

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRMP No. 1831 of 2017

- State of Chhattisgarh through the Police Station Balauda, District Janjgir Champa Chhattisgarh., Chhattisgarh

---- Applicant

Versus

- Anil Kumar Agharia S/o Kamal Kishore Agharia Aged About 26 Years R/o Village Dhorla, Police Station Balauda, District Janjgir Champa Chhattisgarh. , Chhattisgarh

---- Respondent

For Applicant/State	:	Ms. K. Tripti Rao, PL.
For Respondent	:	None

Order on Board

(24-08-2018)

1. Heard on application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973.
2. It is an appeal against the judgment dated 21-9-2017 passed by the Special Judge, under Protection of Children from Sexual Offences Act, 2012 (for short, “the Act, 2012”) Janjgir Champa (CG) in Special Criminal Case No. 29 of 2015, wherein the said court acquitted the respondent for commission of offence under Section 363 of IPC and Section 18 of the Act, 2012.
3. To substantiate the charge, prosecution examined as many as ten witnesses. No one examined to establish the exact date of birth of the prosecutrix. Neither birth certificate of the prosecutrix

was produced nor school certificate was submitted before the trial Court to ascertain the date of birth of the prosecutrix.

4. PW/5 Ku. Ichha Devi who is a sister of the prosecutrix deposed on imagination that the age of the prosecutrix is between 16 to 17 years, but her imagination is not legally admissible evidence and the same is inadmissible in evidence. PW/10 Kheekhdas is father of the prosecutrix and as per his statement he cannot recollect the date of birth of the prosecutrix. No other evidence is adduced for establishing the date of birth of the prosecutrix.
5. In absence of oral and documentary evidence, date of birth of the prosecutrix is not established and it cannot be held that she was minor on the date of incident ie., 25-1-2015. As per prosecutrix, respondent did not commit any wrong against her. In absence of evidence, it is not established that any sexual harassment as defined under Section 11 of the Act, 2012 is committed against the prosecutrix.
6. Offence under Section 363 of the IPC can be made out only when the offence of kidnapping is completed. As per Section 361 of the IPC whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind,

without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

7. In the present case, minority of the prosecutrix is not established, therefore, offence as defined under Section 361 of the IPC and punishable under Section 363 of IPC is not made out. Again, when there is no evidence regarding sexual harassment, offence under Section 18 of the Act, 2012 is not made out. The respondent who already suffered agony of long trial before the Special Court cannot be subjected to face the same twice.
8. Accordingly, the application for grant of leave to appeal is rejected and consequently, the petition filed by the applicant/State is also dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju_