

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 480 of 2020

- State Of Chhattisgarh, through Police Station Udaipur, District Surguja, Chhattisgarh.

---- Petitioner

Versus

- Gohandul Bargah, S/o Late Chander Bargah, aged about 35 years, R/o Village Jarhadand, Pendarkhi, Police Chowki Kedma, Police Station Udaipur, District Surguja, Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Rajendra Tripathi, PL
For Respondent	:	None.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

24.02.2020

Heard on application for grant of leave to appeal.

2. Learned State counsel would argue that even though the prosecutrix (PW-4) has clearly deposed in her evidence that the respondent/accused had dragged her from her house towards forest where she was taken and rape was committed on her, the learned trial Court has perversely recorded a finding that present is a case of consent. It is argued that nowhere in the cross-examination of the prosecutrix it has been elicited that there was voluntarily sexual intercourse between the prosecutrix and the accused. Only on the basis that there was delay in lodging report, there was no injury found and the age of the prosecutrix, the learned trial Court has recorded finding which is contrary to the settled principles with regard to appreciation of evidence in the

matter of commission of offence of sexual offences particularly, offence of rape.

3. We have meticulously gone through the impugned judgment and the evidence led by the prosecution including the evidence of the prosecutrix (PW-4) and her husband Sukhsay (PW-6) and one Shanti Bai (PW-8).

4. The learned trial Court found the case of the prosecution to be doubtful and has given the benefit of the same to the accused taking into consideration that though the incident is alleged to have happened on 11th of November, 2017, the FIR was lodged as late as on 16th of November, 2017 and the explanation sought to be offered in the evidence is that the delay was occurred due to deliberations in the family and the community which is far from being satisfactory.

5. The learned Court below has taken into consideration the evidence of the husband (PW-6) also. On the plain reading of the evidence of the husband, and what has been elicited in his cross-examination, it is apparent that he has admitted that he was informed by Shanti Bai (PW-8) and Ratiyaro Bai that accused Gohandul and prosecutrix had gone together towards bushes. This was informed to him by Shanti Bai and Ratiyaro in his house that prosecutrix and Gohandul have gone towards forest and then he started searching for his wife. He has also admitted that after she met his wife he had scolded her and had taken his wife to the

police station to get the report lodged. He also admits that the prosecutrix and accused were known to each other since long and the prosecutrix frequently used to visit the home of the accused and this witness – the husband of the prosecutrix has further stated that his wife is maintaining illicit relations with Gohandul.

6. No injury has been found on the body of the prosecutrix. Though it is not necessary that in order to hold guilty on an allegation of commission of offence of rape, the presence of injury is necessary, but in a case where the prosecutrix states that she was dragged against her wishes from her house up to the forest, absence of injury whatsoever on any part of the body, renders doubtful such statement. It is not a case that the prosecutrix alleges that the accused committed rape on her in her house. According to her, she was taken by the accused towards forest and there, alleged commission of offence of rape took place. On the face of the statement made by her husband (PW-6) that he was informed by two ladies that his wife had gone towards forest with the accused, a doubt arises with regard to the prosecution case and the conclusion which has been drawn by the learned trial Court that it appears to be a case of consent between the parties, the prosecutrix being aged 30 years, FIR lodged after 5 days and there being no injuries, the view which has been taken by the learned trial Court is plausible and possible view. Merely because another view is possible, that would not be a ground to grant leave to appeal against judgment of acquittal, given the

limited scope of interference against judgment of acquittal as per settled legal position.

7. Therefore, no ground is made there to grant leave to appeal. Application is therefore, rejected.

Accordingly, CRMP is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay