

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 896 of 2017

(Arising out of judgment/order dated 17.03.2017 in Case No. 89/2014 of
the learned First Additional Sessions Judge, Sakti)

State Of Chhattisgarh Through- District Magistrate, District- Janjgir-
Champa, (Chhattisgarh).

---- Applicant

Versus

Mahendrapal Banjare S/o Heeraram Banjare, Aged About 38 Years R/o
Village Birra, Police Station Birra, District- Janjgri Champa, Chhattisgarh.

---- Respondent

For the Applicant	:- Mr. Adhiraj Surana, Dy. Govt. Advocate
For the Respondent	:- None

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

Order On Board By Pritinker Diwaker, J.

12/09/2017

1. Heard on I.A.No. 1 of 2017, application for condonation of delay in filing the appeal.
2. For the reasons mentioned in the application, the same is allowed. Delay in filing the appeal 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 17.03.2017 passed by First Additional Sessions Judge, Sakti in Sessions Trial No. 89/2014 acquitting the accused/respondent of the offence under Sections 450, 506-B and 376 (1) of IPC.

5. As per prosecution case on the basis of undated written report, unnumbered FIR (Ex.P-5) dated 12.06.2014 and thereafter numbered FIR Ex.P-14, dated 13.06.2014 was registered against the respondent under sections 376 and 506 Part-II of the IPC. It has been alleged by the prosecutrix that on 18.04.2014 she was subjected to physical relation by the respondent in her house, thereafter the accused/respondent repeated the same till 05.06.2014. After filing of the charge sheet, the trial Court has framed the charge against the respondent under Sections 450, 506 B, 376(1) of the IPC.

6. So as to hold the respondent guilty, the prosecution examined 10 witnesses in all. Statements of the respondent was also recorded under Section 313 of Cr.P.C. in which he denied and pleaded innocence and false implication.

7. 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.

8. Counsel for the State/appellant submits that the impugned judgment is not in accordance with law as the trial Court has not relied upon the statement of the prosecutrix and acquitted the respondent. He submits though there is some delay in lodging the FIR but considering the statement of the prosecutrix, such delay is required to be ignored.

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

10. From the record, it is apparent that there is inordinate delay of about seven days in lodging the FIR and the prosecutrix has failed to offer any explanation regarding the delay in lodging the FIR. Taking into

consideration the statement of the prosecutrix, and the material brought on record by the prosecution, the trial Court has arrived at a conclusion that the accused/respondent cannot be convicted for any offence.

11. After due appreciation of the evidence available on record, the trial Court has acquitted the accused/respondent and the view taken by the trial Court is one of the possible views. The prosecution thus utterly failed in prove 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 is 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, also comes to the rescue of the respondent/accused bolstering the presumption that he is innocent.

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

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE