

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1079 of 2020

State of Chhattisgarh through the Police Station Sakti, District
Janjgir Champa (CG)

---- Appellant

Versus

Durgesh Patel, S/o. Dhaneshwar Prasad, Aged 22 years, R/o.
Village Jongara, PS - Sakti District Janjgir Champa (CG)

---- Respondent

For the Appellant :- Mr. Lalit Jangade, Govt. Advocate
For the Respondent :- None

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

Order on Board By Vimla Singh Kapoor, J.

07.12.2020

Heard.

1. This is a petition filed by the State seeking leave to appeal against the judgment dated 13.11.2019 passed in Special Criminal Case No. 8/2019 acquitting the respondent/accused of the charge under Sections 4 of the POCSO Act and 450, 376/506 (Part-II) IPC.
2. According to the case of the prosecution, about 4 months prior to 26.10.2018 - the date on which the FIR was lodged, when the prosecutrix (PW-3) below 18 years of age at the relevant time was

all alone in her house, the accused/respondent gained an entry thereto and committed forcible sexual intercourse with her putting her under threat of dire consequences in case of disclosure of the incident to anyone else. Thereafter, on return of her parents from the temple the report was lodged by her against the accused/respondent and after investigation including medical examination of the prosecutrix, challan was filed against the respondent/accused for the offences as referred to above and charged framed accordingly. However, the Court below by the judgment impugned acquitted the accused of all the charges levelled against him. Hence, this petition by the State.

3. Counsel for the State opposes the judgment impugned and submits that the findings recorded by the Court below are not in consonance with the evidence available on record particularly that of the minor prosecutrix (PW-3) and being so, the same is liable to be set aside.
4. After hearing counsel for the State and going through the material available on record this Court is of the opinion that all the three important witnesses being the prosecutrix (PW-3) and her parents PW-2 and PW-4 have not supported the case of the prosecution and have been declared hostile. The prosecutrix has even stated that as she has entered into the matrimonial wedlock with the accused, her parents did not like the same and for that she was forced to lodge the report against the accused. Neither the prosecutrix nor her parents have spoken even a single word about the act of the accused of barging into their house and sexually

exploiting the prosecutrix against her wishes. Not only this, the Doctor (PW-1) who medically examined the prosecutrix has also not supported the case of the prosecution as according to her the prosecutrix was habitual to sexual intercourse, her hymen was old torn and there was no external or internal injury on her person. Of course, according to the date of birth mentioned in her 10th standard mark-sheet marked as article A-1 as 14.12.2000, she on the date of incident, can be said to be minor but as the involvement of the accused/ respondent itself is not proved, the factum of her being minor etc. does not make any difference to the case in hand. Even otherwise, it has been held by the Apex Court in plethora of decisions that if the material collected by the prosecution gives rise to two plausible views, the one favouring the accused has to be given preference to.

5. Considering the aforesaid factual and legal position, this Court does not see any illegality or irregularity in the judgment impugned warranting any interference therewith. Therefore, the leave sought for by the State is hereby refused.
6. The petition is accordingly dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge