

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 629 OF 2018**

State of Chhattisgarh Through Police Station Kondagaon, District
Kondagaon Chhattisgarh.

---- Petitioner**Versus**

1. Prafull Kumar Netam S/o Shri Mandalram Netam Aged About 28 Years R/o Naharpara Kondagaon, District Kondagaon Chhattisgarh.
2. Pawan Kumar Markam S/o Shri Rajuram Markam Aged About 28 Years R/o Ghotgaon, P. S. Sihawa, District Dhamtari Chhattisgarh.

---- Respondents

For State/Petitioner : Mr. Avinash K. Mishra, Panel Lawyer.

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

Order On Board**15/05/2018****Per Pritinker Diwaker, J.**

1. Heard on admission.
2. 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 05/01/2018 whereby the respondents/accused have been acquitted of all the charges by giving them benefit of doubt.

3. By the impugned judgment dated 05/01/2018 passed in Sessions Trial No. 72/2013 by the Additional Sessions Judge (F.T.C.) Kondagaon (C.G.), the respondents/accused have been acquitted of the charges under Sections 366, 376 and 109 of the Indian Penal Code (for short, 'IPC').
4. Brief facts of the case are that on 16/02/2013, First Information Report (Ex. P-4) was lodged by the prosecutrix, alleging in it that in September 2011, she was called by respondent No. 2/accused in his house and introduced to respondent No. 1/accused who developed physical relation with her on the pretext of marriage, which continued subsequently also. Thereafter, according to her, she became pregnant and gave birth to a female child. Since respondent No.1/accused refused to marry her, she lodged the report. Based on this First Information Report, offence punishable under Section 376/34 IPC was registered against respondents. The allegation against respondent No. 2/accused is that he introduced the prosecutrix to respondent No.1/accused.
5. So as to hold the respondents guilty, the prosecution has examined as many as 8 witnesses. Statement of the respondents/accused was recorded under Section 313 Cr.P.C., in which they denied all the circumstances appearing against them and pleaded innocence and false implication in the case.
6. By the impugned judgment, the trial Court has acquitted the respondents/accused of the aforesaid charge mainly on the ground that the prosecutrix was a consenting party.

7. Learned counsel for the State/petitioner submits that the trial Court has erred in law in acquitting the respondents/accused.
8. We have heard learned counsel appearing for the State/petitioner and perused the record carefully.
9. Undisputedly, there is inordinate delay of about 17 months in lodging the First Information Report and the said delay has not been explained by the prosecutrix (PW-5) as per the requirement of the law.
10. Considering the evidence available on record, in particular, the statement of the prosecutrix (PW-5), the trial Court has come to the conclusion that the prosecutrix (PW-5) was a consenting party and there was inordinate delay of about 17 months in lodging the First Information Report, the trial Court has acquitted the respondents/accused of the charges levelled against them.
11. 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 respondents/accused of the charges under Sections 366, 376 and 109 of the IPC is just and proper and does not call for any interference in this petition.

12. Accordingly, the leave as sought for by the State/petitioner for registration of appeal against the judgment of acquittal is hereby refused.
13. Petition is accordingly dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge