

S.B. Criminal Leave to Appeal No.43/006

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 the learned Additional District & Sessions Judge (Fast Track), Chittorgarh in Sessions Case No.33/05, whereby the accused respondents have been acquitted of the charge under Section 376 IPC.

Learned Public Prosecutor submits that inspite of there being statement of the prosecutrix and she being below 16 years of age, on the basis of an affidavit, acquittal has been recorded which cannot be said to be legal and proper in any manner. He further submits that by the oral corroborative evidence it has been proved that the incident had taken place. He also submits that in such cases where a minor girl has

been raped, the Court should have taken proper care while appreciating the evidence. In last, he submits that in the present case leave should be granted.

I have considered the submissions made before me.

Taking into consideration all the facts and circumstances of the case and on the perusal of the impugned judgment of the 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/- each be issued against the accused respondents No.(1) Bhooralal son of Kishore and (2) Ratanlal son of Deo Ji Gaadari for their 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.**

