

(2018) 06 CHH CK 0122

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 1491 Of 2017

State Of Chhattisgarh

APPELLANT

Vs

Sunil Kashyap @ Lauwa

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 376
Code Of Criminal Procedure, 1973 — Section 313, 378(3)
Protection Of Children From Sexual Offences Act, 2012 — Section 4
Schedule Castes & Schedule Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2) (v), 3(1)(xii)

Citation : (2018) 06 CHH CK 0122

Hon'ble Judges : Pritinker Diwaker, J;Gautam Choradiya, J

Bench : Division Bench

Advocate : Vivek Sharma

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J

1. Heard on admission.

2. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the code of Criminal Procedure, 1973 assailing the judgment and order dated 22.07.2017 passed by Special Judge under Schedule Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bilaspur, District Bilaspur (C.G.) in Special Case No. 01/2016 acquitting the accused/respondent of the charge under Sections 363, 366, 376 of Indian Penal Code, under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and under Section 3(2)(v), 3(1)(xii) of Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST Act').

3. According to prosecution case, on 20-9-2015, FIR (Ex-P/1) was lodged by PW-3 Shatrughan - father of the prosecutrix that since 17-9-2015, the prosecutrix is missing. Based on this FIR, offence under section 363 of IPC was

registered against unknown person. On 25-9- 2015, prosecutrix returned to her house and disclosed that she was taken by the accused/respondent. After diary statement of the prosecutrix and other witnesses, investigation was completed, charge sheet was filed and while framing the charge, the trial Judge has framed the charge against the accused/respondent under Sections 363, 366, 376 of IPC, under Section 4 of the POCSO Act and under Section 3(2)(v), 3(1)(xii) of the SC/ST Act.

4. So as to hold the accused/respondent guilty, the prosecution has examined 13 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondents as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.

6. In the court, the prosecutrix has stated that she roamed around various places along with the respondent of her own. Considering the statement of the prosecutrix, evidence regarding her age and other material available on record, the trial Judge has come to the conclusion that the prosecutrix was a consenting party and has acquitted the accused/respondent.

7. We have heard learned State counsel and perused the material available on record.

8. Prosecutrix (PW-6) is a lady aged about 18 years. She has stated that she studied upto 10 th class. On 17-9- 2015 at about 1:30 late night, she met with the accused/respondent, both of them boarded in an auto, went to Bilaspur railway station from where they had gone to Allahabad and then to Kanpur. From Kanpur they had gone to Mathura in the house of relative of the accused/respondent where they performed marriage in a temple. After staying in Mathura for about 3-4 days, she returned along with mother of the accused/respondent. She has further stated that during this period, she was having relation with the accused like husband and wife. She admits that during all this period, she had physical relation with the accused/respondent with her consent and that no force was applied by the accused/respondent. She has also admitted the factum of marriage with the accused and has stated that she never made any effort to come out from the clutches of the respondent.

9. Considering the statement of the prosecutrix and other evidence, in particular the evidence related to her age and her consenting act, the trial court has come to the conclusion that the prosecutrix was a consenting party and thus acquitted the accused/respondent. We find no illegality in the order impugned acquitting the respondent. The view taken by the trial Court appears to be justified and one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence

available on record. That, apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.¹⁰ Accordingly, the CRMP preferred by the State/applicant is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.