

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRA No. 848 of 2007

- Awadhram @ Konda, S/o- Motilal Yadav, Aged about- 40 years,
R/o- Village- Sivni, Police Station- Abhanpur, District- Raipur
(C.G.) ----- Appellant

Versus

- State of Chhattisgarh, though- Police Station- Abhanpur, District-
Raipur (C.G.) ----- Respondent

For Appellant : Shri Bharat Sharma, Advocate.

For State/Respondent : Shri Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna SharmaJudgment on Board19/02/2020

1. This appeal is preferred against the judgment dated 9th August, 2007 passed by Special Judge {Scheduled Casts & Scheduled Tribes (Prevention of Atrocities) Act, 1989}, (for short "the Act, 1989") Raipur, (C.G.) in Special Sessions Trial No. 138/2005 wherein the said Court convicted the appellant for commission of offence under Section 3(i)(xii) of the Act, 1989 and sentenced him to undergo rigorous imprisonment for six months and fine of Rs. 1000/- with further default stipulation.
2. In the present case, the prosecutrix is PW-1. As per version of the prosecutrix, she was consented in maintaining physical relation with the appellant. The trial Court recorded finding that the case filed under Section 376(1) of the IPC for rape and Section 3(2)(v) of the Act, 1989 is not made out and acquitted the appellant.
3. The trial Court recorded finding that the appellant was being in a position to dominate the will of the prosecutrix had used his

position and exploit the prosecutrix to which she would not have otherwise agreed.

4. From evidence of the prosecutrix (Para-2), it is clear that the appellant was labourer in the house of the prosecutrix. This version is supported by Dhannu Ram (PW-2) (Para-3) and it is further supported by version of Navrang (PW-3). From the entire evidence on record, it is clear that the appellant is a labourer while the prosecutrix is master. In capacity of servant, the appellant was not in a position to dominate the will of the prosecutrix, therefore, it is not a case where the appellant had used his position and exploit the prosecutrix for which she would not have agreed. Dominating position is basic ingredient for offence under Section 3(i)(xii) of the Act, 1989, but in the present case, the said dominating position is absent on the part of the appellant and it is not a case of exploitation, but it is a case of maintaining physical relation with consent, therefore, finding arrived by the trial Court is not sustainable. The appellant is acquitted from the charge under Section 3(i)(xii) of the Act, 1989.
5. Accordingly, appeal is allowed. Conviction and sentence imposed on the appellant is hereby set aside. The appellant is acquitted from said charge. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge