

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 349 of 2019**

- Shivani Barman D/o Late Jogendra Nath Barman Aged About 36 Years R/o D.N.K. Colony, Kondagaon, District Kondagaon Chhattisgarh. Presently Residing At Village Bakhra School Para, Police Station Kondagaon, District Kondagaon Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Kondagaon, District Kondagaon Chhattisgarh
- Prakash Shrivastava @ Nicky @ Babu S/o Indradev Shrivastava, Aged About 29 Years R/o Sargipal Para Kondagaon District Kondagaon Chhattisgarh

---- Respondents

For Appellant	:	Ms. Anushri Mishra, Advocate
For State	:	Shri Lalit Jangde, Dy. Govt. Adv.
For Accused	:	Shri Shobhit Koshta, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board**09/02/2021**

Learned counsel for the appellant prays for further adjournment which has been rejected by this Court because on the last date of hearing, this Court had clearly ordered that last opportunity is granted because repeatedly, adjournments are being sought and on the next date, no further adjournment would be granted.

2. According to learned counsel for the appellant, specific grounds have been taken in the memo of appeal that the Court below did not take into consideration the statement recorded under Section 164 CrPC which constitute legally admissible evidence. It is further submitted that even the written report (Ex.P/1) and FIR has not been given due weightage. The findings recorded by the learned Trial Court, on the basis of statement of the prosecutrix in paragraph 8 is without due consideration that the consent was obtained on the misrepresentation of marriage. It is further submitted

that the prosecutrix has admitted suggestion that there existed physical relationship between the accused and the prosecutrix, therefore, the accused was liable to be convicted and his acquittal is an outcome of perverse and patent illegal order.

3. Learned Trial Court has ordered acquittal of the respondent / accused taking into consideration that the most important witness, the prosecutrix herself has turned hostile and has not supported the prosecution case at all. In her evidence, she has categorically stated that a dispute arose between the prosecutrix and the accused which led to filing of the FIR. After she was declared hostile, she was examined by the prosecution and all suggestions made by the prosecution with regard to giving false promise of marriage and committing rape on such pretext have been emphatically denied. In her cross-examination, she has admitted that she and the accused became friends and started meeting each other. In paragraph 4, she has admitted suggestion that relationship between her and the accused was not based on any false pretext of marriage. In paragraph 9, she has admitted that because of dispute, she had lodged report on 04/05/2018 but she did not know what was written in the report. It is further stated that she had put her signature in Ex.P/3 and Ex.P/4 documents which were blank documents.

Taking into consideration the aforesaid evidence on record, particularly the categoric statement of the prosecutrix regarding consent for sexual intercourse not based on false pretext of marriage, learned Trial Court acquitted the respondent / accused.

4. We are at a complete loss as to how the prosecutrix seeks to challenge the judgment of acquittal by filing this appeal on the ground that written report, FIR and 164 CrPC statements have not been acted upon. None of these are substantive evidence. The 164 CrPC statement is only of corroborative value. Once the prosecutrix, having entered the witness box, has not supported the prosecution case and turned hostile, no conviction can be ordered on the basis of what has been stated in the written report and on the basis of contents of FIR. The appeal is, accordingly, dismissed.

Records of the Court below be remitted back.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge