

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 792 of 2019**

- Smt. Lajwantin Dhritlahre W/o Budharu Dhritlahre aged about 34 years R/o Vill. Gadapara P.S. Lalpur District- Mungeli, C.G.

---- Appellant**Versus**

1. Sanjay Ku. Dahria S/o Bdham Daharia, aged about 27 years R/o Vill. Gadapara, P.S. Lalpur District- Mungeli, C.G.
2. State of C.G. through its Police Station Lalpur District- Mungeli, C.G.

---- Respondents

For Appellant	: Ms. A. Lakra, Advocate
For Respondent/State	: Shri Aditya Sharma, Panel Lawyer

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Judgment On Board by Justice Shri Prashant Kumar Mishra****22/01/2020**

1. Heard learned counsel for the parties on admission.
2. This appeal is directed against the judgment rendered by the Additional Sessions Judge, Mungeli C.G. dated 07.08.2019, in Session Trial No. 16/2017, whereby the respondent-Sanjay Kumar Dhahriya has been acquitted of the charges under Sections 450 & 376 of the IPC.
3. Prosecutrix is a grown up lady aged about 32 years. She has three children namely- Bindeshwari, 13 years, Lucky, 8 years & Prince, 4 years. On the date of incident, daughter Bindeshwari was staying at a hostel at Mungeli. Her (prosecutrix) husband had gone to meet Bindeshwari and the prosecutrix was alone in the house with her two sons. At

about 12.30-1.00 am in the midnight accused called the husband of the prosecutrix to which the prosecutrix replied that he has gone to Mungeli. Accused requested the prosecutrix to open the door and when the door was opened by the prosecutrix, the accused entered the house, gagged her and took her to a nearby house and committed forcible intercourse with her. The prosecutrix thereafter went back to her house and quietly retired to bed. On the next morning her husband returned from Mungeli to whom the incident was narrated and the FIR was lodged on the next day.

4. Prosecutrix would admit in her deposition that keys of the nearby house belonging to Budhara remains with them. If this is the house where the incident had taken place and for the fact that prosecutrix did not raise alarm while she was taken to the nearby house as also for the fact that the prosecutrix admits that her clothes were removed before committing sexual intercourse, it appears to be a case of consent. Therefore, the trial Court's finding to this effect neither appears to be perverse nor unreasonable. In her case diary statement, the prosecutrix states that there were stains of Semen over her petticoat, but the article sent for FSL examination did not include the Petticoat as only her underwear was sent for FSL examination. It is also to be seen that FIR was not lodged immediately when her husband returned from Mungeli in the afternoon.
5. Considering the entire evidence, we are satisfied that the trial Court's finding does not suffer from any perversity and the

view taken by the trial Court is one probable view in the matter. It is settled law that when two views are possible and the trial Court has taken one probable view favouring the accused, the same cannot be unsettled only for the reason that another view was also possible.

6. No case for entertaining the acquittal appeal is made out it fails and is hereby dismissed.

Sd/-

Sd/-

(Prashant Kumar Mishra)
Judge

(Gautam Chourdiya)
Judge