

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 674 of 2018**

- State of Chhattisgarh, Through : Police Station Dongargaon, District Rajnandgaon (C.G.).

---- Petitioner**Versus**

1. Baldau Sharma @ Ballu S/o Shri Sudama Prasad Sharma, aged about 35 years, R/o Ward No.12 Matiya, P.S. Dongargaon, District Rajnandgaon (C.G.)
2. Sadanand Nirmalkar @ Raju S/o Shri Mansukha Nirmalkar, aged about 34 years, R/o Ward No.13 Matiya, P.S. Dongargaon, District Rajnandgaon (C.G.)
3. Dhanesh Nishad @ Jungli S/o Late Shri Mehtru Nishad, aged about 60 years, R/o Ward No.12 Matiya, P.S. Dongargaon, District Rajnandgaon (C.G.)

---- Respondents

For Petitioner/State : Shri Rahul Tamaskar, P.L.
For Respondents : None.

Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board**06/07/2018**

1. Heard on I.A.No.01/2018, application seeking condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and delay in filing the petition is condoned.
3. Also heard on admission.
4. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the code of

Criminal Procedure, 1973 assailing the judgment and order dated 27.09.2017 passed by Additional Sessions Judge (FTC), Rajnandgaon (C.G.) in Special Sessions Trial No.49/2016 acquitting the accused/respondents of the charge under Sections 376(2), 506 (Part II) of Indian Penal Code and Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

5. According to the case of prosecution, on 04.06.2016 FIR (Ex.P/22) was lodged by the Prosecutrix (PW/10) alleging in it that about 6-7 months prior to the incident when she was going towards the house of Janak for fetching water, she was subjected to rape by accused/respondent No.1-Baldau Sharma @ Ballu. It has been further alleged that after few days when she was going towards field for answering the nature's call, she was subjected to rape by accused/respondent No.2-Sadanand Nirmalkar @ Raju and again after few days she was subjected to rape by accused/respondent No.3-Dhanesh Nishad @ Jungli. Based on this, FIR under Sections 376/34 IPC and 4, 8, 12 of POCSO Act was registered against accused/respondents. After filing of the charge sheet, the trial Judge has framed the charge under Sections 376 (2), 506 (Part-II) IPC & 4 and 8 of POCSO Act.
6. So as to hold the accused/respondents guilty, the prosecution has examined 19 witnesses. Statements of the accused/respondents were also recorded under

Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

7. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondents as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
8. Counsel for the State submits that the trial Court has erred in law in acquitting the respondent/accused even when there is ample evidence against him.
9. We have heard learned State counsel and perused the material available on record.
10. From the statement of the prosecutrix (PW/10), it appears that she has not supported the case of the prosecution and has been declared hostile. Further, there is no clinching evidence in respect of age of the prosecutrix.
11. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion that the prosecution has failed to prove its case beyond the shadow of doubt and thus acquitted the accused/respondents of the charges levelled against them. We find no illegality in the order impugned acquitting the respondents particularly when there is a

settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

12. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed at the admission stage itself leading to refusal of leave to appeal as sought for by the State.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE