

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1752 of 2018

- State of Chhattisgarh Through Police Station Keregaon District Dhamtari Chhattisgarh.

---- Applicant

Versus

- Bhagbali S/o Jagdish Netam Aged About 55 Years R/o Village Basikhai, Police Station Keregaon District Dhamtari Chhattisgarh.

---- Respondent

For Applicant-State :- Shri K.K. Singh, GA

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

30/07/2019

1. The matter has remained in default for last about an year, therefore, we have permitted learned State counsel to remove the defect in the Court itself.
2. Heard learned State counsel on I.A. No.1, application for condonation of delay in filing the Cr.M.P. as also on admission.

3. On due consideration, delay of 33 days in filing the Cr.M.P. is condoned. Accordingly, I.A. No.1 stands allowed.
4. The trial Court has acquitted the accused of the charges under Sections 363 and 376 of IPC. The prosecutrix is aged about 22 years, her admitted date of birth being 28.01.1995. On the date of incident i.e. 10.12.2017, prosecutrix was sitting at the village square named Gowri Chowara with PW 4, Anju Markam and Bharati at about 2:30 pm. At that time accused came over there and took her to his house and committed forcible sexual intercourse.
5. The evidence available on record would suggest that the prosecutrix did not offer any resistance at the time when she went along the accused to his house nor did she offer any resistance when the accused locked the door from inside and undressed her. She did not offer resistance even afterwards nor cried for help. When she reached back to her house she did not immediately reveal the incident to her mother, to whom she narrated the incident at about 5:00 pm. There is no evidence as to the immediate cause for revealing the incident to her mother at 5.pm.
6. PW-4, Anju Markam, would also admit that the prosecutrix did not protest when the accused was taking her along. Even though there is some evidence that the prosecutrix is

not mentally alert but opposite to that there is evidence also to the effect that her general understanding is normal and she is able to do her own activities. The Medical Officer PW-12, Dr. Pooja Mittal, has not accorded any definite opinion about commission of recent sexual intercourse though the prosecutrix was examined on the very next day of the incident. The prosecutrix was otherwise found to be habitual to sexual intercourse.

7. Considering the entire facts on record it appears the present is a case where two views are possible, therefore, in such a case the High Court is not entitled to take the other view merely because that view is also possible. When a view taken by the trial Court is one such view which is possible on the basis of evidence on record, the benefit has rightly been given to the accused.
8. Accordingly, Cr.M.P. deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge