

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 879 of 2017**

- Smt. Santoshi Gupta, W/o Jitendra Gupta, aged about 34 years, R/o Village Shivnandanpur, P.S. Vishrampur, District Surajpur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through p.S. Vishrampur, District Surajpur, Chhattisgarh,
2. Ashish Gupta @ Chhotu, S/o late Krishna Kumar Gupta @ Sawaha, aged about 28 years, R/o Karanji Railway Colony, Qr.No.146/02, Presently resident of Shivnandanpur (Talwapara), P.S. Vishrampur, District Surajpur, Chhattisgarh.

---- Respondents

For Petitioner :	Shri Ashok K. Shukla with Shri Atanu Ghosh, Advocate
For State/respondent No.1:	Shri Vaibhav A. Goverdhan, P.L.

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

Order On Board**25/04/2018****Per Pritinker Diwaker, J.**

1. This petition, seeking leave to appeal, has been filed under Section 378(3) Cr.P.C. to assail the impugned judgment and order dated 27th May, 2017 passed by the 1st Additional Sessions Judge, Surajpur, Dist. Surajpur in S.T.No.13/2016 whereby the trial Court has acquitted respondent No.2 under Sections 342 & 376 IPC giving him benefit of doubt.
2. As per prosecution case, on 04.12.2015 a written report (Ex.P.3) was lodged by the prosecutrix (P.W.2) alleging in it that on that day, i.e., 04.12.2015 at about 12.30 PM, the accused/respondent

No.2 entered her house and committed forcible sexual intercourse with her.

3. Based on this written report (Ex.P.3), F.I.R. (Ex.P.4) was registered against respondent No.2 under Section 342 & 376 IPC and accordingly, the trial Judge has framed charges against respondent No.2.
4. So as to hold the accused/respondent No.2 guilty, the prosecution has examined as many as 08 witnesses. Statement of the accused/respondent was recorded under Section 313 Cr.P.C., in which, he denied all the circumstances appearing against him and pleaded innocence and false implication.
5. After considering the statement of the prosecutrix, in which, she had not made any allegations against respondent No.2, the trial Judge, by the impugned judgment, has acquitted the accused/respondent No.2
6. We have heard learned counsel for the parties and perused the record.
7. During the course of trial, the prosecutrix (P.W.2) has turned hostile and has stated in Court that the accused/respondent No.2 had not committed any act with her and on account of some dispute, the written report (Ex.P.3) was lodged against him. Since the prosecutrix, in her statement, has not stated anything against respondent, the trial Court was justified in acquitting respondent No.2 of the aforesaid charges.
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/accused of the offence under Section 342 & 376 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.

9. Petition is accordingly dismissed.

Sd/-
(**Pritinker Diwaker**)
Judge

Sd/-
(**Sanjay Agrawal**)
Judge