

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 217 of 2012**

- Lalita Bai W/o Manohar Singh Chauhan, aged about 34 years, R/o Inchko Madanpur, P.S. Patthalgaon, District Jashpur (CG)

---- Appellant/Complainant**Versus**

1. State of Chhattisgarh, through the Station House Officer, Police Station Patthalgaon, District Jashpur (CG)
2. Lachhinder Yadav S/o Leeladhar Yadav, aged about 40 years, Occupation- Shiksha Karmi, R/o Village-Madanpur Inchko, P.S.- Patthalgaon, District Jashpur(C.G.). At present R/o Village-Sarasmar, P.S. Patthalgaon, District Jashpur (C.G.)

---- Respondents

For Appellant : Shri Kawal Jeet Singh, Advocate appears on behalf of Ms. Sharmila Singhai, Advocate

For Respondent No.1/ : Shri Chitendra Singh, Panel Lawyer
State

For Respondent No.2 : None

Hon'ble Shri Justice Prashant Kumar Mishra, J
Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board by Justice Prashant Kumar Mishra**04.03.2020**

1. Heard on admission.
2. Respondent No.2 has been acquitted of the charges under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, alternatively Section 376(1) of IPC vide judgment dated 23.05.2012 passed by the Special Judge (the Scheduled Castes and Scheduled Tribes, Prevention of Atrocities Act), Jashpur (C.G.) in Special Criminal Case No. 18/2010.
3. The appellant/prosecutrix was more than 18 years of age at the time of offence. According to her statement, she was already married but was staying separately from her husband on account of dispute with her in-laws. The accused/respondent No.2 resides in the same village, therefore, both

were acquainted with each other. In the year 2004, the accused informed the appellant/prosecutrix that his wife is suffering from breast cancer, therefore, he is not able to have physical relations with her and she will not live for long. He assured that as soon as his wife dies, he will marry her (prosecutrix) and on this pretext, he started having sexual relations with the prosecutrix. He also got constructed one small hut for the prosecutrix and was taking care of her both ends. In a way she started residing with the accused.

4. On the face of her statement, it is apparent that she was earlier married with some other boy and has not divorced from her previous husband. Similarly, when the accused told to the prosecutrix that his wife is suffering from breast cancer and started having sexual relations with the prosecutrix, it was uncertain whether his wife would eventually die or not. Thus, the appellant/prosecutrix as well as the accused being married, there is no question of any misconception of fact. Had it been case that both were unmarried and the relations at the inception started on promise to marry, things would have been different.
5. Judgments relied by learned counsel for the appellant in the matters of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another, (2019) 9 SCC 608*** and ***Anurag Soni Vs. State of Chhattisgarh, AIR 2019 SC 1857*** would not apply to the facts of the present case for the simple reason that the consent of the prosecutrix was not obtained by misrepresentation as both parties were aware that they are already married.
6. In view of the above, there is no substance in the acquittal appeal, it fails and is hereby dismissed at the motion stage.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge