

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1227 of 2017

- State of Chhattisgarh Through : Police Station - Pakhanjur, District Kanker (C.G.)

---- Applicant

Versus

1. Maniram Hidko, S/o Shri Sukaluram, aged about 25 years, R/o village Murjhar, Police Station - Pakhanjur, District - Kanker (C.G.)
2. Raju Vishwas, S/o Shri Sushen Vishwas, aged about - 18 years, R/o village P.V. 16, Police Station - Pakhanjur, District Kanker (C.G.)
3. Pinku Vishwas, S/o Shri Updesh Vishwas, aged about 20 years, R/o village P.V. 16, Police Station - Pakhanjur, District Kanker (C.G.)

---- Respondents

For Applicant/State	-	Shri Sangharsha Pandey, Dy. G.A.
For Respondents	-	None

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board

By Pritinker Diwaker, J.

23/10/2017

1. Heard on I.A.No.01/2017, application for condonation of delay in filing the Cr.M.P.
2. For the reasons mentioned in the application, the same is allowed and delay in filing the Cr.M.P. is condoned.
3. Also 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 30.03.2017 passed

by Special Judge (Atrocities), North Bastar Kanker in Special Case No.18/2014 acquitting the accused/respondents of the charges under Sections 506 (Part-II), 342/34, 450, 458/34, 376 (2) (D) (on two counts), 376 (2) (I) of IPC, Sections 3 (I)(XII) /34, 3 (II)(V)/34 of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 6/34 of Protection of Children from Sexual Offences Act, 2012.

5. Brief facts of the case are that on 09.05.2013 at about 12 in midnight, respondents/accused have committed rape upon PW/5-minor girl and PW/6, mother of PW/5. Based on a report lodged by PW/5, FIR (Ex.P/7) was registered against respondent No.1 and others under Sections 376(2)(g)/34 of IPC. Prosecutrix (PW/5) and (PW/6) were medically examined on 28.05.2013 by Dr. (Mrs.) Nisha Navratan (PW/11) who gave her report (Ex.P/9 and P/17) respectively opining that sexual intercourse might have been done and exact opinion can be given after chemical examination. After filing of the charge sheet, the trial Court framed the charges against them under Sections 506 (Part-II), 342/34, 450, 458/34, 376(2) (D) (on two counts), 376 (2)(I) of IPC, Sections 3 (I) (XII)/34, 3 (II) (V)/34 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 6/34 of Protection of Children from Sexual Offences Act, 2012.
6. So as to hold the respondents/accused guilty, the prosecution examined as many as 16 witnesses including that of prosecutrix. Statements of the accused/respondents were also recorded under Section 313 of Cr.P.C. in which they denied the

circumstances appearing against them in the prosecution case, 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/respondents as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
8. Learned counsel for the State/applicant submits :-
 - (i) That the trial Court has erred in law in acquitting respondents/accused on the flimsy ground.
 - (ii) The trial Court has acquitted the respondents/accused of the offences mainly on the ground that Prosecutrix (PW/5 and PW/6) have not supported the prosecution case and have stated that as it was dark in the night, they could not see the faces of accused persons.
 - (iii) That Prosecutrix (PW/5) is a minor girl and if at some point of time she has not supported the prosecution case, the said fact is required to be ignored. It has been argued that both the prosecutrix are rustic villagers and minor contradictions in their statements are to be ignored.
9. We have heard learned State counsel and perused the material available on record.
10. From the evidence adduced by the prosecution, it is apparent that both the prosecutrix (PW/5 and PW/6) have categorically stated that as it was dark in the night and the accused persons had covered their faces, they could not see them properly. Present is a case where no test identification parade has been conducted by the prosecution to bring home the guilt of the

respondents/accused and once both the prosecutrix have failed to identify the accused persons in the Court, the evidentiary value of the statements of the prosecutrix becomes doubtful. Considering all these aspects of the case, the trial Court has arrived at a conclusion that the respondents/accused cannot be convicted for any offence and thus acquitted them. 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 appellate 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.

- 11 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/-

(Arvind Singh Chandel)
JUDGE