months. The prosecutrix subsequently contacted her brother over his mobile phone and requested him to take her back to the village. She was recovered from the possession of the accused.
4. In her entire statement, she has not mentioned that the accused abducted her or committed forcible sexual intercourse knowingly that she belongs to the Scheduled Tribe Community. Section 3 (2) (v) of the Act, 1989 provides that whoever, not being a member of Scheduled Caste or Scheduled Tribe, commits any offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more against a person or property KNOWING that such person is a member of Scheduled

Caste or Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. Thus, the accused's knowledge of the person or the property belonging to the Scheduled Tribe or Scheduled Caste Community is the pre-requisite for attracting the offence. The prosecutrix having not stated anywhere in her deposition that the appellant knew that she belongs to the Scheduled Tribe Community, the ingredients of the offence are not available. Therefore, the accused's acquittal for commission of offence punishable under Section 3 (2) (v) of the Act, 1989 appears to be proper and justified.

5. The acquittal appeal deserves to be and is hereby dismissed.
6. CRA No.982/2018 shall be heard on its own merits in due course, before the appropriate Bench.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge