

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 113 of 2020**

- State Of Chhattisgarh Through Its Station House Officer, Police Station Pakhanjur, District Uttar Bastar Kanker Chhattisgarh.

---- Applicant

Versus

- Vishwajeet Rai S/o Giriraj Nath Rai Aged About 32 Years Resident Of Village P.V. 122, Premnagar, Police Station Pakhanjur, District Uttar Bastar Kanker Chhattisgarh.

---- Respondent

For Applicant-State :- Shri Pawan Kesharwani, PL

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

By**Prashant Kumar Mishra, J.****17/01/2020**

1. On due consideration delay of 80 days occurred in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01 of 2019, for condonation of delay is allowed.
2. The trial Court has acquitted the accused of the charge under Section 376 of the I.P.C.
3. The accused allegedly committed forcible sexual intercourse with

the prosecutrix at about 6:30 – 7:30 P.M. on 02.12.2018 for which a written complaint was lodged on the next day. At the time of incident, prosecutrix was returning to her village with her 11 years old son and the accused took her beside the road and committed forcible sexual intercourse on the pretext that she will be provided lift for reaching to her village.

4. In a detailed judgment, the trial Court has pointed out material contradiction and omission in the statement of prosecution witnesses. There is evidence to the effect that daughter of the present accused has lodged a report against one Kamlesh Mandal, who happens to be close relative of the present prosecutrix.
5. The trial Court has also pointed out that as per the prosecutrix, the written complaint was written by her husband but her son examined as PW-2 has stated that neither on the date of incident his father was present in the village nor has returned to the village till the date of his examination. It has been found strange by the trial Court that rape has been committed and yet her husband not visited the house for such a long time. The trial Court has also pointed out that although the prosecutrix states that her blouse and petticoat were recovered by the Police but as per Ex-P-7 only petticoat was recovered and the torn blouse was not recovered. The medical report is also negative for commission of rape or for struggle at the time of commission of sexual intercourse.

6. Prosecutrix is a grown up woman aged about 36 years, her son has stated that at the time of incident he was standing at the distance of 5-6 steps and that if alarm is raised the villagers of P.V.-57 would hear the voice. It is again strange as to why no one of P.V.-57 village could hear the alarm when PW-2 says that he was repeatedly raising alarm at the time of incident.
7. 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.
8. After examining the entire evidence, we are satisfied that the view taken by the trial Court is one probable view in the matter.
9. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi