

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISCELLANEOUS PETITION NO. 1139 OF 2015

State of Chhattisgarh, through District Magistrate, Korba (C.G.)

... Appellant

Versus

Ashokdas, aged about 45 years, S/o Jogidas, R/o Shyam Nagar, Darri,
Police Station- Darri, District Korba (C.G.)

... Respondent

For Appellant-State : Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

16/02/2016

1. I.A. No. 1 of 2015 has been filed to condone delay of 163 days in filing the application for grant of leave to appeal.
2. The State assails acquittal of the Respondent from the charges under Sections 450, 392, 376 IPC, dated 28.2.2015 ordered by the Additional Sessions Judge, Katghora in Sessions Trial No. 55 of 2014.
3. Learned Counsel for the State submits that the Prosecutrix was an illiterate lady approximately 70 years old. There is no reason for an old lady that she would falsely level allegations of having been physically violated. PW-4, Ashok Kumar, though he has gone hostile had deposed that the Respondent and others had consumed alcohol in the night of the occurrence at about 9:10 pm. Apparently, the Respondent appears to have forced his way into the house of the Prosecutrix in an intoxicated condition and committed the offence. The Prosecutrix has also identified the Respondent in the TIP, Exhibit P-4. The silver ornaments of the Prosecutrix were recovered from the bushes close to her house on the confession of the Respondent.

4. We have considered the submission on behalf of the State.

5. No doubt, in cases relating to sexual offences, the evidence of the Prosecutrix may have to be given greater weight and in appropriate cases conviction can be based solely upon the same. Merely because the Prosecutrix may have been 70 years of age cannot lead to any presumptive opinion about the allegations being false. But, in the facts of the present case it appears that the Prosecutrix lodged the FIR against unknown. The FIR was read over to her in the Court when she acknowledged that it had been written correctly and was dictated as mentioned by her. She alleges that she entered her room, lit the chimney after which the Respondent who was hiding in her room kicked the chimney and then in the darkness he sexually assaulted her. If there was a chimney burning in the room obviously the Prosecutrix had the opportunity and occasion to see the Respondent's face and therefore there was no question of her lodging the FIR against unknown. In her evidence and cross-examination she acknowledged that she knew the Respondent from earlier as they both visited the *Shani* temple and there had been dispute between them because the Prosecutrix would rub oil on her body after scraping it off the *Shani* idol stone poured by devotees, which was objected to by the Respondent. The entire prosecution case therefore collapses that she did not know the name of her assailant. The TIP is inconsequential once the Prosecutrix acknowledges that the Respondent was known to her from earlier. In any event, police authorities were present when the TIP was held. The FIR has been lodged four days later without any plausible explanation for the delay. Considering the facts and circumstances, the Trial Judge by collating them has formed an opinion that the charges had not been proved beyond reasonable doubt.

6. We find no reason to interfere with the order of acquittal. The application for grant of leave to appeal is dismissed.

7. Before we part, the present application for grant of leave to appeal is yet again in a series of applications being filed against acquittal by the State without proper circumspection and consideration of the materials which have been noticed by us in more than one application for leave to appeal filed by the State. We can only make a pious observation that the State is expected to pay heed to our observations, of-course within the limitations of our jurisdiction as also discussed in one of the orders.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge