

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.55 of 2018**

Dharmendra Pankaj, age 21 years, S/o Manharan Pankaj, R/o Village Bhurkunda, Chauki Pachpedi, P.S. and Tahsil Masturi, District Bilaspur, Chhattisgarh

---- **Applicant**

versus

State of Chhattisgarh through S.H.O. P.S. Masturi, District and Revenue District Bilaspur, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri Raj Kumar Gupta, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

12.1.2018

1. The instant revision is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the matter is heard finally at the motion stage itself.
2. The revision arises out of the order dated 15.12.2017 passed by 3rd Additional Sessions Judge, Bilaspur in Special Case No.533 of 2016 rejecting the application under Section 311 of the Code of Criminal Procedure preferred by the accused/Applicant.
3. Facts of the case, in brief, are that Dashodabai (PW3), mother of the prosecutrix lodged a missing report regarding missing of her daughter (the prosecutrix) aged about 16 years on 3.9.2016. It is alleged that the accused/Applicant had taken the prosecutrix away from her lawful possession of her parents and committed rape with the prosecutrix. A charge-sheet under Sections 363, 366, 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act was filed against the accused/Applicant and charges were framed against him. The prosecutrix (PW2), her mother Dashodabai (PW3) and her father Sonsai (PW4) were

examined before the Trial Court. After the statements of above witnesses were recorded in the Court, both the parties convened a social meeting in their community and arrived at a compromise that since both the parties belong to a same caste and both the prosecutrix and the Applicant are unmarried, marriage of the Applicant with the prosecutrix will be performed. Thereafter, the accused/Applicant moved an application under Section 311 of the Code of Criminal Procedure before the Trial Court for recalling the witnesses, i.e., the prosecutrix (PW2), Dashodabai (PW3) and Sonsai (PW4) in the Court. The said application of the Applicant has been rejected by the impugned order. Hence, this revision.

4. Learned Counsel appearing for the Applicant argued that a compromise has already taken place between the parties. During the earlier cross-examination of the prosecutrix (PW2), Dashodabai (PW3) and Sonsai (PW4), questions regarding the material things like date of birth of the prosecutrix, her age and her birth certificate could not be put to the said prosecution witnesses by the Counsel for the accused/Applicant due to lack of knowledge on facts. It is further argued that these facts are essential for fair trial and justice in the case. It is further argued that the Trial Court should appreciate that there is a compromise between both the parties and the Applicant and his family members are ready to perform marriage of the Applicant with the prosecutrix and in special circumstances the witnesses can be recalled in the Court for examination.
5. Per contra, Learned Counsel appearing for the State supported the impugned order and submitted that a sufficient opportunity was afforded to the accused/Applicant for making cross-examination of

the prosecution witnesses and they have already been cross-examined in detail on behalf of the accused/Applicant regarding the incident and the age of the prosecutrix.

6. I have heard Learned Counsel appearing for the parties and perused the material available on the record of the instant criminal revision.
7. From perusal of the statements of the prosecutrix (PW2), Dashodabai (PW3) and Sonsai (PW4), it reveals that regarding the incident and the age of the prosecutrix, they have been cross-examined in detail on behalf of the accused/Applicant. This establishes that a sufficient and proper opportunity was afforded to the accused/Applicant for cross-examination of the prosecution witnesses. Merely because the parties have arrived at a compromise out of the Court, it would not be appropriate and necessary to allow the accused/Applicant to recall the prosecution witnesses for their further cross-examination. The Learned Trial Judge has rightly rejected the subject application of the Applicant. No ground is seen to interfere with the impugned order.
8. Consequently, the revision is dismissed at the admission stage itself.
9. A copy of this order be sent to the Trial Court forthwith for information.

Sd/-
(Arvind Singh Chandel)
Judge