

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 822 of 2019**

- Smt. Nahid Saba, W/o Athar Hussain, aged about 28 years, R/o- Kelabadi Durg, District- Durg (C.G.).

---- Appellant**Versus**

1. Nawab Khan @ Aftab Alam S/o- Late Abdul Sattar, aged about 48 years, R/o- Kelabadi, near Mazar of Roomi Baba, District- Durg (C.G.).
2. State of Chhattisgarh Through Station House Officer, Police Station- Durg, District- Durg (C.G.).

---- Respondents

For Appellant	: Ms. Smita Jha, Advocate
For Respondent No. 2/State	: Shri Anmol 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****03/02/2020**

1. This appeal is directed against the judgment rendered by the Additional Sessions Judge (FTC), Durg dated 23.10.2019, in Session Trial No. 47/2017, whereby the respondent/accused has been acquitted of the charges under Sections 376 (1) and 506 (part II) of the IPC.
2. Accused happens to be the brother-in-law of appellant/prosecutrix. Her own sister- Sonam who is residing with the accused as his wife, had earlier lodged a report for commission of rape by the husband and father of present prosecutrix.
3. It is said that accused assured the appellant/prosecutrix that he would facilitate release of her husband and father on bail and in that disguise he took advantage of the helplessness of the prosecutrix and started visiting her house and committed rape for

about 10 to 12 times within a period of one month. When husband and father of the appellant/prosecutrix were not released on bail she suspected that the accused is exploiting her by giving false assurance. She thereafter lodged the report which is delayed by more than a month.

4. We have seen the evidence available on record.
5. The prosecutrix being a married woman, aged about 28 years, was aware of the consequences of her sexual relation with the accused. The parties being closely related it is difficult to comprehend that there was such conspiracy on the promise extended by the accused for getting appellant's husband and father released on bail and that any other members of the family were not aware about the same. If the appellant's case of hatching a conspiracy by her sister- Sonam and her live-in-husband, accused- Nawab Khan is believed then the same could have been proved only when such allegations were made in the FIR with Sonam arrayed as co-accused, however, neither these allegations are available in the FIR nor Sonam was otherwise produced as a witness.
6. In the peculiar facts of the case and the events as told by the prosecutrix to the Police and before the Court, it is highly probable that the prosecutrix was a consenting party to the sexual intercourse between her and the accused. The trial Court's finding to this effect is one probable view in the matter based on the evidence on record. It is settled law that when trial Court has taken one probable view, the same can not be unsettled and a different view cannot be taken by this Court while hearing appeal against the acquittal.
7. No case for entertaining the acquittal appeal is made out, it fails and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Amita