

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1006 of 2018**

- State of Chhattisgarh, Through- Police Station -Kotwali, District Bastar (Chhattisgarh).

---- Applicant**Versus**

- Dukhiram @ Raju, S/o Jhingur Bharti aged about-27 years, R/o village Balrampur, Police Station- Utrola (U. P.)

---- Respondent

For Applicant/State	:	Shri Vivek Sharma, G. A.
For Respondent.	:	None

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

Judgment on Board**Per Pritinker Diwaker, J****03/08/2018**

1. Heard on I.A. No.-01/2018, application for condonation of delay in filing the present petition.
2. For the reasons mentioned in the application, the same is allowed and delay in filing the CRMP 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 23.01.2018 passed by Additional Sessions Judge (FTC), Bastar-Jagdalpur in Special Criminal Case No. 26/2017 acquitting the

accused/respondent of the charges under Sections 376 of Indian Penal Code (for short "IPC") and Section 4 of the Protection of Children from Sexual Offences Act (For Short "POCSO Act).

5. Brief facts of the case are that on 08.06.2017, FIR Ex. P/14 was lodged by the prosecutrix alleging in it that when she was returning after searching her mother, the accused/respondent caught hold of her hand, dragged her inside the house and committed forcibly sexual intercourse with her. Based on this, FIR was registered against the accused/respondent. After filing of the charge sheet, the trial Judge has framed charges against the accused/respondent under Sections 376 IPC and 4 of POCSO Act.

6. So as to hold the accused/respondent guilty, the prosecution has examined as many as 14 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 law in acquitting the accused/respondent. He further submits that on the basis of statement of the prosecutrix, accused/respondent ought to have been convicted.

9. We have heard learned State counsel and perused the material available on record.

10. From the evidence of the prosecutrix, it is clear that she has not supported the prosecution case, turned hostile and even failed to identify the accused/respondent in the Court.

11. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion of acquitting the accused/respondent of the charges levelled against him by extending him benefit of doubt. We find no illegality in the order impugned acquitting the respondent 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