

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 439 of 2018**

1. State of Chhatisgarh through Police station Police station
Bilaigarh, District Baloda Bazar, Bhatapara, CG

---- Petitioner**Versus**

1. Umashankar son of Mohanlal Nirala, aged about 21
years, resident of village Semradih, Police Station
Bilaigarh, District Baloda Bazar, Bhatapara, CG

---- Respondent

For petitioner/State : Shri Adil Minhaj, PL
For Respondent : None

Hon'ble Shri Ajay Kumar Tripathi, CJ &
Hon'ble Shri Justice Pritinker Diwaker

Order On Board**17/07/2018**

Heard on IA No. 1/2018 for condonation in filing this
petition.

2. For the reasons stated in the application, it is allowed
and the delay in filing the petition is condoned.

3. Heard on admission.

4. Challenge in this petition is to the judgment dated
10.10.2017 passed by Special Judge (FTC) Baloda Bazar in
Special Case No. 37/2017 acquitting the respondent/accused
of the charge under Sections 363, 366, 376 IPC and 17, 18
and 04 of the POCSO Act.

5. Facts of the case in brief are that on 13.5.2016 the prosecutrix (PW-2) was taken away by the respondent/accused from her village Rohania, Bilaigarh and was recovered on 9.6.2017 i.e. after about a year. On the complaint made by the prosecutrix, respondent/accused was prosecuted for the said offences. After investigation, challan was also filed under the same sections followed by framing of charge against the respondent.

6. In order to prove the complicity of the respondent/accused in the crime in question, the prosecution has examined 08 witnesses. Statement of the respondent/accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

7. After hearing the parties, the Court below acquitted the respondent/accused of all the charges levelled against him. Hence this petition by the State seeking leave to appeal.

8. Counsel for the petitioner/State submits that the Court below has erred in law in disbelieving the statement of the prosecutrix. He further submits that there is sufficient evidence to prove the complicity of the respondent/accused in the crime in question but even then the Court below has been quite oblivious of the same and ultimately arrived at an erroneous conclusion of acquittal.

9. Heard counsel for the State/petitioner and perused the material available on record.

10. Here the prosecutrix (PW-2) herself has not supported the case of the prosecution and has been declared hostile. Further, she herself has stated her age to be about 19 years on the date of recording of her evidence, which means that in any case she was about 18 on the date of incident when the accused/respondent is said to have taken her away. Her statement further makes it clear that on account of ill-treatment by her maternal grandmother she had gone away to Jammu where accused/respondent met her and after sometime they both tied a nuptial knot. In these circumstances, the Court below cannot be said to have committed any error in giving a clean chit to the respondent/accused as the prosecution has utterly failed to bring anything on record on the basis of which a contrary view could be taken. Settled legal position that if the material available on record leads to two possible conclusions then one favouring the accused has to be struck at, also stands to the rescue of the respondent.

11. In the result, there is no infirmity in the judgment impugned and being so the petition seeking leave to appeal is liable to be dismissed and it is hereby dismissed. Leave to appeal sought for by the State is refused.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge