

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 925 OF 2015

State of Chhattisgarh, through Station House Officer, Police Station
Saja, District Bemetara (C.G.)

... Appellant

Versus

Kanha @ Sanjay, S/o Anjan Verma, age 20 years, R/o Village
Khamhariya, Naya Para, Police Station Bemetara, District Bemetara
(C.G.)

... Respondent

For Appellant : Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

15/10/2015

1. The present application has been filed for leave to appeal against the acquittal of the Respondent from the charges under Sections 363, 366, 376 IPC as also under Section 4 of the Protection of Children from Sexual Offenses Act, ordered on 2.7.2015 in Sessions Trial No. 74 of 2014 by the Additional Sessions Judge, Bemetara.
2. Learned Counsel for the State submits that consent was an irrelevant consideration. The victim was below 18 years of age.
3. We have considered the submissions and are not inclined to interfere.
4. The Sessions Judge has observed that the Kotwari register was seized and which would have been evidence with regard to date of birth but it was not produced by the prosecution with no explanation for its non-production. Similarly, the Doctor had suggested ossification test for determination of age which was also not done and no explanation offered for the same.

5. In our opinion, the Trial Judge in the aforesaid circumstances committed no error in declining to absolutely relying upon the primary school register in view of the conflicting nature of evidence given by the parents to conclude that the Prosecutrix was approximately 18 to 19 years of age. If the prosecution was not able to establish beyond reasonable doubt that the alleged victim was a minor, the benefit of doubt has to go to the Respondent.

6. The other evidence available was that the Prosecutrix and the Respondent were well known to each other since long. She had left home on a phone call from him. Her father then lodged a missing persons report and she came back to the police station with the Respondent only pursuant to the same. She had been writing love letters to the Respondent because of which her parents had stopped sending her to school also. Since the Respondent belonged to another caste, her parents did not approve of her friendship with the Respondent.

7. We find no reason to interfere with the order of acquittal.

8. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge