

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 928 of 2014**

- The State Of Chhattisgarh Through The Distt. Magistrate
Kondagaon, Chhattisgarh

---- Applicant

Versus

1. Prafull Jain S/o. Suresh Jain Aged About 32 Years
2. Smt. Prabha Jain W/o. Prafull Jain Aged About 25 Years,
3. Preetesh Jain S/o. Suresh Jain Aged About 29 Years

All R/o. Tehsilpara, Narayanpur, Distt. Narayanpur C.G.

---- Respondents

For Applicant-State :- Mr. Rajendra Tripathi, PL

For Respondent/s :- Mr. Shashi Bhushan Tiwari, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****By****Prashant Kumar Mishra, J.****12/02/2020**

1. On due consideration delay of 120 days in filing of the
Cr.M.P. is condoned. Accordingly, I.A. No.01, for
condonation of delay is allowed.

2. The trial Court has acquitted the accused persons of the charges under Sections 120B/34, 302/34, 376 of the I.P.C. and Sections 3(1)(xii), 3(2)(v) and 3(1)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. Deceased - XYZ aged about 12 years belonging to Scheduled Tribe community was subjected to forcible sexual intercourse and was set ablaze by the accused persons in furtherance of conspiracy knowing that she belongs to Scheduled Tribe community. She sustained burn injuries at about 6:30 a.m. on 02.09.2012 after which she ran out of the house of the accused persons and was seen by PW-1 Radheshyam Dewangan. Deceased was administered some medical aid at Narayanpur and was being taken to Durg for better medical treatment, however, she succumbed to injuries on her way to Durg.
4. Case of the prosecution was based on eye-witness account rendered by PW-1 Radheshyam Dewangan; postmortem report having findings of injuries over her private part and the dying declaration of the deceased (Ex-P11).
5. PW-1 Radheshyam Dewangan would depose that in the house of the accused only three persons were residing at the relevant time, however, the deceased was in the ground

floor and the accused persons were in the first floor. When he witnessed the deceased sustaining burn injuries she called accused – Prafull Jain on which he came downstairs and the deceased was taken to the hospital. He says that he will not be able to tell the Court as to the manner, the deceased sustained burn injuries and further that the deceased lived in the house of the accused as their family member. PW-4 Saurabh Awasthi supports the prosecution in so far as the recording of dying declaration is concerned, however, the dying declaration itself does not implicate the accused as the deceased has not stated name of the accused as the person responsible for setting her ablaze. In the dying declaration she clearly stated that someone poured kerosene oil from behind and set her ablaze but she could not see the face of the person. Significantly, she is not raising any allegation of commission of rape or sexual assault in her dying declaration against any of the accused person. PW-7 Kumari Lachani Verda, sister of deceased is not making any allegation against the accused. On the contrary she supports the accused by saying that her sister used to reside in the house of the accused but she was not treated as servant and further that her sister never complained about ill-treatment by any of the accused persons. PW-8 Smt. Situ Jain, an independent witness, has also not supported the prosecution.

6. True it is that in the postmortem report findings of sexual assault is available but in the absence of any allegations by the deceased herself in her dying declaration alleging sexual assault by any of the accused and the negative FSL report, the finding of the trial Court that sexual assault is not proved also appears to be borne out from the record.
7. Considering the quality of evidence, we are not inclined to grant leave to appeal against acquittal.
8. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi