



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 89 of 2021

- State of Chhattisgarh, Through : Police Station Marwahi, District Bilaspur (C.G.).

---- Appellant

Versus

- Kamlesh Harijan, S/o Ranju Harijan, aged about 30 years, R/o Dadiya, Police Station Marwahi, District Bilaspur (C.G.)

---- Respondent

For Appellant/State : Ms. Madhunisha Singh, Dy. A.G.

**DB : Hon'ble Shri Sanjay K. Agrawal &
Hon'ble Smt Justice Rajani Dubey**

Judgment on Board
(21.04.2022)

Rajani Dubey, J

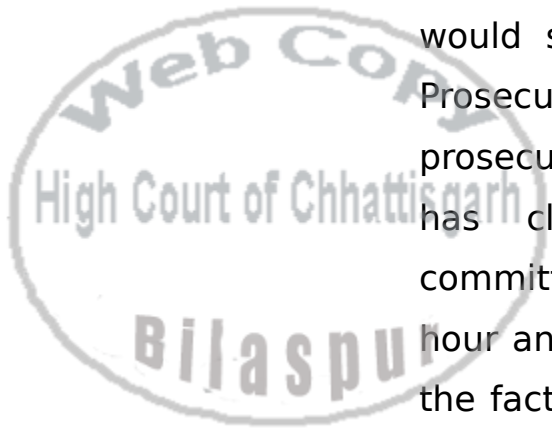
1. Heard on admission.
2. The present acquittal appeal has been filed by the State against the judgment dated 05.09.2020 passed in Sessions Case No.05/2019 by the learned Additional Sessions Judge, Pendraroad, District Bilaspur (C.G.), whereby the learned trial Court acquitted the accused/respondent herein from the charge punishable under Section 376 of the Indian Penal Code.
3. Ms. Madhunisha Singh, learned Dy. A.G. for the State/Appellant submits that even though there is emphatic and uncontroverted evidence of the Prosecutrix (PW/1), the learned trial Court wrongly acquitted the accused/respondent herein. She further submits that the Prosecutrix (PW/1) has categorically





stated about the incident and her husband PW/2 also reached the spot and saw the accused/respondent herein but the learned trial Court by ignoring the material piece of evidence and by disbelieving the evidence of Prosecutrix (PW/1), acquitted the accused/respondent herein on assumption of facts that there is animosity between the parties. She also submits that the learned trial Court committed grave error in discarding the entire case of the prosecution merely on the minor contradictions in the statements of prosecution witnesses. As such, the instant acquittal appeal deserves to be admitted.

4. A careful perusal of the statement of Prosecutrix (PW/1) would show that though, in examination-in-chief, the Prosecutrix who is major, has supported the case of the prosecution, but in para 12 of cross-examination, she has clearly stated that the accused/respondent committed sexual intercourse with her for about one hour and no one had seen them. She has also admitted the factum of animosity of accused/respondent with her husband. Further, in her cross-examination, she has also stated that when the accused/respondent was establishing physical relation with her, she made hue and cry & only her husband (PW/2) and one Suddhu had come. Furthermore, Ram Avtar (PW/2), husband of the Prosecutrix, in para 4 of cross-examination, has stated that Prosecutrix (PW/1) has not narrated the incident of her own. On being asked, she narrated the same. He has also stated that if someone is thrown at the spot, his/her body would sustain injury. He has further stated that he had not seen any injury on the body of his wife (PW/1). That apart, Dr. Kamla Patnayak (PW/5) who medically examined the Prosecutrix (PW/1), has not seen any internal or external injury on her body. As such, the number of witnesses have been examined by the





learned trial Court to record the finding of acquittal.

5. The Supreme Court in the matter of **Babu V. State of Kerala**¹, has laid down the principle to be followed in an appeal against the acquittal under Section 378 of the Cr.P.C. and it has been held that Appellate Court should not ordinarily set aside acquittal in a case where two views are possible, though the views of Appellate Court may be the more probable one and held in para 12 as under:-

“..12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial Court. The appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of trial court were perverse or otherwise unsustainable. The appellate Court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court.”

6. Thereafter, recently in **Anwar Ali & Another v. State of Himachal Pradesh**², Supreme Court has reviewed its earlier decisions including **Babu** (supra) reiterating the principles laid down therein.
7. Reverting back to the facts of the case, in the light of judgment of Supreme Court in the matter of **Babu** (supra) and **Anwar** (supra) dealing with the scope of appeal against acquittal and further considering the

1 (2010) 9 SCC 189

2 (2020) 10 SCC 166





evidence on record, we are of the considered opinion that the learned trial Court is absolutely justified in not believing the evidence of Prosecutrix (PW/1) who is major and further justified in relying upon other evidence of prosecution to record the judgment of acquittal. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has fully justified in recording the finding of acquittal which is based on proper appreciation of evidence on record. We do not find any compelling & substantial reason to interfere with the judgment of acquittal recorded by the trial Court.

8. Accordingly, the acquittal appeal is dismissed *in limine* at the admission stage itself.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Rajani Dubey)
JUDGE

PKD

