

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 958 of 2018**

- State of Chhattisgarh, Through : Station House Officer, Police Station - Chalgali, District Balrampur - Ramanujganj (C.G.)

---- Petitioner**Versus**

1. Muneshwar S/o Ramsurat Harijan, aged about 22 years, R/o village Parasdiha, Police Station Chalgali, District Balrampur - Ramanujganj Civil District Surguja (C.G.)
2. Kameshwar S/o Mohabat, aged about 24 years, R/o village Parasdiha, Police Chowki Wadrafnagar, Police Station Chalgali, District Balrampur - Ramanujganj Civil District Surguja (C.G.)

---- Respondents

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

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

Judgment on Board**31/07/2018**

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. Considering the fact that original record of the trial Court has been received, default as pointed out by the office is over-ruled.
4. Also heard on admission.

5. 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 24.11.2017 passed by Additional Sessions Judge, Ramanujganj, Civil District Surguja (Ambikapur) (C.G.), in Sessions Trial No.91/2012 acquitting the accused/respondents of the charge under Sections 363, 366 and 376 of Indian Penal Code.
6. According to the case of prosecution, on 04.12.2011 written report (Ex.P/1) was lodged by the Prosecutrix (PW/1), aged about 17 year, alleging in it that on 01.12.2011 the accused/respondents took her on their motorcycle near the school and there in the waiting room accused/respondent No.2-Kameshwar committed forcibly sexual intercourse with her thrice. It has been further alleged that thereafter she was threatened for dire consequences by the accused/respondent No.2. Based on this report, FIR (Ex.P/2) under Sections 363, 366 and 376/34 IPC was registered against accused persons. After filing of the charge sheet, the trial Judge has framed the charge under Sections 363 and 366 IPC against accused/respondent No.1-Muneshwar, whereas charge was framed under Sections 363, 366, 376 and 506 Part-II IPC against accused/respondent No.2-Kameshwar.
7. So as to hold the accused/respondents guilty, the prosecution has examined 05 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.

8. 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.
9. Counsel for the State submits that the trial Court has erred in law in acquitting the accused/respondents even when there is ample evidence against them.
10. We have heard learned State counsel and perused the material available on record.
11. From the statement of the prosecutrix (PW/1) and that of her parents, it appears that they have not supported the case of the prosecution and have been declared hostile.
12. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion of acquitting the accused/respondents of the charges levelled against them by extending them benefit of doubt. 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.

13. 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