

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1429 of 2017**

- Phuleshwari Suryavanshi D/o Melu Ram Suryavanshi Aged About 25 Years R/o Bhawreli Bhatapara, Police Station Saragaon, District Janjgir Champa, Chhattisgarh, ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Police Of Police Station Saragaon, District Janjgir Champa, Chhattisgarh,
2. Basant Suryavanshi S/o Bisahu Suryavanshi Aged About 27 Years R/o Mohgaon, Police Station Saragaon, District Janjgir Champa Chhattisgarh. ---- **Respondents**

For Petitioner :	Shri Govind Dewangan, Advocate
For State/respondent No.1:	Shri Ravindra Agrawal, Govt. Advocate.

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

Order On Board**23/04/2018****Per Pritinker Diwaker, J.**

1. This petition, seeking leave to appeal, has been filed under Section 378(3) Cr.P.C. to assail the impugned judgment and order dated 19.01.2017 passed by the Additional Sessions Judge (F.T.C.), Janjgir, Dist. Janjgir-Champa in S.T.No.102/2015 whereby the Court has acquitted the respondent under Section 376 IPC giving him benefit of doubt.
2. As per prosecution case, on 01.04.2015, F.I.R. (Ex.P.1) was lodged by the prosecutrix (P.W.1), aged about 23 years, alleging in it that since last 7 years she was having an affair with the accused/respondent and on several occasions, she had physical relations with him. She has further alleged that as the accused has refused to marry her she lodged the report.

3. Based on this F.I.R., charge under Section 376 IPC was registered against the respondent/accused by the trial Court.
4. So as to hold the accused/respondent guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/respondent 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 Judge has acquitted the accused/respondent mainly on the ground that there was inordinate delay in lodging the F.I.R. and the said delay has not been properly explained by the prosecutrix and also keeping in view the over all conduct of the prosecutrix.
6. Counsel for the petitioner submits that once the allegations of rape have been levelled by the prosecutrix against the respondent/accused on the false pretext of marriage, the Court below ought to have convicted the accused/respondent irrespective of the fact that there was delay in lodging the F.I.R.
7. We have heard learned counsel for the parties and perused the record.
8. During the course of trial also, prosecutrix (P.W.1) has stated that she was subjected to physical relations by the accused/respondent and that when he refused to marry her, she lodged the report. This apart, there is inordinate delay in lodging the F.I.R. by the prosecutrix. The alleged incident was of 2012 whereas report was lodged in the year 2015 and the said delay has not been explained by the prosecutrix, as per requirement of law. The Court below has recorded a finding that from the

evidence of the prosecutrix, it is apparent that she was aware of the fact that her marriage with the accused is not possible without consent of their family members; she is an educated girl and as such mature enough to distinguish between the right and wrong things, and therefore, appears to be a consenting party. We find no illegality in the judgment impugned and the same appears to be based on proper appreciation of the overall evidence on record.

9. 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 view that the judgment impugned acquitting the respondent/accused of the offence under Section 376 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.
10. Petition is accordingly dismissed at the admission stage itself.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge