

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2511 of 2019

- Applicant

- Goursingh Nishad S/o.- Chatur Nishad Aged About 30 Years
R/o.- Village Khadkhadi, Police Station-Chilhathi, District-
Rajnandgaon, Chhattisgarh.

---- Respondent

For Applicant-State :- Shri Ashish Gupta, PL.

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

22/11/2019

1. Heard.
2. On due consideration, delay of 03 days in filing the Cr.M.P is condoned. Accordingly. I.A. No.1 is allowed.
3. The trial Court has acquitted the accused of the charges under Sections 376 and 506 Part II of the IPC & Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989.

4. The prosecutrix, examined as PW-12, is a married lady aged about 30 years. On the date of incident she had gone to the accused's grocery shop at about 4:00 pm for purchasing potatoes. After the transaction was over the accused requested her to place the potatoes lying on the floor in a gunny bag. When the prosecutrix went to the adjoining store room for doing the work, the accused reached there, caught hold of her, and subjected her to forcible sexual intercourse. The prosecutrix did not raise alarm nor offered resistance. She later on informed her husband about the incident and the report was lodged on the next day.
5. We have seen the entire evidence and perused the judgment rendered by the trial Court particularly in Paras 27 to 32 providing reasoning as to why the prosecutrix appears to be a consenting party. The trial Court has observed that her residence is at distance of about 50 steps from the place of occurrence which by itself is located in the village square having a platform beneath a tree in front of the shop which is ordinarily occupied by the villagers for gossiping. In her FIR and case diary statements she has not informed that at the time of incident her bangles were broken and the clothes were torn, however, in the Court statement she has deposed so which amounts to improvement. It is also observed that

except telling her husband the family thereafter did not make complaint to the villagers or before the Panchayat which ordinarily happens in the villages. The Forensic Science Laboratory (FSL) report in respect of traces of sperms over the underwear of the prosecutrix is negative. Although the prosecutrix speaks about threatening given by the accused at the time of incident but the actual words constituting “threat” have not been stated in any of the statement.

6. Considering the evidence on record, we do not find that the reasoning assigned by the trial Court is perverse in any manner.
7. It is settled that law when two views are possible the view favouring the accused has to be adopted and similarly that in such a case the judgment of acquittal cannot be converted into judgment of conviction merely because another view is also possible. (See : **State of M.P. Vs. Bachhudas alias Balram and others, (2007) 9 SCC 135**),
8. Having regard to the well settled proposition of law, 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.

9. In view of the above, we do not find any ground for granting leave to appeal. Accordingly, the present Cr.M.P. deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit