

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1456 of 2017**

State of Chhattisgarh, Through Police station Pankhajur, Distt.
North Bastar Kanker (CG)

---- **Petitioner****Versus**

Pankaj Gain, S/o. Shri Magal Gain, Aged about 26 years, R/o.
Purla, Police Station Damarkot, Distt. Navrangpur (Odisha)

---- **Respondent**

For the appellant/State : Shri Sanjeev PandeY, Govt. Advocate
For the respondent : Shri Shalvik Tiwari, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****20.8.2018.**

1. Heard on IA No.01/17 for condonation of delay in filing the acquittal appeal.

2. For the reasons mentioned in the application, the same is allowed and the delay of 28 days in filing the acquittal appeal is hereby condoned.

3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.

4. Leave is sought on the ground that judgment of acquittal dated 30.5.2017 passed by Additional Special Sessions Judge, Bhanuprapur, Distt. North Bastar Kanker in Special Session Case No.80/2016 for the commission of offence under Sections 363, 366, 376(2)(g) of the IPC and under Section 6 of Protection of Children from Sexual Offences Act, 2012 is improper, unjust and uncalled for as the prosecutrix was minor on the date of

incident being 16 years of age and the trial Court has not evaluated other evidence adduced by the prosecution.

5. To substantiate the charges, the prosecution has examined as many as 15 witnesses. Ranjita Biswas (PW-1) is the mother of the prosecutrix and Manmat Biswas PW-3) is the father of the prosecutrix. Both of them have not stated regarding the date of birth of the prosecutrix. Virendra Nath Bairagi (PW-8), the teacher deposed on the basis of school register that date of birth of the prosecutrix is 18.10.2000. But in his cross-examination he deposed that in the year 2008 he was posted in the institution and he has not admitted the prosecutrix in the school and does not know who admitted the prosecutrix in the school and how her date of birth has been recorded. No birth certificate has been produced before the trial Court. No radiological report has been produced and no medical expert has been examined to establish the age of the prosecutrix.

6. On overall assessment, since there is no legally admissible evidence regarding date of birth of the prosecutrix, she was not proved to be below the age of 18 years on the date of incident, i.e. on 11.10.2016. Unless minority is proved, offence defined as kidnapping under Section 361 IPC and punishable under Section 363 IPC is not made out.

7. The prosecutrix deposed that she married with the appellant in the temple and she further deposed that no act was committed against her by the appellant. The prosecutrix has been declared

hostile and leading questions were put forth to her at length, but nothing could be elicited against the present appellant. Therefore, there is no evidence regarding commission of offence under Sections 366 & 376(2) IPC or under Section 6 of POCSO Act. The trial Court has properly evaluated the evidence and looking to the judgment it is not a fit case where leave to appeal be granted. Accordingly, application under Section 378(3) is hereby rejected.

Sd/-

(Ram Prasanna Sharma)

JUDGE