

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 862 of 2017

- State Of Chhattisgarh Through Police Station Sitapur, District Surguja, Chhattisgarh.

---- Petitioner

Versus

- Dugan @ Abhimanyu S/o Fuleshwar Ram, Aged About 24 Years R/o Village Barodih, Police Station Sitapur, District Surguja, Chhattisgarh.

---- Respondent

For Petitioner/State	:	Shri Vivek Sharma, G.A.
For Respondent	:	None present

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

Order on Board by Pritinker Diwaker, J.

10/10/2017

Heard on I.A. No.01, application for condonation of delay in filing the present petition.

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

Also heard on admission.

This petition filed under Section 378(3) of the Code of Criminal Procedure assailing the impugned judgment and order dated 23.02.17 passed by the Additional Sessions Judge (FTC) Surguja (Ambikapur) in S.T. No. 65/2014 whereby the court below has acquitted the respondent of the offence under Sections 450 & 376 IPC.

2. As per prosecution case on 26.03.14 prosecutrix (PW-1), a married lady aged about 26 years, was subjected to rape by the respondent in her house. Written report Ex.P-1 was lodged by the prosecutrix on 13.4.14 based on which FIR Ex.P-2 was registered against the respondent under Sections 450 and 376 IPC. After framing of the charge in relation to the above offence, prosecution has examined eight 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 of the offence as mentioned above.

4. Counsel for the petitioner/State submits that

i) the trial court has erred in law in disbelieving the statement of the prosecutrix (PW-1).

ii) though there is some delay in lodging the FIR but considering the fact that husband of the prosecutrix was not at home she could not lodge the report.

5. Heard counsel for the parties and perused the record.

6. As per prosecutrix (PW-1), on 26.3.14 she was subjected to rape when she was alone in her house. Statement of the prosecutrix reveals that she did not make any efforts to come out from the clutches of the respondent/accused. Written report has been lodged after about 17 days i.e. on 13.4.14 and no probable explanation has been offered by the prosecutrix in the said written report except saying that her husband was not at home. According to the prosecutrix her husband returned on 07.4.14 but yet no report was lodged and it was lodged only after the

panchayat meeting was convened. Prosecutrix has admitted the fact that on the report lodged by the wife of the respondent/accused a case was registered against her husband and the said case is still pending. Considering the statement of the prosecutrix, it is apparent that she was a consenting party. Further considering the fact that there was inordinate delay in lodging the FIR and that wife of the respondent had earlier lodged a report against the husband of the prosecutrix, the court below has arrived to a conclusion that the offence under Sections 450 and 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 Sections 450 & 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