

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1350 of 2018

- State Of Chhattisgarh Through Police Station Trikunda, District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

---- Petitioner

Versus

- Dayashankar Khairwar S/o Shri Bhajawan Khairwar Aged About 28 Years R/o Village Chera, Chowki Dino, Police Station Trikunda, District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

---- Respondent

For Petitioner/State	:	Shri Neeraj Mehta, PL
For Respondent	:	None present.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Order on Board by Pritinker Diwaker, J.

10/09/2018

Considering the fact that record of the trial court has been received default as pointed out by the Registry is overruled.

Heard on I.A. No. 01, application seeking condonation of delay in filing the present petition.

For the reasons mentioned in the application, the same is allowed. Delay in filing the petition is condoned.

Also heard on admission.

This petition filed under Section 378(3) of the Code of Criminal

Procedure assailing the impugned judgment and order dated 19.02.2018 passed by the Additional Sessions Judge (FTC), Ramanujganj, district Balrampur-Ramanujganj in Sessions Trial No.72/2015 whereby the court below has acquitted the respondent of the offence under Sections 376 & 506 Part II IPC.

Brief facts of the case are that on 05.05.2015 written report Ex.P-1 was lodged by the prosecutrix (PW-1) aged about 28 years alleging that on 07.04.2015 when she had gone to fetch water, accused/appellant reached there, caught hold of her and committed forcible sexual intercourse. Based on this written report FIR Ex.P-2 was registered against the respondent on 05.05.2015 under Sections 376 and 506 Part II IPC. During trial, charges were framed against the respondent/accused under Sections 376 & 506 Part II IPC.

So as to hold the accused/respondent guilty, prosecution has examined eight witnesses. Statement of the accused/respondent was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case.

By the impugned judgment, the trial Judge has acquitted the accused/respondent of the offence as mentioned above.

Counsel for the petitioner/State submits that the court below has erred in law in acquitting the respondent.

Heard counsel for the State/petitioner and perused the record.

In the court, prosecutrix (PW-1), has not supported the prosecution case and has turned hostile. Considering the statement of the prosecutrix and other relevant factors, in particular the inordinate

delay in lodging the FIR, the trial court has come to the conclusion that the offence under Sections 376 & 506 Part II IPC as alleged by the prosecution is not made out against the respondent.

Thus, after hearing counsel for the parties and considering the material available on record as well as the elaborate judgment impugned passed by the Court below, no illegality or infirmity is noticeable in the conclusion drawn by the court below acquitting the accused. Even otherwise keeping in mind the material on record leads to two possible views the one favouring the accused has to be preferably taken, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence under Sections 376 and 506 Part II 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 and the petition is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Rajani Dubey)
Judge