

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1161 of 2017

- Kiran D/o Late Nonelal, Aged About 42 Years R/o Katni, District Katni Madhya Pradesh. (Name And Address As Per PW. 8 The Prosecutrix)

---- Petitioner

Versus

- State Of Chhattisgarh Through The Police Station Chirmiri, Civil & Revenue District Koriya Chhattisgarh.
- Ashok Malik, S/o Adhina Malik, Aged About 32 Years R/o Godripara, Police Station Chirmiri, Civil & Revenue District Koriya Chhattisgarh.

---- Respondents

For Petitioner	: Shri Puneet Ruparel, Advocate
For Respondent No.1/State	: Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Order On Board By Pritinker Diwaker, J.

09/01/2018

Present petition filed under Section 378(3) Cr.P.C. has been filed to assail the impugned judgment and order dated 27.05.2017 passed by the First Additional Sessions Judge, Manendragarh, district Koriya in S.T. No. 10/2012 whereby the court below has acquitted the respondent No.2 of the offence under Sections 376 and 506 IPC.

2. As per prosecution case, on 07.09.2010 the prosecutrix was subjected to forcible sexual intercourse by the accused/respondent No.2. Report of the incident has been lodged on 04.05.11 i.e. after about 8 months of the incident. While framing the charge, trial judge has framed charge against the accused/respondent No.2 under Sections 376 & 506 IPC.

3. In relation to the above offence, prosecution has examined 9 witnesses. Statement of the accused/respondent No.2 was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case.

4. By the impugned judgment, the trial Judge has acquitted the accused/respondent No.2 mainly on the ground that there was inordinate delay of about eight months in lodging the FIR and the said delay has not been explained by the prosecutrix. The trial court has also considered the fact that earlier also the prosecutrix has filed a complaint case against the accused/respondent No.2 alleging that in the year 2004 also she was subjected to forcible sexual intercourse by the accused/respondent No.2.

5. Counsel for the prosecutrix submits that once the allegations have been levelled by the prosecutrix about she being subjected to forcible sexual intercourse by the appellant, the court below was obliged to convict the accused/respondent No.2 irrespective of the fact that there was delay in lodging the FIR. It has been argued that the delay in lodging the FIR was due to the threat extended by the accused and thus the prosecutrix was justified in explaining the delay. He further argues that the trial court has erred in law in not considering the previous act of the accused/respondent No.2. He submits that earlier the matter was compromised.

6. We have heard counsel for the parties and perused the record.

7. Undisputedly there is inordinate delay of about 8 months in lodging the FIR and the said delay has not been explained by the prosecutrix as per requirement of the law. Further statement of the prosecutrix does not appear to be trustworthy and it does not inspire confidence of this court. Moreover earlier also the prosecutrix had made an attempt to implicate the accused but subsequently the said case was compromised.

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 view that the judgment impugned acquitting the respondent No.2 /accused of the offence under Sections 376 and 506 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.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge