

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Miscellaneous Petition No.1239 of 2021

State of Chhattisgarh through Station House Officer, Police Station
Bhatapara (City), District Balodabazar-Bhatapara, Chhattisgarh

---- Petitioner

versus

K. Sonu Rao, son of Late K. Lachhaiya, aged about 29 years, resident
of Station Ward Bhatapara, Police Station Bhatapara (City), District
Balodabazar-Bhatapara, Chhattisgarh

--- Respondent

For Petitioner	:	Shri Sudeep Verma, Dy. Govt. Advocate
For Respondent	:	None

and

Acquittal Appeal No.238 of 2021

XYZ

---- Appellant

versus

1. K. Sonu Rao, son of Late K. Lachchhaiya, aged about 29 years,
resident of Station Ward Bhatapara, Police Station Bhatapara (Town),
District Balodabazar-Bhatapara, Chhattisgarh
2. State of Chhattisgarh through Police Station Bhatapara (City), District
Balodabazar-Bhatapara, Chhattisgarh

--- Respondents

For Appellant	:	Shri Rahul Agrawal, Advocate
For Respondent No.1	:	None
For Respondent No.2	:	Shri Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

Per Arvind Singh Chandel, J.

2.12.2021

1. Both the Criminal Miscellaneous Petition and the Acquittal Appeal
are heard on admission.

2. Vide common judgment dated 31.7.2021 passed in Sessions Trial No.H-7/2018, the Additional Sessions Judges, Bhatapara, District Balodabazar-Bhatapara acquitted Respondent/accused K. Sonu Rao of the charges framed under Sections 376(2)(n) and 306 of the Indian Penal Code.
3. Being aggrieved by the judgment of acquittal, Criminal Miscellaneous Petition No.1239 of 2021 has been moved by the State for grant of leave to appeal and Acquittal Appeal No.238 of 2021 has been preferred by the father of the deceased.
4. Case, in short, is that on 27.12.2017, the deceased/victim committed suicide by hanging herself at home. Her age on the fateful day was about 26 years. Prior to the incident, she remained in love relation with the Respondent/accused for about 4 years and this relation was known to her sister Pinki Sen (PW6). Due to the love relation, the accused used to visit the house of the deceased and commit sexual intercourse with her on a false pretext of marriage with her. But, later on, he refused to marry her. Meanwhile, her marriage was fixed with Vikas Kumar Shrivastava (PW1). She introduced him with the accused. At that time, on being asked by Vikas Kumar Shrivastava, the accused told that he will perform his marriage in his society itself. Thereafter, the relation between the accused and the deceased ended. But, it is the further case of the prosecution that 2-3 days thereafter, the accused again started visiting the house of the deceased, talking to her and committing sexual intercourse with her. On the date of incident

also, i.e., 27.12.2017 at about 1 p.m., he visited her house and committed sexual intercourse with her. Thereafter, she committed suicide at home. It is the case of the prosecution that the accused was making physical relationship with her frequently on the pretext of marriage with her and thereby he mentally tortured her and as a result thereof she committed suicide. Morgue was lodged. Inquiry over the morgue was conducted. On completion of the investigation, a charge-sheet was filed against the accused.

5. On completion of the trial, vide the impugned judgment, the Trial Court acquitted the accused of the charges framed against him. Hence, the present Criminal Miscellaneous Petition by the State and the Acquittal Appeal by the father of the deceased have been filed.
6. Learned Counsel appearing for the State and Learned Counsel appearing for the father of the deceased/victim submit that from the statements of the prosecution witnesses, namely, Mani Shrivastava (PW2), Ramnarayan Sen (PW5) and Pinki Sen (PW6), it is well established that there was a love relation between the deceased and the accused and the accused used to visit her house and commit sexual intercourse with her. From the evidence adduced by the prosecution, it is also established that thereafter the accused refused to marry her and, therefore, she committed suicide. Hence, the judgment of acquittal passed by the Trial Court is perverse and contrary to the evidence available on record.

7. We have heard Learned Counsel appearing for the parties and perused the material available with due care.
8. In **V.N. Ratheesh v. State of Kerala, AIR 2006 SC 2667**, the Supreme Court held that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Supreme Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The Supreme Court referred to the decision rendered in **Bhagwan Singh v. State of Madhya Pradesh, [2002 (2) Supreme 567]**. It was further held that the principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and

relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

9. In **Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225**, the Supreme Court said that “While sitting in judgment over an acquittal, the Appellate Court is first required to seek an answer to the question whether the findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in negative, the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then and then only reappraise the evidence to arrive at its own conclusions”.
10. Vikas Kumar Shrivastava (PW1) is the witness with whom, according to the case of the prosecution, marriage of the deceased was fixed. He deposed that after fixing of his marriage with the deceased, she told him that there was a love relation between her and the accused. She also telephonically informed him that the accused used to chase her. According to this witness, thereafter, he met with the accused and talked to him. The accused told him that he will perform his marriage in his society itself. According to this witness, even thereafter, the accused remained in contact with the deceased.
11. Mani Shrivastava (PW2) and Pinki Sen (PW6) are sisters of the

deceased. According to the Court statement of Pinki Sen (PW6), there was a love relation between the deceased and the accused. The accused used to visit their house and physical relation had also developed between the deceased and the accused. According to this witness, later on, the love relation ended between them and with the consent of the deceased herself, her marriage was fixed with Vikas Kumar Shrivastava (PW1). This witness further deposed that even thereafter the accused continued to have relation with the deceased and finally on 25.12.2017 the accused refused to marry the deceased. This witness, in paragraph 7 of her examination-in-chief, deposed that on the issue of their marriage, quarrels had been taking place between the deceased and the accused.

12. Mani Shrivastava (PW2) also deposed that after the incident, the accused visited their house on 31.12.2017 and confessed that he was responsible for the incident and the death of the deceased.
13. On taking the entire statements of the above witnesses as they are, it is established that there was a love relation between the deceased and the accused and physical relation had also developed between them with the consent of the deceased. It is also established that the deceased, even after break up with the accused and fixing of her marriage with Vikas Kumar Shrivastava (PW1), remained in relation with the accused. Therefore, the accused developed physical relation with the deceased on the pretext of marriage with her is not established in any way. There is also nothing on record on the basis of which it could be said that as

defined under Section 107 of the Indian Penal Code the accused made an instigation to the deceased to commit suicide.

14. Taking into consideration the statements of the above witnesses and the other evidence available, it cannot be said that the finding of acquittal arrived at by the Trial Court is perverse or contrary to the evidence on record. We do not find any reason to grant leave to appeal to the State or admit the acquittal appeal for final hearing.
15. Resultantly, both Criminal Miscellaneous Petition No.1239 of 2021 and Acquittal Appeal No.238 of 2021 are dismissed at the stage of admission itself.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge