

HIGH COURT OF CHHATTISGARH, BILASPUR

- State Of Chhattisgarh Through Police Station Gandai, District Rajnandgaon, Chhattisgarh.

Versus

- Respondent

For Applicant-State :- Shri Avinash Choubey, PL

Order On Board

By

Prashant Kumar Mishra, J.

06/01/2020

1. On due consideration delay of 18 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01/2019, application for condonation of delay in filing of instant Cr.M.P. is allowed.
2. The trial Court has acquitted the accused of the charges under Sections 376(2)(j)(n) of the I.P.C. and Section 3/4 of

the Protection of Children from Sexual Offences Act, 2012.

3. Prosecutrix is a minor girl aged about 16 years. Her father PW-1 Girwar Jogi lodged missing report on 03.06.2018 alleging that some unknown person has abducted his daughter. After she was recovered, she informed the Police that she was subjected to sexual intercourse by the accused. In her Court statement, the prosecutrix would state that she had gone to Gandai with one Nilkamal who dropped her at Gandai Bus Stand. From this place accused took her on the pretext that she would be dropped at the house of one Gopi but the accused brought her to his residence and committed forcible sexual intercourse.
4. Contrary to this, she admits that from Gandai Bus Stand she went along with PW-7 Sushila. This witness, namely PW-7 Sushila, would depose that the prosecutrix stayed in her house throughout the night and on the next day the Police team came and took her with them. Thus, the basic story that the accused committed forcible sexual intercourse at his own residence, stands contradicted from the statement of prosecution evidence including, to some extent, from the statement of the prosecutrix herself.
5. Considering the version of the prosecutrix herself that she had initially gone with Nilkamal, the trial Court's finding that

the allegation appears to be doubtful is supported with the evidence in record and the view taken by the trial Court appears to be one possible view in the matter. Moreover, PW-12 Dr. Nidhi Meshram has not found signs of any recent sexual intercourse with the prosecutrix.

6. In view of the settled legal position that when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. (See : **State of M.P. Vs. Bachhudas alias Balram and others**, (2007) 9 SCC 135), 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.
7. Considering the totality of the evidence, we are not inclined to grant leave to appeal for the reason that the view taken by the trial Court is one possible view in the matter.
8. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge