

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 317 of 2018**

- Lalita Bai, W/o Rajendra Kumar Kashyap, Aged About 22 Years, R/o Salkhan, Police Station Shivrinarayan, District: Janjgir-Champa, Chhattisgarh. ----- **Petitioner**

Versus

1. State Of Chhattisgarh, Through Station House Officer, Police Station Shivrinarayan, District: Janjgir-Champa, Chhattisgarh.
2. Jay Kishan Kashyap, S/o Santosh Kumar Kashyap, Aged About 23 Years, R/o Salkhan, Police Station Shivrinarayan, District: Janjgir-Champa, Chhattisgarh. ----- **Respondents**

For Petitioner	: Shri Dharmesh Shrivastava, Advocate
For State/Respondent No.1	: Shri Vaibhav A Goverdhan, P.L.

Hon'ble Shri Pritinker Diwaker and
Hon'ble Shri Sanjay Agrawal, J.J.

Order On Board**05.04.2018****Per Pritinker Diwaker, J.**

1. The present petition has been filed under Section 378(4) of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C.'), seeking leave to appeal, against the judgment and order dated 23.11.2017 acquitting respondent No.2.
2. By the impugned judgment dated 23.11.2017 passed in Sessions Trial No.178/2015 by Additional Sessions Judge (FTC) Janjgir-Champa (C.G.), respondent No.2/accused Jay Kishan Kashyap has been acquitted of the offence under Section 376 (2) (n) and 506 Part-II of IPC giving him benefit of doubt.

3. As per prosecution case, on 04.08.2015 a written report (Ex.P7) was lodged by the prosecutrix (PW8) alleging in it that since December 2014, she is being subjected to physical relation by respondent No.2 on the pretext of marriage. She has further stated that she got married with one Rajendra Kumar Kashyap on 07.05.2015 and also gave birth to a child on 23.07.2015 alleging that the said child was in fact of respondent No.2.

4. So as to hold respondent No.2 guilty, the prosecution has examined as many as 18 witnesses. Statement of respondent No.2 was recorded under Section 313 Cr.P.C., in which, he denied all the circumstances appearing against him and pleaded innocence and false implication.

5. By the impugned judgment, the trial Court acquitted respondent No.2 mainly on the ground that the prosecutrix (PW8) was major, was a consenting party and there was inordinate delay in lodging the FIR.

6. We have heard learned counsel for the State and perused the record carefully.

7. Undisputedly, there is inordinate delay of more than 7 months in lodging the FIR. As per the prosecutrix (PW8), she was subjected to physical relation by respondent No.2 since December, 2014 whereas, written report has been lodged on 04.08.2015, that too, after giving birth to a child. Further it is relevant to note that though the prosecutrix (PW8) and respondent No.2 were having relations but the prosecutrix got married with

one Rajendra Kumar Kashyap and it appears that as she delivered the child which she was carrying from respondent No.2, she had lodged the report. The statement of prosecutrix does not appear to be trustworthy and does not inspire confidence of this Court as the delay of more than 7 months in lodging the FIR has not been explained properly by the prosecutrix as per requirement of law.

8. After 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 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 Court taking the other possible view into consideration, is not permissible in law, this Court is of the opinion that the judgment impugned acquitting the respondent No.2/accused of the offence under Section 376 (2) (n) and 506 Part-II of 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 at the admission stage.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge