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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1676 of 2018**

- The State of Chhattisgarh, Through : Station House Officer, Police Station Rajim, District Gariyaband (C.G.).

---- Applicant**Versus**

1. Mohd. Sahbaj S/o Sahajada Warshi, aged about 23 years, R/o Somwari Bazar, Nawapara, Police Station Gobra Nawapara, District Raipur (C.G.).
2. Janak Dhruw S/o Ramesh Dhruw, aged about 23 years, R/o Bhoipara, In front of Gopi Tailor, Nawapara, Police Station Gobra Nawapara, District Raipur (C.G.).
3. Mohd. Salam S/o Mohd. Halim Musalman, aged about 26 years, R/o Muraadpur, Police Station Mahant Manihari, District mujaffarpur (Bihar)
4. Jinsan S/o Polsam, aged about 21 years, R/o Paragaon, in front of Surya Rice Mill, Police Station Gobra Nawapara, District Raipur (C.G.)
5. Prakash Soni S/o Raj Soni, aged about 28 year R/o Nawapara, Police Station Gobra Nawapara, District Raipur (C.G.)
6. Rahul Sen S/o Late Shiv Kumar Sen, aged about 19 years, R/o Dammani Colony, Nawapara in front of the house of Councilor Anil Dubey, Police Station Gobra Nawapara District Raipur (C.G.)

---- Respondents

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

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Smt Justice Rajani Dubey****Judgment on Board****25/09/2018**

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 I.A.No.01/2018, application seeking condonation of delay in filing the petition.
3. For the reasons mentioned in the application, the same is allowed and delay in filing the petition is condoned.
4. Also heard on admission.
5. 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 07.02.2018 passed by Additional Sessions Judge, Gariyaband, District Gariyaband (C.G.), in Sessions Trial No.50/2015 acquitting the accused/respondents of the charge under Sections 148, 341, 294, 506 (Part II), 307/149 and 323/149 of Indian Penal Code.
6. Brief facts of the case are that on 06.04.2015 FIR (Ex.P/12) was lodged by Rana Thakur (PW/4) alleging in it that he and his friend Shailesh Kumar Yadav (PW/5) were assaulted by the accused/respondents. Based on this, FIR (Ex.P/12) was registered under Sections 294, 506-B, 323, 341 and 307/34 IPC against the accused/respondents. Both the injured Rana Thakur (PW/4) and Shailesh Kumar Yadav (PW/5) were medically examined by Dr. (Ms.) Snehlata Humane (PW/2) who

gave her report (Ex.P/8 and P/7) noticing three lacerated wounds and two contusions on the body of injured Rana Thakur and two contusions on the body of injured Shailesh Kumar Yadav respectively. After filing of the charge sheet, the trial Judge framed the charges against accused/respondents under Sections 148, 341, 294, 506(Part-II), 307/149 and 323/149 IPC.

7. So as to hold the accused/respondents guilty, the prosecution has examined 10 witnesses. Statements of the accused/respondents were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.
8. 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.
9. Counsel for the State submits that the trial Court has erred in law in acquitting the accused/respondents even when there is ample evidence against them.
10. We have heard learned State counsel and perused the material available on record.
11. During trial, both the injured PW/4 and PW/5 have not supported the prosecution case and turned hostile. They

have stated that they sustained injuries accidentally and were never beaten by anyone.

12. Considering the statements of two injured (PW/4 and PW/5), where they have not supported the prosecution case, 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/respondents of the charges levelled against them. We find no illegality in the order impugned acquitting the respondents 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.
13. 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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