

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 605 of 2021

- State Of Chhattisgarh Through Police Station City Kotwali, District Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh

---- Petitioner.

Versus

1. Shahrukh Warsi S/o. Late Abdul Warsi Aged About 23 Years R/o. Bidpara, Raigarh, District Raigarh (Chhattisgarh) R/o Police Station - Kotwali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. Mohammad Aftab S/o. Mohd. Akram Aged About 19 Years R/o. Near Neeraj Carrier, Gorkha, District Raigarh (Chhattisgarh) R/o Police Station - Kotwali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
3. Rama Sahu S/o. Ghuraaram Sahu Aged About 21 Years R/o. Near Shiv Mandir, Rambhanta, Raigarh, District Raigarh (Chhattisgarh) R/o Police Station - Kotwali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
4. Samir Walter Kujur S/o. Lalit Kujur Aged About 28 Years R/o. Purani Basti Dhimrapur, Raigarh, District Raigarh (Chhattisgarh) R/o Police Station - Kotwali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
5. Dilip Yadav S/o. Mahesh Yadav Aged About 30 Years R/o. Goushalapara, Raigarh, District Raigarh (Chhattisgarh) R/o Police Station - Kotwali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondents.

For the State :- Mr. Lalit Jangde, Dy. GA.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava, J.
12.07.2021

Heard on prayer for leave to appeal.

2. Though learned State counsel would submit that the acquittal has been ordered even when the prosecutrix (PW-9) and her husband (PW-16) both have clearly stated regarding allegation of commission of rape of the prosecutrix by two accused in presence of others, we find

that the learned trial Court has minutely scrutinized the evidence of the prosecutrix and other witnesses and has taken into consideration that though the allegation of commission of rape is on 25th of February, 2017, and the husband had reported the matter of assault and Maar-Peet on that very day in police station and prosecutrix and her husband both were also subjected to medical examination of alleged Maar-Peet, there was no report of commission of offence of rape was lodged either by the prosecutrix or by husband. The statement of the husband also has been minutely scrutinized and it has been found that the husband himself has stated in the evidence regarding he coming to know about the alleged rape, therefore, the explanation offered for 4 days delay in lodging report did not satisfy the trial Court. No significant injury has been found on the body of the prosecutrix. The learned trial Court has taken into consideration the law that though presence of injury is not necessary, condition precedent to rely upon the evidence of the prosecutrix, at the same time, totality of the evidence particularly that on the date of incident no report of rape was lodged but later on after 4 days such report was lodged and on the date of incident only allegation was reported in the police station was of Maar-peet and assault and not of rape and that previously also, similar allegations were levelled against other person, acquittal has been ordered.

3. Having gone through the entire evidence and the judgment of the trial Court, we are unable to record a satisfaction that the learned trial Court, while assessing the evidence on record has committed any patent illegality or perversity in coming to the conclusion that the prosecution case with regard to allegation of rape has become doubtful.

Learned State counsel also could not point out to us that while

assessing the evidence on record, settled legal position and the principles with regard to assessment of appellant were not taken into consideration.

4. Taking into consideration the limited scope of interference against the judgment of acquittal, we find ourselves unable to grant leave to appeal and the application is therefore, dismissed.

CRMP is accordingly **rejected**.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay