

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1471 of 2019**

- State Of Chhattisgarh Through Station House Officer, Police Station Shankargarh, District Balrampur-Ramanujganj Chhattisgarh.

---- Petitioner**Versus**

- Bhupendra Lakda @ Putu S/o Goadma Lakda Aged About 20 Years R/o Village Ghughrikala, Police Station Kusmi, District Balrampur-Ramanujganj Chhattisgarh.

---- Respondent

For State-Petitioner :- Shri Suryakant Mishra, PL

Hon'ble Shri Prashant Kumar Mishra**Hon'ble Shri Gautam Chourdiya, JJ.****Order On Board By****Prashant Kumar Mishra, J.****01/07/2019**

1. Heard.
2. Default has been removed, therefore, we have proceeded to hear learned State counsel on prayer for condonation of delay and on admission.

3. On due consideration **I.A. No. 01 of 2019** for condonation of delay of 12 days in filing the application for leave to appeal deserves to be and is hereby allowed.
4. The trial Court has acquitted the accused from the offence under Section 376 of I.P.C.
5. The prosecutrix is a villager aged about 22 years. On the date of incident, the entire family had gone to the village market where a Mela was also organised. The prosecutrix and her father had two separate stalls for selling sugarcane. At about 1:30 pm, the accused came near the prosecutrix and took her along to a nearby Jungle, from where the prosecutrix returned after two and half hours. When she was enquired as to where she had gone to for such a long time, she informed witnesses (PW-5) Kamla, (PW-6) Bitro and to her mother (PW-3) Sampati as well that the accused took her to a nearby forest and committed forcible intercourse. The trial Court has acquitted the accused despite there being medical report slightly involving the accused for the reason that as per the prosecution's case itself a huge gathering of about one thousand people had assembled at the Mela market and the prosecutrix was taken along by the accused in the presence of witnesses but she did not raise any protest or alarm and similarly she did not protest at the time of commission of rape, therefore, it appears to be a

case of consent.

6. Having scrutinized the entire evidence particularly the contents of the F.I.R., case diary statement of witnesses and deposition of the prosecutrix, her mother and the independent witnesses Kamla and Bitro, we are of the considered view that present is a case where two views are possible.
7. In view of the settled legal position that when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. (See : State of M.P. Vs. Bachhudas alias Balram and others, (2007) 9 SCC 135), we are of the opinion that the present is not a fit case for grant of leave to appeal, because, the view taken by the trial Judge emanates from the state of evidence on record and the same does not appear to be perverse.
8. For the foregoing we do not find any ground to entertain this application for leave to appeal. Accordingly, the prayer for leave to appeal is dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge