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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1352 of 2018

- The State of Chhattisgarh, Through : Police Station Trikunda, District Balrampur, Ramanujganj (C.G.).

---- Petitioner

Versus

- Devsai Bharti S/o Harihar Bharti, aged about 21 years, R/o village Goverdhanpur, Police Station Trikunda, District Balrampur Ramanujganj (C.G.)

---- Respondent

For Petitioner/State : Shri Ravindra Agrawal, G.A.
For Respondent : None.

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

Judgment on Board

07/09/2018

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

2. Heard on admission.

3. 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 17.04.2018 passed by Additional Sessions Judge, Ramanujganj, District Balrampur-Ramanujganj (C.G.) in Special Sessions (POCSO) Trial No.17/2015

acquitting the accused/respondent of the charge under Sections 376(2)(n) of Indian Penal Code and Sections 5(1) & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

4. As per the prosecution case, on 02.05.2015 written report (Ex.P/1) was lodged by the Prosecutrix (PW/1) alleging in it that on 03.10.2014 at about 11.30 PM the accused/respondent, after alluring took her with him on the pretext of marriage and had physical relation with her. It has been further alleged that their relations continued till 23.02.2015, thereafter, accused/respondent refused to marry her and after holding the panchayat meeting, the report was lodged. Based on this, FIR (Ex.P/2) under Section 376 (2) (n) IPC and 5(1) & 6 of POCSO Act was registered against accused/respondent. After filing of the charge sheet, the trial Judge has framed the charge under Sections 376 (2) (n) IPC & 5 (1) and 6 of POCSO Act.

5. So as to hold the accused/respondent guilty, the prosecution has examined 11 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.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record

has acquitted the accused/respondent as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.

7. Counsel for the State submits that the trial Court has erred in law in acquitting the respondent/accused even when there is ample evidence against him.

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

9. From the statement of the prosecutrix (PW/1), it appears that she has not supported the case of the prosecution and has been declared hostile. Further, there is no clinching evidence in respect of age of the prosecutrix.

10. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion that the prosecution has failed to prove its case beyond the shadow of doubt and thus acquitted the accused/respondent of the charges levelled against him. 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.

11. 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/-

(Rajani Dubey)
JUDGE

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