

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 309 OF 2018

State Of Chhattisgarh Through- Station House Officer, Police
Station Salhewara, District- Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

Hukumchand Patel S/o Narendra Patel Aged About 20 Years
R/o- Village Khadi, Police Station Salhewara, District-
Rajnandgaon, Chhattisgarh.

---- Respondent

For State/Petitioner : Shri Vivek Sharma, Govt. Advocate.

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

Order On Board

07/05/2018

Per Pritinker Diwaker, J.

1. Heard on I. A. No. 01/2018, an application for condonation of delay in filing this petition.
2. For the reasons mentioned in the application, the same is allowed and the delay in filing this petition is hereby condoned.
3. Also heard on admission.
4. The present petition has been filed under Section 378(3) of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C.'), seeking leave to appeal, against the judgment dated 25/10/2017 whereby the respondent/accused has been acquitted.

5. By the impugned judgment dated 25/10/2017 passed in Special Sessions Trial No. 12/2015 by the Additional Sessions Judge, Khairagarh, District Rajnandgaon (C.G.), the respondent/accused has been acquitted of the charges under Sections 363, 366, 376 (2)(j)(n) of the Indian Penal Code (for short 'IPC') and in violation of Section 5(३), under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').
6. Brief facts of the case are that on 24/05/2015 First Information Report (Ex. P-3) was lodged by Bajarū Patel (PW-9) father of the prosecutrix (PW-10) alleging in it that since 19/05/2015, his daughter (PW-10) was missing. He has also alleged that the respondent/accused, a local resident, was also missing from the village since 19/05/2015. Based on this First Information Report, offence punishable under Section 363 of the IPC was registered against an unknown person.
7. The prosecutrix (PW-10) was produced before the Police Station by one Kishan Patel on 06/06/2015 and based upon her statement and medical report, the respondent/accused was prosecuted under Section 376 of the IPC also for committing rape with the prosecutrix. The trial Court has also framed the charges against the respondent/accused under Sections 363, 366, 376 (2)(j)(n) of the IPC and in violation of under Section 5(३), under Section 6 of the POCSO Act.
8. So as to hold the respondent/accused guilty, the prosecution has examined as many as 15 witnesses. Statement of the respondent/accused was recorded under Section 313 Cr.P.C., in

which he denied all the circumstances appearing against him and pleaded innocence and false implication.

9. By the impugned judgment, the trial Court has acquitted the respondent/accused of the aforesaid charges mainly on the ground that the prosecutrix (PW-10) has not supported the case of the prosecution and has turned hostile.
10. Learned counsel for the State/petitioner submits that the trial Court has erred in law in acquitting the respondent/accused.
11. We have heard learned counsel appearing for the State/petitioner and perused the record carefully.
12. The prosecutrix (PW-10) has not supported the case of the prosecution and has turned hostile. She has stated that after being scolded by her maternal grandmother she left the house, but her maternal grandfather had lodged the report. She has not stated anything even in respect of her age. The prosecution to prove the age of the prosecutrix (PW-10), has examined Sunita Choure (PW-1), but the said witness is not the author making entry in the relevant document.
13. Considering the evidence available on record, in particular, the statement of the prosecutrix (PW-10) and the evidence in respect of her age, the trial Court has come to the conclusion that the prosecutrix (PW-10) was not recovered from the custody of respondent/accused; rather, she has been recovered from the custody of one Kishan Patel vide *Panchanama* (Ex.P.-9) and that the respondent/accused was not found to take her away on the pretext of marriage nor did he subject her to sexual

intercourse, the trial Court has acquitted the respondent/accused of the charges levelled against him.

14. After considering the material available on record as well as the elaborate judgment impugned passed by the trial Court 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, in the considered opinion of this Court reversion of the findings of acquittal would not be permissible in law. Accordingly, the judgment impugned acquitting the accused/respondent of the charges under Sections 363, 366, 376 (2)(j)(n) of the IPC and in violation of under Section 5(२), under Section 6 of the POCSO Act is just and proper and does not call for any interference in this petition.
15. Accordingly, the leave as sought for by the State/petitioner for registration of appeal against the judgment of acquittal is hereby refused.
16. Petition is accordingly dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge