

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 75 of 2018**

1. State of Chhatisgarh through Police station AJK, Ambikapur, District Sarguja, CG

---- Petitioner**Versus**

1. Santosh Kumar Vishwakarma, son of Jamuna Prasad Vishwakarma, aged about 27 years, R/o Mahamayapara, Ambikapur, District Sarguja, CG

---- Respondent

For petitioner/State	:	Shri Ravindra Agrawal, GA
For Respondent	:	None

Hon'ble Shri Ajay Kumar Tripathi, CJ &
Hon'ble Shri Justice Pritinker Diwaker

Order On Board**17/07/2018**

Heard on IA No. 1/2018 for condonation in filing this petition.

2. For the reasons stated in the application, it is allowed and the delay in filing the petition is condoned.

3. Heard on admission.

4. Challenge in this petition is to the judgment dated 29.8.2017 passed by Special Judge, Sarguja (Ambikapur) in Special Case No. 43/2014 acquitting the respondent/accused of the charge under Sections 342, 363, 366, 376 (1) IPC and 3 (2) (v) of Scheduled Caste and Scheduled Tribe (Prevention of

Atrocities) Act, (for short the Special Act).

5. Facts of the case in brief are that on 25.7.2014 written report Ex. D-1 was lodged by the prosecutrix alleging that on 23.7.2014 at about 2.30 PM when she was going to hospital along with her son, on the way respondent herein met her and asked to board his vehicle for being dropped at the hospital. It is alleged that instead of taking to the hospital, respondent took her to a rented house and committed forcible sexual intercourse with her. On receiving information to this effect, her family members reached there and took her along. Based on this report, FIR Ex. P-2 was registered against the respondent for the offences punishable under Sections 342, 363, 376 and 506 (Part-II) IPC and 3 (2) (v) of the Special Act. After investigation, challan was also filed under the same sections followed by framing of charge against the respondent.

6. In order to prove the complicity of the respondent/accused in the crime in question, the prosecution has examined 11 witnesses. Statement of the respondent/accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

7. After hearing the parties, the Court below acquitted the respondent/accused of all the charges levelled against him. Hence this petition by the State seeking leave to appeal.

8. Counsel for the petitioner/State submits that the Court

below has erred in law in disbelieving the statement of the prosecutrix. He further submits that there is sufficient evidence to prove the complicity of the respondent/accused in the crime in question but even then the Court below has been quite oblivious of the same and ultimately arrived at an erroneous conclusion of acquittal.

9. Heard counsel for the State/petitioner and perused the material available on record.

10. Statement of the prosecutrix makes it apparent that she accompanied the respondent/accused of her own by boarding his vehicle to a house taken by him on rent and submitted to his demand of having sex. Her detailed cross examination further shows that she had ample opportunity to wriggle out of the custody of the respondent but no such effort appears to have been made by her. Statement of this witness nowhere speaks that she raised any hue and cry while the respondent was making her occupy his vehicle. She has even admitted that the respondent did not exert any pressure on her to proceed along with him. Even the medical report does not support the case of the prosecution. In these circumstances, the Court below cannot be said to have committed any error in holding the prosecutrix to be a consenting party to the act of the respondent/accused. It was rather fully justified in giving a clean chit to the respondent/accused as the prosecution has utterly failed to bring anything on record on the basis of which a contrary view could be taken. Settled

legal position that if the material available on record leads to two possible conclusions then one favouring the accused has to be struck at, also stands to the rescue of the respondent.

11. In the result, there is no infirmity in the judgment impugned and being so the petition seeking leave to appeal is liable to be dismissed and it is hereby dismissed. Leave to appeal sought for by the State is refused.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge