

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.1844 of 2017**

State Of Chhattisgarh Through The Incharge, Police Station Udaipur, District
Surguja Chhattisgarh

---- Petitioner**Versus**

Arjun @ Shiv Gulab Chouhan S/o Ramayan Ram Aged About 20 Years R/o
Village Khamhariya, Police Station Udaipur, District Surguja, Chhattisgarh

---- Respondent

For Petitioner/State:	Ravindra Agrawal, Government Advocate.
For Respondent:	None.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal
Order on Board

Per Pritinker Diwaker, Judge**11/04/2018**

1. The present petition has been filed under Section 378(3) of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C.'), seeking leave to appeal, against the judgment dated 2.8.2017 acquitting the Respondent.
2. By the impugned judgment dated 2.8.2017 passed in Special Sessions Trial (POCSO) No.56/2016 by the Additional Sessions Judge (FTC) Surguja (Ambikapur) (C.G.), Respondent-Arjun @ Shiv Gulab Chouhan has been acquitted of the offence under Sections 363, 366, 376, 506-B and 342 of IPC and under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').
3. As per prosecution case, on 17.08.2016 First Information Report (Ex.P-6) was lodged by the prosecutrix (PW-2) alleging in it that the

accused/respondent entered her house, allured her for marriage and asked her to come outside her house and thereafter took her on his motorcycle to village Khamariya and had physical relations with her. She states that in the meanwhile, her parents came there searching her and then she narrated the entire incident to them. Based on this, First Information Report (Ex.P-6), offence punishable under Sections 363, 366, 376, 109 and 342 of IPC read with Sections 3, 4 & 17 of the POCSO Act and Section 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Corruption) Act, 1989 (for short 'the SC/ST Act') was registered against the Respondent.

4. So as to hold Respondent guilty, the prosecution has examined as many as 11 witnesses. Statement of the Respondent was recorded under Section 313 Cr.P.C., in which, he denied all the circumstances appearing against him and pleaded his innocence and false implication.

5. By the impugned judgment, the trial Court acquitted the Respondent mainly on the ground that the prosecution has failed to prove that the Respondent had eloped the prosecutrix (PW-2) from the legal custody of her guardians/parents on the pretext of marriage and she was subjected to rape.

6. Learned Counsel for the Petitioner/State submits that the trial Court has erred in law in acquitting the accused.

7. We have heard learned counsel for the State and perused the record carefully.

8. Prosecutrix (PW-2) has not supported the case of the prosecution

and has been declared hostile. She has stated that she left her house and had gone to the house of the sister of the Respondent and that no incident had taken place. Even the medical report of the prosecutrix does not support the case of the prosecution. Considering all the aspects of the case and further considering the age of the prosecutrix, where she has not been found minor, the trial Court has acquitted the Respondent.

9. After considering the material available on record as well as the elaborate judgment impugned passed by the Court below and being very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, this Court is of the opinion that the judgment impugned acquitting the respondent/accused of the offence under Sections 363, 366, 376, 506-B and 342 of IPC and under Section 4 of the POCSO Act is just and proper and does not call for any interference. Accordingly, the leave as sought for by the Petitioner/State for registration of appeal against the judgment of acquittal is hereby refused.

10. Petition is accordingly dismissed at the admission stage.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE