

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 335 OF 2018**

State of Chhattisgarh Through Police Station Janjgir District Janjgir-Champa Chhattisgarh.

---- Petitioner**Versus**

Ramshankar Rathore S/o Shri Shyamlal Rathore, Aged About 27 Years, R/o Village Sukli, Police Station Janjgir District Janjgir-Champa Chhattisgarh.

---- Respondent

For State/Petitioner : Shri Ravindra Agrawal, Govt. Advocate.

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

Order On Board**12/04/2018****Per Pritinker Diwaker, J.**

1. Heard on I.A. No. 01/2018, an application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed. Delay in filing the 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 07/10/2017, acquitting the respondent.

5. By the impugned judgment dated 07/10/2017 passed in Sessions Trial No. 33/2017 by the Additional Sessions Judge (F.T.C.) Janjgir, District Janjgir-Champa (C.G.), the respondent/accused Ramshankar Rathore has been acquitted of the offence punishable under Section 376 of the Indian Penal Code (for short 'IPC'), giving him benefit of doubt.
6. As per prosecution case, on 13/11/2016, First Information Report (Ex. P-1) was lodged by the prosecutrix alleging in it that she had affair with the respondent and on the pretext of marriage, the respondent committed sexual intercourse with her. She has alleged that on several occasions, the respondent had committed sexual intercourse with her.
7. Based on this First Information Report, offence punishable under Section 376 IPC was registered against the respondent.
8. On the basis of the diary statement of the prosecutrix, investigation was done and charge-sheet was filed against the respondent. The trial Court framed the charge against the respondent under Section 376 IPC.
9. So as to hold the respondent guilty, the prosecution has examined as many as five 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.

10. By the impugned judgment, the trial Court acquitted the respondent of the aforesaid offence.
11. Learned counsel for the State/petitioner submits that the trial Court has erred in law in acquitting the respondent by ignoring the First Information Report, diary statement as well as evidence of the prosecutrix.
12. We have heard learned counsel appearing for the State/petitioner and perused the record carefully.
13. During trial, the prosecutrix (PW-1), aged 20 years, has turned hostile and has stated that she was never subjected to physical relation by the respondent. She has further stated that she never had any affair with the respondent. Even the medical report of the prosecutrix does not support the prosecution case.
14. Considering all the aspects of the case as well as the statement of the prosecutrix (PW-1), the trial Court acquitted the respondent mainly on the ground that the prosecution has utterly failed to prove that the respondent had committed sexual intercourse with the prosecutrix against her will, giving him benefit of doubt.
15. After going through the evidence, we are of the view that after due appreciation of the evidence, the trial Court was justified in acquitting the accused/respondent.
16. 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, 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 accused/respondent of the offence punishable under Section 376 IPC is just and proper and does not call for any interference. Accordingly, the leave as sought for by the State/petitioner for registration of an appeal against the judgment of acquittal is hereby refused.

17. Petition is accordingly dismissed at the admission stage.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge