

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 18 of 2016

- Heera Lal Devangan S/o Shri Ishwar Devangan Aged About 27 Years
Caste - Panika, R/o Village Bhandarpara Basdei, Police Station
Surajpur, District Surajpur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station Ajak Surajpur,
District Surajpur Chhattisgarh.

---- Respondent

For applicant	: Shri Rakesh Pandey, Advocate
For Respondent /State	: Shri Ashish Shukla, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

29/01/2016

Challenge in the present revision is to the order dated 17.06.2015 passed by the Special Judge (Atrocities) District Surajpur framing the charge against the accused/applicant under Sections 366, 376(2)(g) IPC and 3(2)(v) of the SC/ST (Prevention of Atrocities Act). Subsequently, on 30.09.2015, the charge has been amended and instead of Section 376(2)(g) charge under Section 376 D has been framed against the accused/applicant.

2. Counsel for the applicant submits that the statement of the prosecutrix has been recorded on 25.07.2015 and from her statement it is apparent that offence under Section 376 D is not made out against the applicant. He submits that as per the prosecution case it is the accused/appellant who first committed the offence and thereafter his friend came and he too committed sexual intercourse with the prosecutrix and thus the question of defining the act as gang rape by two persons does not arise.

3. Opposing the submission of the counsel for the applicant it has been argued by the State counsel that apart from the evidence of the prosecutrix five other witnesses have already been examined and if any interference is made at this stage, the trial would be hampered. He further submits that the

evidence of the prosecutrix cannot be appreciated at this stage and it is for the trial court to decide as to whether the applicant has committed any offence or not.

4. Heard counsel for the parties and perused the material available on record.

5. Considering the FIR, *prima facie* the offence as charged against the applicant is made out. The court statement of the prosecutrix cannot be appreciated at this stage when the trial is yet to be concluded. This apart, the evidence of other witnesses have also been recorded and considering this aspect of the case I am not inclined to entertain this revision. The same has no substance and is accordingly dismissed.

Sd/-
Pritinker Diwaker
Judge