

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 743 of 2017

Jashowanti Sahu Wd/o Late Yudhishhthir, Aged About 40 Years
R/o Ayodhya Nagar, Mahasamund, Police Station
Mahasamund, Civil & Revenue District Mahasamund,
Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through Police Station Mahasamund, Civil & Revenue District Mahasamund, Chhattisgarh.
- Khemu @ Khemrao Banjari, S/o Raghav Rao Banjari, Aged About 54 Years R/o Near Railway Station, Mahasamund, Police Station Mahasamund, Civil & Revenue District Mahasamund, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Manoj Paranjape and Shri Anurag Singh, Advocates
For Respondent No.1/State	: Smt. Madhu Nisha Singh, P.L.
For Respondent No.2	: None present

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

Order On Board

Per P.Diwaker, J.

10/07/2017

This petition filed under Section 378(3) of the Code of Criminal Procedure assailing the impugned judgment and order dated 26.3.15 passed by the Additional Sessions Judge (FTC) Mahasamund in S.T. No. 5/2015 whereby the court below has acquitted the respondent No.2 of the offence under Section 376 IPC.

2. Brief facts of the case are that on 1.11.2014 FIR (Ex.P-2) was lodged by the prosecutrix (PW-1) a widow, aged about 40 years

alleging that during summer season, in the year 2011, accused/respondent came to her house on the pretext of taking the measurement of water pipeline and committed rape on her. She has alleged that after the incident, accused assured her that he will perform marriage. According to the prosecutrix she was subjected to physical relation by the accused for about 4 years but when he refused to marry her the report was lodged by her. After framing of the charge in relation to the above offence, prosecution has examined six witnesses. Statement of the accused/respondent was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case.

3. By the impugned judgment, the trial Judge has acquitted the accused/respondent mainly on the ground of delay in lodging the FIR.

4. Counsel for the petitioner/complainant submits that as the accused has assured her for marriage she kept quiet for four years and had not lodged the report. Once there was promise of marriage, the delay in lodging the FIR is insignificant and the moment the accused had refused to marry the prosecutrix, she had right to lodge the FIR and his conviction can not be rejected only on the ground of delay of FIR. He placed reliance upon various judgments of the Apex Court in the matter of **Mohd. Ali @ Guddu Vs. State of U.P.** reported in **(2015) 7 SCC 272**, in the matter of **Gangabhavani Vs. Rayapati Venkat Reddy and Others** reported in **(2013) 15 SCC 298** and in the matter of **Karthi @ Karthick Vs. State represented by Inspector of Police, Tamil Nadu** reported in **(2013) 12 SCC 710**.

5. On the other hand, State counsel has duly assisted this Court.

6. Prosecutrix (PW-1) in her court statement has stated that she had

made an application before the Municipal Corporation seeking water pipeline connection and during summer season in the year 2011 accused came to her house for measurement of the said pipe line and asked for Rs. 5,000/-, when she went inside the room to bring the amount so demanded from the almirah, accused also entered inside the room and forcibly committed rape on her. She has stated that the respondent No.2/accused told her that he had lost his wife and further threatened her of dire consequence. She has stated that on account of fear she did not lodge any report. She has stated that on the next day also accused came to her house and developed physical relation with her on the promise of marriage. She has stated that for about four years her relation with the respondent/accused continued and he also took Rs. 2,50,000/- from her by saying that he would return the same after taking loan and when she demanded back the same he used to quarrel with her. She has stated that from July 2014 respondent/accused stopped coming to her house and therefore she lodged the report. Considering the statement of the prosecutrix, it is quite apparent that she was a consenting party. Further considering the fact that there was inordinate delay in lodging the FIR, the trial court has come to the conclusion that the offence under Section 376 IPC as alleged by the prosecutrix is not made out against the respondent.

7. Thus after hearing counsel for the parties and considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal/revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate/revisional 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 offence under 376 IPC is just and proper and does not call for any interference. Accordingly, the leave as sought for by the petitioner for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge