

S.B. Criminal Leave to Appeal No.48/006

Date of Order : 28<sup>th</sup> February, 2006.

**HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK**

Mr. Narendra Moolchandani, Public Prosecutor.

This criminal leave to appeal under Section 378(iii) & (i) Cr.P.C. has been filed by the State against the judgment and order dated 15.10.2005 passed by learned Additional District & Sessions Judge (Fast Track), Rajsamand in Sessions Case No.21/05(33/05), whereby the accused respondent has been acquitted of the charge under Sections 376 IPC.

The main contention of learned Public Prosecutor is that 10 years old girl was subjected to intercourse but the learned trial court has acquitted the accused respondent simply for the reason that there appeared only one injury on the person of the prosecutorix whereas the prosecutrix stated that the rape was committed on a surface where plenty of stones were there. According to learned Public Prosecutor the learned trial Court

in passing the judgment of acquittal also swayed by the 7 days' delay in filing the FIR. He submits that in the instant case if the delay is properly explained then it cannot be said to be a reason for acquittal of the accused in such a heinous offence where the rape is said to have been committed with a minor girl. He further submits that before lodging the First Information Report the matter was considered in the family and several talks took place between the family members as the reputation of the family and the minor girl was at stake. Learned Public Prosecutor vehemently submits that when the minor girl has stated that she was subjected to rape then there was no reason why her statement was not considered trustworthy. In last, he submits that in this case leave to appeal should be granted.

I have considered the submissions made before me.

After taking into consideration overall facts and circumstances of the case and perusing the impugned judgment of acquittal passed by the learned trial court, I find it to be a fit case to grant leave to appeal.

Accordingly, the leave to appeal is granted. The memo of leave to appeal be treated as memo of appeal. Bailable warrants in the sum of Rs.5,000/- be issued against the accused respondent Kalu s/o Gheesa for his appearance before this court on 4<sup>th</sup> April, 2006 and as & when called upon to do so.

Call for the record.

**(SATYA PRAKASH PATHAK) , J.**