

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2566 of 2018

- State Of Chhattisgarh, Through Station House Officer, Police Station Sanna, District : Jashpur, Chhattisgarh

---- Petitioner

Versus

- Dilip Kumar Nagesiya, S/o Tenu Ram Nagesiya, Aged About 28 Years, R/o Rukuma, Out Post Soankyari, Police Station Sanna, District : Jashpur, Chhattisgarh

---- Respondent

For Petitioner/State : Shri Suryakant Mishra, PL

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order On Board by Hon'ble Shri Justice Manindra Mohan Shrivastava

25.01.2019

1. Heard on application for condonation of delay in filing appeal.
2. Upon due consideration, the application is allowed.
3. Delay is condoned.
4. Also, heard on application for grant of leave to appeal.
5. Learned counsel for the State submits that the statement of the prosecutrix PW-4 clearly shows that the appellant raped her without her consent. He would further argue that the learned Trial Court has recorded the finding that the evidence and established circumstances of the case makes out a case of consent despite there being a clear evidence of the prosecutrix that she had no consent for the same.
6. We have gone through the entire judgment of conviction and evidence available on record in particular that of prosecutrix PW-4 herself wherein she has admitted in her evidence that she had gone with the appellant in cattle shed where they both consumed liquor, and in her cross examination, she has stated that she did not make any efforts to get herself free or cried for help. According to her, her husband was searching for her and during search he reached to the cattle shed, he found the appellant and prosecutrix in a compromise situation which followed a village meeting wherein she stated that she would not go with appellant Dilip and would stay with her husband Rajendra. The report was lodged in the

conspectus of the aforesaid evidence. The view taken by the learned Trial Court that prosecutrix appears to be a consenting party, could not be said to be suffering from any patent illegality, perversity so as to warrant interference by this Court, keeping in view that limited scope of interference against the judgment of acquittal. We, accordingly, do not consider present to be a fit case to grant leave to appeal.

7. Accordingly, CRMP is dismissed at the admission stage itself.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge