

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 975 of 2019

- State Of Chhattisgarh, Through The In-charge, Police Station Gandai, District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Hemu Joshi, S/o Chaindas Joshi, Aged About 38 Years, R/o Village Panchdevri, Police Station Kumhari, District : Durg, Chhattisgarh
2. Onkar Maheshwari, S/o Ganesh Maheshwari, Aged About 24 Years, R/o Ward No. 14, Tikripara, Gandai, P.S. Gandai, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner/State : Shri Vikash Shrivastava, PL

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board by Hon'ble Smt. Justice Rajani Dubey

19.06.2019

1. Heard on application for condonation of delay in filing appeal.
2. Upon due consideration, the application is allowed.
3. Delay is condoned.
4. Also, heard on application for grant of leave to appeal.
5. Learned counsel for the State would argue that the learned trial Court committed illegality and perversity in granting acquittal to respondents/accused only on the ground that it was a case of consent, ignoring the clinching evidence on record with regard to age of prosecutrix, that on the date of incident, she had eloped with the respondents and stayed with them and entered into sexual intercourse, she was less than 18 years of age.
6. After going through the judgment of acquittal and evidence on record, particularly that of the prosecutrix(PW-8), her mother(PW-9), father(PW-10), we find that the learned trial Court has granted benefit of doubt to the respondents. In view of two sets of oral and documentary evidence with regard to the age of the prosecutrix. The prosecutrix(PW-8) in her cross examination has stated that

her sister's age is 25-26 years and she was 2-2 ½ years younger than her. In her examination in chief she stated that she went to Nagpur and after two years, she married to respondent/accused Onkar Maheshwari.

7. Considering the aforesaid evidence, the learned trial Court has granted the respondents/accused benefit of doubt because the prosecution failed to prove beyond reasonable doubt that the prosecutrix on the date of alleged commission of offence was less than 18 years, and the view taken by the trial Court appears to be plausible view, based on the evidence.
8. The view taken by the learned Trial Court in granting acquittal by giving respondents/accused benefit of doubt, in so far as the allegation commission of rape is concerned, we find ourselves unable to interfere with judgment of acquittal, keeping in view the limited scope of interference against the judgment of acquittal. We, accordingly, do not consider present to be a fit case for grant of leave to appeal.
9. Accordingly, CRMP is dismissed at the admission stage itself.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge