



2026:CGHC:3495-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No.429 of 2018

1 - Ku. Anupam Bhol D/o Ganesh Ram Bhoi Aged About 23 Years R/o Durugpali, Police Station Pithora, District Mahasamund, Chhattisgarh

Petitioner(s)

versus

1 - Manish Nirmalkar S/o Hardeo Nirmalkar Aged About 40 Years R/o Village Rawanbhatha, Police Station Pithora District Mahasamund, Chhattisgarh

2 - Madhu W/o Mohal Lal Sher Aged About 46 Years R/o 59 Old Compound , Bhagwan Das Road Mandi House, New Delhi

3 - State Of Chhattisgarh Through Police Station Pithora, District Mahasamund, Chhattisgarh

Respondent(s)

For Petitioner (s) : Mr. Shikhar Sharma, Advocate

For Respondent (s) : Mr. Ram Narayan Sahu, Dy. GA

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

Per Rajani Dubey J.

21/01/2026



1. This acquittal appeal has been preferred by the appellant against the judgment of acquittal dated 27.02.2018 passed by learned Additional Session Judge (FTC), Mahasamund, Chhattisgarh in ST No.29/2017, whereby the respondent has been acquitted of the charges under Sections 506, 342, 328, 323, 495 & 376 of IPC against the accused/respondent No.2 Madhu framed charges under Sections 342/34, 328/34, 323/34, 495/34 & 120 of IPC.
2. Brief facts of the case are that the respondent No.1 committed sexual intercourse with the appellant from 07.02.2017 to 13.02.2017 in connivance with the respondent No.2, who used to give her intoxicated medicine and also committed maarpeet with her. Thereafter a case was registered against the accused respondents. After investigation, charge sheet was submitted before the Magistrate concerned. After appreciation of oral and documentary evidence available on record, the learned Trial Court acquitted the accused respondents of the aforesaid charges.
3. Learned counsel for the appellant/State submits that the impugned judgment of acquittal is bad in law and facts, hence the same is liable to be set aside. The Learned Trial Court has failed to appreciate the evidence recorded in its true and correct prospective and the prosecution had proved its case beyond all reasonable doubts against the respondent, but despite the same the accused respondents have been acquitted. The appellant



clearly stated against the accused respondents and remained firm in her statement. The other prosecution witnesses have also stated against the respondents but the same has not been considered by the learned Trial Court. Therefore, looking to the facts and circumstances of the case, the judgment and finding of the learned Court below is perverse and is liable to be set aside.

4. Learned counsel for the respondent supports the impugned judgment of acquittal and submits that the learned Trial Court has minutely appreciated the oral and documentary evidence available on record and has rightly acquitted the respondent of the aforesaid charges. Therefore, the appeal is liable to be dismissed.
5. Heard learned counsel for the parties and perused the material available on record.
6. It is clear from the record of the learned Trial Court that against the accused/respondent No.1 Manish, the learned Trial Court framed charges under Sections 506, 342, 328, 323, 495 & 376 of IPC against the accused/respondent No.2 Madhu framed charges under Sections 342/34, 328/34, 323/34, 495/34 & 120 of IPC. After appreciation of oral and documentary evidence available on record, the learned Trial Court acquitted the respondents of the aforesaid charges.
7. PW-1 prosecutrix stated that the accused respondent Manish is neighbor of her brother-in-law (jija). On 07.02.2017, she was



standing on the road to go to Pithora, at that time the accused Manish came there and told her to drop Pithora, then she sat on his motorcycle but took him to Jhadap despite her objection by saying that he has some work there and thereafter he would take her to Pithora. Thereafter he took her to Mandir Hasaud where her sister lives and from there he took her to Durg and in lodge he made her drunk intoxicated medicine and committed sexual intercourse with her. He also committed maarpeet with her, as a result of which she sustained injuries on her chest and back. She admitted her signatures on complaint (Ex-P/1), FIR (Ex-P/2), spot map (Ex-P/3), spot map of Shitla Lodge (Ex-P/4), spot map of house of accused Madhu (Ex-P/5), map of her own home (Ex-P/6) and her statement recorded under Section 164 of CrPC (Ex-P/7). In the cross-examination, she admitted this suggestion of defence that on the way she did not stop any vehicle and did not tell anybody about the accused Manish that he is taking her forcefully. She also admitted that she did not complain anybody when she lived with the accused Manish at Delhi. In paras 34, 35, 38, 41 & 67, she stated as under:-

“34. यह सही है कि मैंने अभियुक्त मनीष के बच्चे के साथ भी फोटो खींचवायी है। यह सही है कि जो फोटो मैंने अभियुक्त मनीष के बच्चे के साथ खींचवायी है, उसमें मैंने मांग भरी हुई है। अभियुक्त मनीष का लड़का जिसके साथ मेरी और अभियुक्त मनीष का फोटो है, वह हमारे साथ दिल्ली नहीं गया था। यह सही है कि आर्टिकल ए-3 की फोटो दिल्ली से वापस आने के बाद की है, जिसमें मेरे और अभियुक्त मनीष के बीच में अभियुक्त मनीष का पुत्र भी है। दिल्ली से वापस आने के बाद मुझे अभियुक्त मनीष के विवाहित होने की जानकारी हुई थी।

35. साक्षी से यह पूछने पर कि दिल्ली के विभिन्न दर्शनीय स्थलों में अभियुक्त मनीष के साथ विभिन्न फोटोग्राफ है। साक्षी का कहना है कि



मैं रात को बेहोश रहती थी। यह सही है कि मैं दिनभर अभियुक्त के घुमती थी फिर कहा नहीं घुमती थी। साक्षी ने कहा कि मुझे पता नहीं चलता था कि, मैं घुम रही हूँ कि नहीं।

38. साक्षी से यह पूछने पर कि शादी से संबंधित कपड़े चुनरी, साड़ी वगैरह आपने कहां से खरीदा ? साक्षी ने हसते हुए कहा कि उक्त कपड़े अभियुक्ता मधु ने दिये थे।

41. वापसी के समय हम लोग दिल्ली से दुर्ग रिजर्वेशन कराकर आये थे। वापसी के समय मैंने अपनी सिंदूर से भरी मांग को मैंने मिटा दिया था। यह सही है कि मैंने अपनी मांग से सिंदूर को दुर्ग वापस लौटते समय इसलिए मिटाया था कि किसी को पता ना चले, मेरी शादी हुई है।

67. 17 फरवरी 2017 की शाम को मेरे माता-पिता और जीजाजी, अभियुक्त मनीष के घर आये थे, जहां उनसे मेरी मुलाकात हुई थी। ये सभी लोग अलग-अलग मोटर सायकल से आये थे। यह सही है कि मुझे अभियुक्त मनीष के घर से सीधे मेरा घर ले जाया गया था।"

8. Shrawan Kumar (PW-2), manager of Shitla Hotel, Durg filed original register of lodge (Ex-P/9) and stated that the police seized register as Ex-P/8 and he admitted his signatures on A to A part of the same. As per this register Manish stayed in hotel from 13.02.2017 to 16.02.2017 with his wife. In the cross-examination, he admitted that the woman had applied vermilion on her forehead and was looking mature. He also admitted this suggestion that prior to entry, their IDs were checked.
9. PW-3 Mukesh, brother-in-law of prosecutrix stated that on 07.02.2017, Shashank Pradhan had told him on phone that the prosecutrix had gone with accused Manish to Bhoi Market and she did not come back. On 17.02.2017, Shashank called him that Manish is roaming in Pithora, upon which he went there along with her mother-in-law where the prosecutrix was found and she came with them. There were wounded marks on her body. Thereafter report was lodged. The prosecution declared him



hostile and cross-examined him but he denied his police statement (Ex-P/12-A) on A to A part of the same.

10. Shashank Pradhan (PW-4), brother-in-law of prosecutrix stated that the accused Manish told that he is going to Pithora and he would drop the prosecutrix there, upon which prosecutrix went with him. When she returned back, she told them that the accused Manish had taken her to Pithora and threatened her that he would kill her and her family members and committed rape with her. In the cross-examination, he admitted that till 10 days from the incident, he did not lodge any missing report at the police station.
11. PW-5 Reena is witness of articles which are arya samaj registers (Article-A/51 & A/52) but she denied her signatures on Article-A/51 & 52 and also denied her photographs contained in Article-A/52. The prosecution declared her hostile and cross-examined her then she admitted that accused Madhu is her neighbor. She denied this suggestion that she did signatures as a witness of marriage between Manish and the prosecutrix at Arya Samaj.
12. PW-6 Kamlesh Sher is son of accused Madhu Sher and nephew of accused Manish Nirmalkar but he also denied his signatures on Articles-A-51 & 52.
13. Dr. Chandrakishan (PW-8) examined the prosecutrix and she did not find any internal injuries. She found some abrasions on her



back and thighs and gave her report (Ex-P/23). In the cross-examination, she admitted that she did not find any sign of forceful intercourse or rape.

14. Close scrutiny of statements of all the witnesses shows that the accused Manish and prosecutrix went to Pithora. They performed marriage in Arya Samaj and when they returned, the prosecutrix lodged FIR against Manish and co-accused Madhu. The statement of prosecutrix and her conduct clearly shows that she is consenting party and it is also clear that she was aged about 23 years at the time of incident.
15. Learned counsel for the appellant has argued that the prosecutrix did not know about first marriage of Manish but it is clear from her admission that she clicked pictures with son of accused and in para 52 of her statement, she admitted this suggestion of defence that wife of Manish is handicapped since long. The learned Trial Court minutely appreciated the oral and documentary evidence of learned Trial Court and rightly found that the statements of the prosecutrix are not reliable and found that the prosecution has failed to prove its case against the respondents beyond reasonable doubt.
16. The Hon'ble Supreme Court in **Rai Sandeep @ Deepu vs State of NCT of Delhi**, reported in **(2012) 8 SCC 21**, held in para 15 as under:-

“15. In our considered opinion, the ‘sterling witness’ should



be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

17. The Hon'ble Apex Court in the matter of **Phool Singh vs State of Madhya Pradesh**, reported in **(2022) 2 SCC 74**, held in para 8 as under:-

"8. In the case of [Ganesan](#) (supra), this Court has observed and held that there can be a conviction on the sole testimony



of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paragraphs 10.1 to 10.3, it is observed and held as under:

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in [Vijay \[Vijay v. State of M.P., \(2010\) 8 SCC 191\]](#), it is observed in paras 9 to 14 as under:

“9. In [State of Maharashtra v. Chandraprakash Kewalchand Jain \[State of Maharashtra v. Chandraprakash Kewalchand Jain, \(1990\) 1 SCC 550\]](#) this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under:

‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. [The Evidence Act](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under [Section 118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the [Evidence Act](#) similar to Illustration (b) to [Section 114](#) which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose



that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

18. The Hon'ble Apex Court vide its judgment dated 12.02.2024 (Criminal Appeal No.1162 of 2011) passed in **Mallappa and Ors.**

Versus State of Karnataka has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive--inclusive of all vidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

19. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in aforesaid cases, it is clear that the statements of the prosecutrix are not reliable and



her conduct also shows that she is consenting party to the act of the accused Manish. Thus, the view which has been taken by the learned trial Court appears to be plausible and possible view and in the absence of any patent illegality or perversity and looking to the limited scope of interference in an acquittal appeal, this Court is not inclined to interfere with the impugned judgment.

20. Accordingly, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-
Rajani Dubey
Judge

Sd/-
Radhakishan Agrawal
Judge

Nirala