

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 584 of 2019

- Geeta Soni W/o Ashok Kumar Soni Aged About 33 Years R/o New Mines, Godripara, Ward No. 32, Chirmiri, District - Koriya Chhattisgarh. (Victim) ----- **Appellant**

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station , Chirmiri, District - Koriya Chhattisgarh.
2. Bhimsen S/o Arun Pal Aged About 28 Years R/o Post Office Line, Godripara, Chirmiri, Police Station, Chirmiri, District - Koriya Chhattisgarh. --**Respondents**

with

CRMP No. 2239 of 2019

- State Of Chhattisgarh Through Its Station House Officer, Police Station Chirmiri, District Korea Chhattisgarh., District : Koriya.

----- **Petitioner**

Versus

- Bhimsen S/o Arun Pal Aged About 28 Years R/o Post Office Line Godaripara, Chirmiri, Police Station Chirmiri, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

----- **Respondent**

For the Appellant/victim :- Ms. Nirupama Bajpai, Adv.
For the State :- Mr. Anurag Verma, PL.
For respondent/accused :- None.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

23.02.2021

Being aggrieved by the same judgment dated 25.07.2018 passed in Sessions Trial No.66/2017 the State has filed an application seeking leave to appeal by way of CRMP No.2239/2019 whereas the prosecutrix has filed Acquittal Appeal No.584/2019 there against. It is relevant to note here that by the judgment impugned, the accused namely Bhimsen has been acquitted by the

Court below of the charges under Sections 450, 376 (2) (n) and 506 IPC.

2. As is reflected from the material available on record, on 10.01.2017 the accused had come to her house and after coming to know through the prosecutrix that her husband was not at home he got back. Next day i.e. on 11.01.2017 at about 7-8 PM when the prosecutrix was all alone in her house, the accused again came there, took her to the bedroom and committed forcible sexual intercourse with her. On 12.01.2017 also the accused came to her house and committed the same act with her. Allegedly, after committing sexual intercourse he had put her under threat of throwing acid at her and also of showing the video of the incident to her husband. The report of the incident undisputedly was lodged on 30.04.2017 i.e. with an inordinate delay of three and a half months for which no satisfactory explanation has been offered by her.

3. Learned Court below by the judgment impugned did not find any substance in the case of the prosecution and therefore, acquitted the accused of all the charges levelled against him.

4. Having heard counsel for the parties and taken into consideration the evidence on record in particular the deposition of the prosecutrix (PW-1) and her husband (PW-2) it is evident that adjacent to the house of the prosecutrix number of houses situate and being at the busy locality the public movement is always there, but none of her neighbours has been examined to state that the prosecutrix had raised any hue and cry. It is very surprising that though the incident had taken place at about 7-8 PM, not even a

single witness claims to have heard the cries of the prosecutrix to ensure her safety particularly when the accused did sexual intercourse with her on two consecutive dates. In addition to this, the evidence of the doctor (PW-5) who medically examined the prosecutrix also does not reflect any external or internal injuries on her person. On the contrary, the medical evidence opines that her hymen was old ruptured and that she was habituated to sexual intercourse, which in this case is normal as apart from being a married lady she was a mother of two children. Absence of external injuries on the body of the prosecutrix is however indicative of the fact that no resistance was made by her at the time of sexual intercourse by the accused which suggests that she was a consenting party to the said act. Had the sexual intercourse with the prosecutrix not been consensual, she must have raised an alarm attracting the attention of passers-by as also the neighbours but nothing like this appears to have happened in this case by the prosecutrix. This apart a considerable delay of about three and a half months also suggests that the report has been lodged after due deliberation in order to implicate the accused.

5. The discussion made above makes it clear that the sexual intercourse between the prosecutrix and the accused if any, was a consensual one and that being so, the trial Court has not committed any error in recording a finding of acquittal. Since the prosecution has failed to collect any cogent and clinching material in support of its case, the accused has rightly been acquitted by the Court below. Even otherwise, it is a settled legal position that if two views

emanate from the material on record, the one favouring the accused has to be a preferred upon.

6. There is no substance in the application for leave to appeal filed by the State as also in the acquittal appeal filed by the prosecutrix and therefore, they are hereby dismissed.

7. Consequently, IA No.1/19 – the application for condonation of delay of 323 days in filing the application seeking leave to appeal also stands disposed of.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge