

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1045 of 2019

- The State Of Chhattisgarh, Through - Police Station, Tikrapara, District Raipur, Chhattisgarh

---- Petitioner

Versus

- Kapoore Sahu @ Jitendra, S/o Radheshyam Sahu, Aged About 26 Years, R/o Gokul Nagar, Ram Nagar, Gudiyari, Police Station Gudiyari, District Raipur, Chhattisgarh

---- Respondent

For Petitioner

Shri Santosh Bharat, PL

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Mr. Gautam Chourdiya

Order On Board by Prashant Kumar Mishra J.

01/07/2019

1. On due consideration, IA No.1/2019, application for condonation of delay in filing the application for leave to appeal, is allowed and the delay of 53 days in filing the application is condoned.
2. The Trial Court has acquitted the accused from the charges 450, 376, 323 & 506 of IPC.
3. The prosecutrix is a lady, aged about 32 years, residing as the wife of PW-2 Khomlal, though they are not legally married. The evidence available on record would suggest that PW-2 Khomlal, with whom the prosecutrix resides, is working with accused Kapoore Sahu @ Jitendra. There is material available on record that Kapoore Sahu is a vegetable merchant, whereas the

prosecutrix's husband is a transporter who usually carries on the accused's vegetables to different places for delivery. On the date of incident, the accused came to the house of the deceased and committed forcible sexual intercourse, which was disclosed to PW-2 Khemlal Sahu about 2-3 days afterwards and the FIR was lodged 2-3 days thereafter. Thus, there is delay of about a week in lodging of FIR.

4. Reading of the deposition of PW-1 (prosecutrix) and PW-2 Khemlal Sahu would also reveal that on and from the date of incident, there was a dispute between the accused and Khomlal Sahu of transaction involving 28,000/-. This amount was to be paid by Khomlal Sahu to the accused but he was not returning the same, which was actually returned by him after the accused was incarcerated and later released on bail. This fact has been admitted by the prosecutrix in para 17 of her deposition. The tenor of her statement and the attending circumstances do not rule out an understanding and relationship between the prosecutrix and the accused and the prosecutrix being 32 years of age, we are not inclined to admit this application seeking leave to appeal for the reason that if two views are possible and the Trial Court has taken one possible view in the matter while acquitting the accused, the same cannot be unsettled by the Appellate Court.
5. Accordingly, the application for leave to appeal deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge