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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 909 of 2019**

- State Of Chhattisgarh Through The Incharge Police Station Kukdur District Kabirdham Chhattisgarh

---- Petitioner

Versus

- Umesh Kumar S/o Dashruram Radekar Aged About 32 Years R/o Village Awaspara, Police Station Kukdur, District Kabirdham Chhattisgarh. (Accused)

---- Respondent

For PetitionerMr. Vikash Shrivastava, Panel Lawyer

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Order On Board by Prashant Kumar Mishra, J.**23/9/2019**

1. Heard on IA No.1, an application for condonation of delay in filing the CRMP.
2. On due consideration, the application is allowed and the delay is condoned.
3. The trial Court has acquitted the accused of the charges under Sections 363, 366, 376 of IPC and Section 6 of the Protection of

Children from Sexual Offences Act, 2012.

4. Also heard on admission.
5. From the evidence available on record, it appears that the prosecutrix and the accused were having an affair. The accused allegedly abducted the prosecutrix and they stayed together for about 15 days at Bhopal. In respect of age, the prosecution relied on *Dakhil-Kharij* register, in which, her date of birth is mentioned as 15.10.1999. However, the Headmaster of the School examined as PW-2 stated that the date of birth of the prosecutrix was informed by her father, whereas, her father examined as PW-8 is not definite as to on what basis he informed the date of birth at the time of admission of her daughter in the school.
6. The defence has putforth the copy of Kotwari register carrying the entry of the date of birth of the prosecutrix as 6.3.1997. Thus, there being contradictory documentary evidence in respect of age of the prosecutrix, the trial Court has found that the prosecution has failed to prove in conclusive terms that the prosecutrix was less than 18 years of age on the date of the incident.
7. Since consent on the part of the prosecutrix while maintaining an affair and allowing the accused to have sexual intercourse, is borne out from the evidence on record, age of the prosecutrix assumes significance. Therefore, for the failure of the prosecution to prove that the prosecutrix was less than 18 years

of age on the date of the incident, we are not inclined to grant leave to appeal against acquittal.

8. The CRMP deserves to be and is hereby is dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

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