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**(2018) 09 CHH CK 0247**

**Chhattisgarh High Court**

**Case No:** Acquittal Appeal No. 346 Of 2010

State Of Chhattisgarh

APPELLANT

Vs

Lokesh Kumar

RESPONDENT

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**Date of Decision:** Sept. 14, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 342, 376, 511
- Scheduled Castes & Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Section 3(1)(xii)
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** Vivek Sharma, Anup Majumdar

**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

1. This appeal has been filed by the State against the judgment dated 09.01.2003 passed by Special Judge, Rajnandgaon in Special Case No. 62/2002

acquitting the accused/respondent of the charge under Sections 342, 376, 511 IPC and 3 (1) (xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act

(hereinafter referred to as "Special Act").

2. Facts of the case in brief are that on 18.04.2002 FIR (Ex.P-1) was lodged by the prosecutrix (PW-1) aged about 14 years at the relevant time

alleging that on 16.04.2002 at about 12 noon when she had gone to the house of her friend Khemin Bharti but nobody was present there at that time.

Meanwhile, the respondent/accused and one Prakash came there from the back-side, removed their clothes, tore her Kurta and made an attempt to insert their private part into that of her. It is alleged that when she raised an alarm, they filthily abused her in the name of her caste. Based on this report, offences under Sections 342, 376, 511 IPC and 3 (1) (xii) of the Special Act were registered against the two. The other accused Prakash however being juvenile was tried in the Juvenile Court. Court below then framed the charge against the respondent/accused accordingly.

3. So as to hold the accused/respondent guilty, prosecution has examined 08 witnesses in support of its case. Statement of the accused/respondent has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence and false implication in the case.

4. After hearing the parties and appreciating the evidence on record the Court below has acquitted the accused/respondent of the charges levelled against him and therefore, the State has preferred this appeal against the judgment of acquittal.

5. Counsel for the appellant/State submits that the Court below has committed an error of law in acquitting the respondent/accused of the charges levelled against him by ignoring the evidence adduced by the prosecution.

6. Counsel for the respondent/accused however supports the judgment impugned and submits that while recording the finding of acquittal, the Court below has taken note of the evidence on record in proper perspective and there is no infirmity in the same warranting interference by this Court.

7. Heard counsel for the parties and perused the material on record.

8. Prosecutrix (PW-1) has stated that on the date of incident when she was returning from the house of her friend Khemin Bai, respondent/accused along with juvenile accused Prakash came there from the back side, shut the door, removed their clothes, tore her clothes also, threw her down on the ground and made an attempt of inserting their private part into that of her and when she abused them they left the spot. From the statement of this witness, it appears that there was some money dispute between her father and the respondent/accused who had even reported the matter to the

police. This apart, there is two days' un-explained delay in lodging the report and that the prosecutrix did not even inform her mother about the incident. Devki Bai (PW-2), Shilendra Kumar (PW-3), Pannalal (PW-6) and Devnarayan (PW-8) have not supported the case of the prosecution.

Prosecutrix has not even been medically examined nor any cogent evidence has been adduced by the prosecution to show that on the date of incident the prosecutrix was minor.

9. All this factual scenario makes this Court to hold that the prosecution has utterly failed to prove that the respondent/accused made an attempt to sexually assault the prosecutrix. That apart, there is two days' delay in lodging the report but no explanation has been offered by the prosecution as to how did it occur. Even the medical examination of the prosecutrix has not been conducted nor did the prosecution has adduced any evidence to show that the prosecutrix was minor on the date of incident. Being so the Court below has been quite justified in recording the finding of acquittal on the basis of evidence before it. There is no illegality or infirmity in the judgment awarding acquittal to the respondent/accused. Even otherwise, as regards appeal against the finding of acquittal, it is a settled position of law that if on the basis of material on record two views can be drawn then the preference has to be given to the one favouring the accused.

10. On viewing the evidence on record and being conscious to the existing legal position referred to above, this Court finds no substance in the appeal and accordingly the same is dismissed. Judgment impugned is affirmed.