

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 55 of 2020**

- State Of Chhattisgarh Through The Police Station Raghunathnagar, District Balrampur Chhattisgarh.

---- Applicant**Versus**

1. Sanjay Yadav @ Badhan S/o Chandeshwar Yadav Aged About 25 Years R/o Village Dedhdhara, P. S. Rahui, District Nalanda (Bihar), Present Address Bindhnagar, Samplex, District Singrouli M. P.
2. Smt. Punam W/o Jaynath Gond Aged About 21 Years R/o Village Shashitola, P. S. Babhni, District Sonbhadra, Uttar Pradesh Present Address Bindhnagar, Samplex, District Singrouli M. P.

---- Respondents

For Applicant-State :- Shri Avinash Choubey, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya**

Order On Board**By****Prashant Kumar Mishra, J.****10/01/2020**

1. On due consideration delay of 66 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01 for condonation of

delay is allowed.

2. The trial Court has acquitted the accused- Punam of the charges under Sections 363, 366(क) of the I.P.C. while acquitted the accused- Sanjay Yadav of the charges under Sections 363, 366 of the I.P.C. and Section 5 (क) / 6 of the Protection of Children from Sexual Offences Act, 2012 in alternative Section 376 (2)(क) of the I.P.C.
3. The FIR was lodged by Heera Lal PW-1, father of prosecutrix but in his deposition he has denied that the prosecutrix had informed him that accused – Punam has abducted her and accused – Sanjay Yadav has committed forcible sexual intercourse. PW-2 Lalita, sister-in-law (*Bhabhi*) of the prosecutrix has also turned hostile and has not supported the prosecution at any stage of her examination.
4. The prosecutrix, examined as PW-5, makes allegation of abduction and commission of rape but she also states that even before this incident she was having illicit relationship with one – Rakesh Panika and has married him in the year 2016. She further admits that accused- Punam is her aunt (*Bua*).
5. Reading of the entire evidence of PW-1 Heeralal, PW-2 Lalita and PW-5 prosecutrix does not inspire confidence to find evidence of commission of rape in the absence of the

informant, her father, supporting the prosecution. The trial Court has, therefore, rightly given benefit of doubt to the accused.

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. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(**Prashant Kumar Mishra**)
Judge

SD/-
(**Gautam Chourdiya**)
Judge

Ayushi