

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 613 of 2017

- State of Chhattisgarh, through- District Magistrate- Rajnandgaon (C.G.) ----- **Petitioner**

Versus

- Shivprasad @ Guddu Nishad, S/o Panchu Nishad, Aged about 35 years, R/o Village Gokna, Police Station- Gandai District- Rajnandgaon (C.G.) ----- **Respondent**

For State/Petitioner : Smt. Shubha Shrivastava, Panel Lawyer.

For Respondent : Shri Samir Singh, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board06/02/2020

1. Heard on I.A. No. 01/2017, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 28 days in filing the instant petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 4th January, 2017 passed by Additional Sessions Judge, Khairagarh, District- Rajnandgaon (C.G.) in Special Case No. 01/2014 wherein the said Court acquitted the respondent for charge under Sections 376(1) and 506 Part-II of Indian Penal

Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

5. In the present case, the prosecutrix is PW-1. The report was lodged after 7 months of the incident. As per report (Ex. P/7), some unknown persons committed rape on the prosecutrix. As per report, the prosecutrix was carrying pregnancy for 7 months, it means offence was committed by unknown persons 7 months prior to the report (Ex.P/7) to In-charge of Police Station-Chuikhadaan.
6. The statement of the prosecutrix was recorded as per Section 161 of the Cr.P.C. on 29th June, 2013, in that statement the prosecutrix stated that when she was cleaning the house someone came from backside and made her laid down and thereafter committed rape on her, but she did not identify the person who committed offence against the prosecutrix because she had no occasion to see the face of the culprit and he flew away just after the incident. When the prosecutrix had not occasioned to see the face of the culprit, the identification in the present case lost its evidentiary value because when the prosecutrix had not seen the face of the culprit, she cannot identify anyone who is real culprit in the present case. The trial Court also recorded finding that date of incident appears to be in the month of September, 2012 while the Act, 2012 came in force on 4th November, 2012, therefore, Section 4 of the Act, 2012 has no application in the present case. When there was no occasion

to identify the culprit by the prosecutrix, there was no reason on threatening by the culprit.

7. The trial Court after evaluating the entire evidence recorded finding of acquittal. After going through the record, it is not a case where interference of this Court is required in the judgment of the trial Court. It is not a case where the respondent should be called for full consideration of this petition.
8. Accordingly, the application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant