

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 433 of 2017

- State of Chhattisgarh Through : District Magistrate Surguja (C.G.)

---- Applicant

Versus

- Chandrashekhar Kerketta S/o Vakshraj Kerketta, aged about 24 years, R/o Panpapur, Gajar Bhawna, Police Station Darima, District Surguja (C.G.)

---- Respondent

For Applicant/State	-	Shri Vivek Sharma, G.A.
For Respondent	-	None

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

Judgment On Board

By Pritinker Diwaker, J.

10/05/2017

Heard on admission.

1. Present CRMP has been filed by the State seeking leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 28.12.2016 passed by Additional Sessions Judge (FTC), Surguja in Sessions Trial No.362/2012 acquitting the accused/respondent of the charge under Sections 450, 506-B and 376 (1) of IPC.
2. Brief facts of the case are that on 25.05.2012 a written report Ex.P/12-A was lodged by Rangwati (PW/5) - mother of the prosecutrix alleging in it that on 26.10.2011 when the prosecutrix was sleeping inside her house at night, the accused/respondent entered the house and committed rape upon her. It has been

further alleged that on account of act of the accused/respondent, the prosecutrix conceived and when she had gone to lodge the report, the same was not recorded and, therefore, she is making written report. Based on this, FIR (Ex.P/13) was registered against the accused/respondent on 11.06.2012 under Sections 376 and 506 IPC. Prosecutrix was medically examined on 12.06.2012 by Dr. (Mrs.) Manorama Minj (PW/1) and gave her report Ex.P/1 opining that the prosecutrix was carrying pregnancy of about 7-8 months, and as per ultra sonography report (Ex.P/14), the prosecutrix was pregnant. After filing of the charge sheet, the trial Court has framed the charge against the acquitted accused under Sections 450, 506-B and 376(1) of IPC.

3. So as to hold the accused/respondent guilty, the prosecution examined as many as 10 witnesses including that of prosecutrix. Statement of the accused/respondent 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 as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
5. Learned counsel for the State/applicant submits :-
 - (i) That on the date of commission of offence the prosecutrix was minor and, therefore, the Court below ought not to have acquitted the respondent on the ground of delay in lodging the report.

(ii) As the prosecutrix was minor, therefore, the question of her consent does not arise.

(iii) That the prosecutrix was firm in the Court and considering her statement, the acquittal of respondent is not proper.

5. We have heard learned State counsel and perused the material available on record.
6. From the documentary evidence adduced by the prosecution, it is apparent that on the date of commission of offence the age of prosecutrix was 16 years and 3 months and thus she was major. Further, record goes to show that there is inordinate delay of about 7-8 months in lodging the FIR and the FIR has been lodged only after when the prosecutrix became pregnant and the said delay has not been explained in accordance with law. Another most important feature of the case is that when the prosecutrix was subjected to physical relation by the accused/respondent, there were other family members sleeping inside the said room. Considering all these aspects of the case, the trial Court has arrived at a conclusion that the accused/respondent cannot be convicted for any offence and thus acquitted him. 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.

7. Accordingly, the CRMP preferred by the State/applicant 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