

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 627 of 2018**

State of Chhattisgarh, through The Incharge Police Station Bagicha,
District- Jashpur (C.G.)

---- **Petitioner**

Versus

Awadhilal Singh S/o Harihar Singh, Aged About 26 Years, R/o Village
Ghankhori, Police Station Sidhi, District- Jashpur (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Suryakant Mishra, Panel Lawyer.
For Respondent : Mr. Akhand Pratap, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

20/09/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 61 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 12.10.2017 passed by Sessions Judge, Jashpur, District- Jashpur (C.G.) in Sessions Case No. 34/2017, wherein the said court acquitted the respondent for commission of offence under Sections 363 & 366 of IPC for kidnapping minor prosecutrix

with intent to seduce her for illicit intercourse on 23.04.2017 at 4.00 p.m.

5. To substantiate the charge, the prosecution examined as many as 12 witnesses. Ashok Kumar Darpan (PW-7) is a teacher in village Sankul Bhitghara, police station- Bagicha, District- Jashpur (C.G.) and he produced school register before the trial court in which date of birth of the prosecutrix is mentioned as 25.04.2002. But, this witness has clearly stated in his cross-examination that entry is not made by him in the said register and this entry is regarding admission of the prosecutrix in class-VI. He further deposed that it is not mentioned in the register that where the prosecutrix has studied from class-I to V. No one examined to establish age of the prosecutrix other than this witness. This witness has not recorded date of birth of the prosecutrix and it is not proved that date of birth of the prosecutrix is recorded on the basis of birth certificate. Birth certificate or radiological report is not filed before the trial court to ascertain age of the prosecutrix. Again, there is no satisfactory oral or documentary evidence to establish date of birth of the prosecutrix.
6. In absence of evidence, it is not established that the prosecutrix was below 18 years on the date of commission of offence. Unless the prosecutrix is minor, offence under Section 363 of IPC is not made out. As per section 361 of IPC, whoever takes or entices any minor female, if she is 18 years

of age out of keeping of the lawful guardian of such minor is said to have kidnapping the female.

7. In the present case, age of the prosecutrix is not established, therefore, it is not proved that she was minor in custody of guardian. In absence of proof of age, offence of kidnapping is not established. From the evidence of prosecutrix, it is not established that the respondent has committed any criminal act against her. The prosecutrix (PW-5) has clearly stated that the petitioner did not take her and entice her and she moved to village- Bhitghara on her own to visit house of her friend. Other witnesses have also not supported version of the prosecutrix, therefore, evidence for kidnapping which intent to seduce her to illicit intercourse is lacking.
8. The trial court has overall assessed the entire evidence and this Court has no reason to substitute contrary finding and it is not a fit case to grant leave to appeal. Accordingly, application for grant of leave to appeal is rejected.
9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge