

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1230 of 2016

- A, B, C, the Victim, through : her father Dullu Ram son of Umrao Sahu, aged about 46 years, Occupation Labour, R/o village Pandey Tola, P.S. Chhuriya, District Rajnandgaon (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh, Through : District Magistrate, Rajnandgaon (C.G.)
2. Balram Patel S/o Sukdeo Patel, aged about 24 years, R/o village - Pandeytola, Police Station Chhuria, District Rajnandgaon (C.G.)

---- Respondent

For Applicant	-	Shri Vinod Kumar Sharma,
For Respondent/State	-	Shri Adhiraj Suranal, P.L.
For Respondent No.2	-	None

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board

By Pritinker Diwaker, J.

27/04/2017

Heard on admission.

1. Present CRMP has been filed by the applicant/complainant seeking leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 21.09.2016 passed by Additional Sessions Judge (FTC), Rajnandgaon in Special Sessions Trial No.29/2015 acquitting the accused/respondent No.2 of the charge under Sections 354-A, 376(1), 506 Part-II of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012.

2. Brief facts of the case are that on 07.02.2015 a written report Ex.P/7 was lodged by the applicant/Prosecutrix (PW/4) alleging in it that on 29.01.2015 while she was returning from village shop, the accused/respondent No.2 forcibly took her inside one house, gagged her mouth and after threatening pressed her breast. It has been further alleged that at the relevant time her father reached there, slapped her and took her along with him. Based on this report, FIR (Ex.P/8) was registered against the acquitted accused for the offences under Sections 354-D and 506 of IPC. During investigation, 161 Cr.P.C. statement of the prosecutrix was recorded wherein she has alleged that about one year prior to the date of incident she was subjected to rape by acquitted accused. After filing of the charge sheet, the trial Court has framed the charge against the acquitted accused under Sections 354-A, 376(1) and 506 Part-II of IPC.
3. So as to hold the accused/respondent guilty, the prosecution examined as many as 13 witnesses including that of applicant/prosecutrix. Statement of the accused/respondent No.2 was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent No.2 as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
5. Learned counsel for the applicant submits as under :-
 - (i) that the Court below has erred in law in acquitting

accused/respondent No.2;

(ii) that though there is some delay in lodging the FIR as also making allegation of rape against accused but once the applicant/prosecutrix has made such statement, it is to be believed;

(iii) that as per school registered, the prosecutrix was below 18 years of age;

(iv) that the accused/respondent No.2 has tried to outrage modesty of the applicant/prosecutrix and at-least the offence under Section 354 IPC can be made out against him.

6. We have heard learned counsel for the parties and perused the material available on record.
7. From the evidence available on record, it is apparent that there is 9 days delay in lodging the written report (Ex.P/7), and from the report, it appears that when the father of Prosecutrix saw her in the company of accused/respondent No.2, a report thereof was lodged. As per own saying of the applicant/Prosecutrix (PW/4), when her father reached the place of occurrence, he slapped her and took her along with him. Furthermore, while diving litter dipper in to the contents of first report (Ex.P/7) lodged by the Prosecutrix, there is no allegation of rape. However, in her 161 Cr.P.C. statement she has improved and made allegation of rape against accused/respondent. If such act was done to the prosecutrix, the report thereof could have been lodged by her but she remained silent for a year and for the first time while recording her 161 Cr.P.C. statement such allegation was made, which creates suspicion. That apart, there is no legally

admissible evidence on record showing the prosecutrix to be minor. As per Kotwar report, she was above 18 years of age. Considering all these aspects of the case, the trial Court has arrived at a conclusion that the accused/respondent No.2 cannot be convicted for any offence and thus acquitted the accused. The view taken by the trial Court appears to be justified and one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the Court should not disturb the finding of acquittal recorded by the trial Court. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

8. Accordingly, the CRMP preferred by the applicant/prosecutrix is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(R.C.S. Samant)
JUDGE