

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1285 of 2018**

- State Of Chhattisgarh Through The Incharge Police Station Ajk Jagdalpur, District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

- Sonaru Nag S/o Sukdev Nag Aged About 28 Years Caste Lohar, Occupation Vehicle Driver, R/o Village Mavlipadr, Thothapara, P. S. Darbha, District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

 For the petitioner/State : Ms. K. Tripti Rao, PL.

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

5-9-2018.

1. Heard on I.A.No. 1 of 2018, which is an application for condonation of delay in filing the instant petition.
2. For the reasons mentioned in the application and as per law laid down by the Hon'ble Supreme Court in the matter of **State of Haryana vs. Chandra Mani and others, reported in (1996) 3 SCC 132**, delay of 16 days in filing the instant petition is allowed.
3. Also heard on application for grant of leave to appeal under Section 378 (3) of the Code of Criminal Procedure 1973.
4. This petition is preferred against the judgment of acquittal dated 8-3-2018 passed by the Special Judge (under Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989) (for short, "the Act, 1989") Bastar at Jagdalpur in

Special Case No. 9 of 2017 wherein the said court acquitted the respondent for charge of commission of offence under Sections 363, 366 of IPC 1860 and Section 3 (1)(v) of the Act, 1989.

5. In the present case, prosecutrix is PW/9. As per version of the prosecution on 2-8-2015 prosecutrix was minor and was in custody of her mother. The respondent enticed her and took her away from lawful guardianship of her mother with intent to seduce her for illicit intercourse. Further case of the prosecution is that prosecutrix is a member of Scheduled Tribe and therefore, offence of Special Act is also committed.
6. PW/9 prosecutrix has not supported the version of prosecution. As per version of this witness she does not know the respondent. Though PW/4 Sumni deposed that respondent took the prosecutrix from custody of her mother and version of this witness is supported by version of PW/2 Inder and PW/1 Smt. Balu Bai, but the fact remains that the prosecutrix has not supported the version of prosecution and her version is contrary to the version of other witnesses.
7. Now the point for consideration is whether the prosecutrix was minor on the date of incident i.e., 2-8-2015. No one deposed her exact date of birth and there is no oral evidence regarding exact date of birth of the prosecutrix. PW/5 Jhumuk Lal Thakur deposed that as per school register date of birth of the

prosecutrix is 21-11-1999, but in his cross examination he admitted that he was not posted in primary school at the time of admission of prosecutrix. Again he is unable to speak as to who admitted the prosecutrix in the said school. Neither birth certificate of prosecutrix was produced nor radiology examination was done to prove the age of the prosecutrix. In absence of any evidence, it is not proved that prosecutrix was minor i.e., below 18 years of age on the date of incident as per Indian Majority Act 1875. In absence of proof of her minority even if she accompanied the respondent, the same is not offence under Section 363 of IPC. For other offences, evidence adduced by the prosecution is contradictory and when prosecutrix has not supported the version of the prosecution, the finding of the trial Court appears to be a conclusion based on admissible evidence.

8. Considering the facts and material on record, this court is of the view that it is not a fit case for grant of leave to appeal. Accordingly the application for grant of leave to appeal is rejected. Consequently, the instant CRMP is also dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju