

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No.7 of 2012

- Smt. Vandana Dubey, W/o Late Shri Santosh Dubey, aged about 28 years, R/o Village Indira Ward, In front of Anand Lodge, Jagdalpur, Police Station Bodhghat, Jagdalpur, District Bastar (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through Station House Officer, Police Station Bodhghat, Jagdalpur, District Bastar (C.G.)
2. Deepak Tiwari, S/o Shri R. L. Tiwari, aged about 49 years, R/o Vijay Ward, Jagdalpur, District Bastar (C.G.)

---- Respondent

For Appellant

Shri Sachin Nidhi, Advocate on behalf
of Shri Y. C. Sharma, Advocate

For Respondent-State

Shri Aditya Sharma, PL

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Shri Gautam Chourdiya

Order On Board By Shri Prashant Kumar Mishra J.

02/03/2020

1. This acquittal appeal is filed against the Trial Court's judgment acquitting the accused for the offence under Sections 376 and 317 of IPC.
2. The prosecutrix, examined as PW-4, was married with one Santosh Dubey. The accused was working as Revenue Inspector in the Collectorate, Jagdalpur. The prosecutrix happened to visit the accused's office for mutation of her name in the revenue record upon death of her husband. As per the prosecutrix, the

accused allured her and promised to marry and thereafter entered into sexual relation, which lasted from January, 2005 till the birth of a child on 09.10.2006. It was alleged that on 09.11.2006, the accused came to her house and took away the child to abandon him in an open place, however, when he returned to the house and on their verification, the prosecutrix became aware of the fact of abandonment of the child and insisted that she should be taken to the place where the child has been thrown. The child was immediately recovered from an open place at Village Sargipal.

3. Contrary to the prosecution case that it was the appellant who threw the child in an open place, PW-1 Durgesh Kumar and PW-3 Suresh Kumar have stated that when they saw the accused and the prosecutrix together in a motorcycle, it was the prosecutrix who was carrying the child inside a bag. The Trial Court has therefore doubted that it was the prosecutrix who was trying to conceal the birth of the child and in order to get rid of him, she had planned to abandon him. Moreover, the prosecutrix deposes that the first sexual intercourse happened on 03.01.2005 when her husband was alive. Thus, the affair between the accused and the prosecutrix commenced during the life time of her husband and as such, the basic prosecution case that he happened to meet the accused for the first time after the death of her husband is not correct. There is no proof either of the fact that the accused is the biological father of the child. Thus, the ingredient of offence under Section 317 of IPC is not satisfied. Similarly, the prosecutrix having admitted that her physical relation with the accused started with her consent, the

subsequent allegation that the accused sexually exploited her on promise to marry does not seem to be correct. From her own statement, it is apparent that there was no promise to marry at the inception of the relationship. The prosecutrix being a married lady, aged about 24 years, if she enters into consensual sexual relation, the same does not attract offence under Section 376 of IPC.

4. No case for entertaining the acquittal appeal is made out. It is accordingly dismissed.

Sd/-

Prashant Kumar Mishra
Judge

Sd/-

Gautam Chourdiya
Judge

Nirala