

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1340 of 2018**

State of Chhattisgarh Through the Station House Officer, Police Station
Nagarnar, District Bastar (C.G.)

---- Appellant**Versus**

Ramesh Gautam S/o. Dhanurjai Gautam, Aged about 22 years, R/o. Village
Madhpal, Manjhigudapara, Police Station Nagarnar, District Bastar (C.G.)

---- Respondent

For the Appellant :- Mr. Ravindra Agrawal, Panel Lawyer

For the Respondent :- None.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****Per Pritinker Diwaker, J****20/08/2018**

1. Heard on I. A. No. 01/2018, application seeking 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 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 31.01.2018 passed by Additional Sessions Judge, (FTC) Bastar (C.G.) at Jagdalpur Special Judge (POCSO Act) in Special Case No. 33/2017 acquitting the accused/respondent of the charge under Sections 363,366 and 376 of the IPC and Section 6 of the

Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act).

5. Brief facts of the case is that on 19.08.2017, a missing report was lodged by Balingh Netam (PW-2) father of the prosecutrix alleging in it that the prosecutrix (PW-1), aged about 16 years is missing since 15.08.2017. Based on this written report, FIR (Ex.P/6) was registered against the respondent for the offence punishable under Sections 363,366 and 376 of the IPC. Subsequently, the prosecutrix (PW-1) was recovered from the custody of the accused/respondent on 28.03.2017. Based on her statement, the accused/respondent was prosecuted. While framing of charges, the trial Judge framed charges against the accused/ respondent under Sections 363,366 and 376 of the IPC and Section 6 of the Protection of Childre from Sexual Offences Act, 2012 (for short POCSO Act).

6. So as to hold the respondent guilty, the prosecution has examined 14 witnesses. Statement of the respondent/accused was also recorded under Section 313 of the Cr.P.C, wherein he pleaded innocence and false implication. By the impugned judgment the trial judge after hearing the parties and considering the entire material on record acquitted the accused/respondent.

7. Counsel for the State submits that the trial Court has erred in law while acquitting the respondent/ accused. He submits that on the basis of statement of the prosecutrix and the evidence, respondent/accused ought to have been convicted.

8. We have heard the parties and perused the records.

9. From the records, it is apparent that during the course of evidence the prosecutrix has turned complete hostile and has not supported the case of the prosecution. Thus, apart there is no legally admissible evidence

showing the prosecutrix to be minor and as per ossification test she was 16-19 years age.

10. Considering the entire evidence in particularly, the evidence of the prosecutrix and her age and other related evidence available on record, the trial Court has acquitted the respondent. We find no illegality in the order impugned acquitting the respondent /accused. The view taken by the trial Court appears to be justified and one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court was fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusion are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. 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.

11. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Vimla Singh Kapoor)
JUDGE