

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.717 of 2020

State Of Chhattisgarh Through Its Station House Officer, Police Station
Somni, District Rajnandgaon Chhattisgarh ---- **Petitioner**

Versus

1. Mahendra Yadav S/o Toman Yadav Aged About 19 Years R/o Village Gathula, Police Outpost Chikhali, Police Station City Kotwali, Rajnandgaon
2. Manrakhan S/o Ashok Aged About 19 Years R/o Village Gathula, Police Outpost Chikhali, Police Station City Kotwali, Rajnandgaon, District Rajnandgaon Chhattisgarh
3. Bhomraj S/o Visarjan Thakur Aged About 19 Years R/o Village Birejhar, Police Station Somni, District Rajnandgaon Chhattisgarh --**Respondents**

For State/Petitioner : Mr. Lalit Jangde, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

06/07/2021

Heard on application for condonation of delay in filing leave to appeal as also on application for grant of leave to appeal.

1. Even if we were inclined to condone the delay, taking into consideration the Court evidence of the prosecutrix (PW7), it is clear that the prosecutrix has turned completely hostile and has stated that nothing happened to her. Considering the said statement of the prosecutrix, the Court below granted the accused benefit of doubt and acquitted him.

2. Though learned State counsel would submit that the prosecutrix has stated that her statement under Section 164 Cr.P.C. was recorded before the Magistrate before taking her statement in the Court proceeding, we find that her statement in this regard also does not inspire confidence and she has gone to the extent of stating that she has not given any such statement before the

Magistrate.

3. Faced with the aforesaid situation, applying the settled principle of criminal jurisprudence, learned Court below recorded finding that the case of the prosecution has now become doubtful.

4. Baring the exceptional circumstances as mentioned in Section 164 Cr.P.C., statement under Section 164 Cr.P.C. recorded before the Magistrate, as is well settled, is not by itself a substantive piece of evidence but it could be used only for the purposes of corroboration. As the prosecutrix has not stated anything in her Court statement to involve the accused on the allegation of commission of offence of rape, only on the basis of 164 Cr.P.C. statement, as has rightly been held by the learned Court below, no conviction could be ordered. The view therefore which has been taken by learned trial Court cannot be said to be suffering from perversity or patent illegality or against settled principle of law or any statutory mandate. Given the limited scope of interference against the judgment of acquittal, this Court is of the opinion that present is not a fit case for grant of leave to appeal. The CRMP is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge