

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 717 of 2019

Ku. Annu Suryavanshi, D/o - Rajendra Suryavansi, Aged about - 19 years, R/o - Village Bharari (Bhatapara), P.S. - Ratanpur, District- Bilaspur (C.G.)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through the P. S. Ratanpur, District - Bilaspur (C.G.)
2. Rajendra Suryavansi, S/o – Late Abhayram Suryavansi, Aged about - 41 years, R/o - Village Bharari (Bhatapara), P.S.- Ratanpur, District- Bilaspur (C.G.)

---- **Respondents**

For Petitioner : Mr. Kalyan Kalamkar, Advocate

For State/Respondent : Mrs. Subha Shrivastava, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

13/05/2019

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing the instant petition.
2. On due consideration and for the reasons mentioned in the application, the same is allowed and delay of 378 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal.
4. This petition is preferred against judgment dated 11th December, 2017 passed by 3rd Additional Sessions Judge, Bilaspur (C.G.)/Special Judge (under POCSO Act) in Special Criminal Case (POCSO) No. 471/2016, wherein the said court convicted respondent No. 2 for commission of offence under Section 376 of IPC, 1860 and Sections 5 and 6 of the

Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act")

5. This petition is preferred by the victim under Section 372 of CrPC, which may be read as under:-

No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force: [Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction or such Court.]

6. In the present case, respondent No. 2 was found guilty under Section 376 of IPC and Section 6 of the POCSO Act. The trial court opined (para-28) that age of the prosecutrix was 16 years at the time of incident. The case of respondent No. 2 falls within mischief under Section 376 (1) of IPC for which minimum sentence is 7 years.
7. The trial Court also recorded finding that respondent No. 2 is guilty for offence punishable under Section 6 of the POCSO Act for which minimum sentence is 10 years and trial Court awarded sentence of 10 years to respondent No. 2. It is not a case where respondent is acquitted or convicted for lesser offence. It is also not a case where inadequate compensation

was imposed, therefore, Section 372 of Cr.P.C. is not applicable in the present case.

8. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle