

M.CR.C. NO.11630/15

29.01.2016:

Ms.M.Ravindran, learned GA for the applicant/State.

Heard on admission and I.A.No.No.9618/15 for condonation of delay.

This is an application for leave to appeal against the judgment of acquittal passed by the Special Judge (Atrocities), Neemuch in Special Case No.31/14 whereby the accused/non-applicant has been acquitted of the charge under sections 354, 506(Part-II) IPC, under section 3(1) (11) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and under section 12 of the Protection of Children from Sexual Offences Act.

Counsel for the applicant vehemently urged the fact that there was ample evidence on record to prove the offence under section 354 IPC committed by the non-applicant despite which the trial Court has acquitted the accused of the said offence. She also candidly admitted that this application for leave to appeal is barred by 117 days. Counsel for the

applicant submits that para-9 of the impugned judgment clearly brings home the guilt of the accused-non-applicant and merely because the incident was happened in the morning at 8 A.M and no independent witnesses have not been examined by the prosecution, the trial Court has erred in acquitting the accused. Hence, she prayed that the delay in filing the application for leave to appeal be condoned and leave may be granted to the applicant to file appeal against the judgment of acquittal.

Considering the above submissions and the evidence available on record, in the considered opinion of this Court, the application cannot be allowed primarily because the judgment of acquittal passed by the trial Court is based on proper appreciation of evidence. Para-9 of the impugned judgment brought out several discrepancies in the statements of the parents of the prosecutrix and in the absence of any independent witness the prosecution has failed to prove the guilt beyond reasonable doubt. Hence, I am of the considered opinion that the trial

Court has rightly acquitted the accused. In order to sustain conviction evidence must be unshakable and consistent with the hypothesis of the guilty of the accused. The Apex Court has time and again warned that whenever there is a finding of acquittal in favour of the accused, it should not be set aside merely because another view of the matter is possible. I have no hesitation in concurring with the findings recorded by the trial Court. That apart, the application is barred by a delay of 118 days which is not properly explained. In the result, I.A.No.9618/15 for condonation of delay and application for leave to appeal being devoid of merit are hereby dismissed.

(MRS.S.R.WAGHMARE)
JUDGE

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