

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 792 of 2017

(Arising out of judgment/order dated 06.12.2016 in Case No. 591/2014 of
the learned Additional Sessions Judge, (FTC) Raigarh)

State Of Chhattisgarh Through The Police Station Kotwali, District Raigarh,
Chhattisgarh **---- Applicant**

Versus

Gaurav Agrawal, S/o. Poonamchand Agrawal, Aged About 25 Years R/o
Gandhi Ganj, Near Kali Mandir, Raigarh, Police Station Kotwali, District
Raigarh, Chhattisgarh **---- Respondent**

For the Applicant :- Mr. Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board By Pritinker Diwaker, J.

09/10/2017

Heard on I.A. No. 1 of 2017, application for condonation of delay in
filing the present petition.

2. For the reasons mentioned in the application, the same is allowed.
Delay in filing the petition is condoned.

3. Heard on admission.

4. 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 06.12.2016 passed by Additional Sessions
Judge, (FTC) Raigarh District Raigarh, in Sessions Case No. 591 of

2014 acquitting the accused/respondent of the offence under Sections 376 and 506-Part II of the IPC.

5. As per prosecution case, the prosecutrix (PW-5) a widow lady, aged 34 years, lodged a written report (Ex.P-1) on 26.12.2013 alleging in it that she was being subjected to physical relations by the accused/respondent since December, 2010, however, the respondent has refused to marry her. Based on the written report, First Information Report (Ex.P-2) was registered against the respondent under Sections 376 and 506-Part II of the IPC. Accordingly, charges were framed by the trial Court.

6. So as to hold the respondent guilty, prosecution has examined as many as 12 witnesses. Statement of the accused/respondent was recorded under Section 313 of Cr.P.C. in which he pleaded innocence and false implication in the crime in question.

7. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent of all the offences holding that there is delay in lodging the FIR and the prosecutrix was a consenting party.

8. Counsel for the applicant submits that the impugned judgment is not in accordance with law and the trial Court has erred in law in not appreciating the evidence adduced by the prosecution in proper perspective. He further submits that the trial Court should have relied upon the statement of the prosecutrix and ought to have convicted the respondent.

9. We have heard learned counsel for the parties and perused the material available on record.

10. From perusal of the record, it is apparent that there is inordinate delay in lodging the FIR. As per prosecutrix for the first time, in the year December, 2010, she was subjected to physical relation by the respondent and, thereafter, the respondent continued to have such relation with her. The Court statement of the prosecutrix appeared to be improved one and there are contradictions and omissions in her statement as well. Considering the inordinate delay in lodging the FIR (Ex.P-2) and the evidence of the prosecutrix and other witnesses it has been held by the trial Court that the prosecutrix was a consenting party and the offence under Section 376 of the IPC is not made out against the respondent.

11. Thus, after hearing learned counsel for the applicant and considering the material available on record as well as the judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the Court below taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondent/ accused of the charges under Sections 376 and 506 Part II of the Indian Penal Code is just and proper and does not call for any interference.

12. Accordingly, the leave as sought for by the applicant/State for registration of appeal against the judgment of acquittal is hereby refused and it is hereby dismissed as such at the admission stage itself.

Sd/
(Pritinker Diwaker)
JUDGE

Sd/
(Ram Prasanna Sharma)
JUDGE