

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1047 of 2013**

State of Chhattisgarh, Through: S.H.O., P.S. - Balco Nagar,
District - Korba (C.G.)

---- Petitioner

Versus

Vivek Choudhary, S/o - Shri Vijay Choudhary, Aged about -
21 Years, R/o- Aghora, P.S. - Haidar Nagar, District - Palamu,
Presently R/o - Nehru Nagar, Near Church, Balco, P.S. - Balco,
District - Korba (C.G.)

---- Respondent

For State/Petitioner : Shri V.B. Singh, Panel Lawyer.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

28/06/2019

1. Heard on I.A. No. 01/2013, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 678 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 21st October, 2011 passed by Sessions Judge, Korba, District – Korba (C.G.) in Sessions Trial No. 05/2011 wherein the said Court acquitted the respondent for charge under Sections 363 and 366 of IPC, 1860.

5. In the present case, prosecutrix is (PW-6). Saroj Das (PW-8) is mother of the prosecutrix, deposed before the trial court that age of prosecutrix is 16 years, but no birth certificate was produced before the trial Court. Though, one school certificate was seized in the present case, but no one is examined from the school in which the prosecutrix was admitted. To establish regarding actual date of birth of the prosecutrix, no ossification test is conducted in the present case. In absence of any certificate or medical opinion, it is not established that the prosecutrix was below 18 years on 27th November, 2010. The prosecutrix deposed that she went to her maternal aunt home without informing member of family that is why report was lodged in the present case.
6. Sahdev Das (PW-7) and Saroj Das (PW-8) deposed that the prosecutrix was found in the home of her maternal aunt. Though, Chamaru (PW-2) deposed that one Sahdev Das (PW-7) informed him that prosecutrix eloped with respondent, but version of this witness is hearsay in nature and Sahdev Das (PW-7) has not deposed that he informed Chamaru (PW-2) regarding eloping of the respondent with the prosecutrix.
7. The trial Court has elaborately discussed the entire evidence and recorded that taking from lawful guardianship to the prosecutrix is not established because age of the prosecutrix is not proved to be below 18 years. The trial Court recorded that it is not a case where the respondent has seduced the prosecutrix to move with him in order that she will be subjected to illicit intercourse or marriage with the other person against her consent. After going

though the record, the trial Court recorded finding of acquittal and this Court has no reason to take a contrary view. It is not a case where order of the trial Court requires any interference of this Court and it is not a case where the respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.

8. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge