

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISCELLANEOUS PETITION NO. 119 OF 2016

State of Chhattisgarh, through the Station House Officer, Police Station,
Khairagarh, District Rajnandgaon (C.G.)

... Appellant

Versus

Pinku @ Budharu @ Raj, S/o Ramswarup Makande, age 21 years, R/o
Village Mandla, Police Station Khairagarh, District Rajnandgaon (C.G.)

... Respondent

For Appellant-State : Ms. Madhunisha Singh, Advocate.

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

Order on Board

Per NAVIN SINHA, C.J.

18/02/2016

1. I.A. No. 1 of 2016 has been filed to condone delay of 11 days in filing the application for grant of leave to appeal.
2. The State questions acquittal of the Respondent from the charges under Sections 363, 366, 376 IPC, dated 31.8.2015 ordered by the Additional Sessions Judge, Khairagarh in Sessions Trial No. 23 of 2012.
3. Learned Counsel for the State submits that even if the Prosecutrix went hostile, being under 16 years of age, acquittal could not have been ordered as consent was irrelevant. If there was any doubt with regard to age, the Court ought to have had a ossification test conducted, instead of ordering acquittal on the ground that the school certificate had not been validly proved or that the father had said that they had not disclosed the date of birth at the time of admission.
4. We have considered the submissions.

5. If the Prosecutrix was under 16 years of age on 22.12.2011 the date of occurrence, any consent will become irrelevant. We therefore proceeded to examine the age of the Prosecutrix on basis of the evidence placed on her behalf, Exhibit P-6, the District Primary Examination certificate, 2009 mentioning her date of birth as 8.4.1995. No other evidence was placed by the prosecution. Even according to the certificate, alleged not to have been proved in accordance with law to grant acquittal, when we examine the age of the Prosecutrix, the finding is that she was 16½ years of age on the date of occurrence.

6. There is no merit in the application for leave to appeal. Delay is condoned. The application for grant of leave to appeal is dismissed.

7. Let a copy of this order be also sent to the Secretary, Department of Law, Government of Chhattisgarh in view of our orders in Criminal Miscellaneous Petition Nos. 122 of 2016 and 207 of 2016.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge