

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1965 of 2018

The State Of Chhattisgarh Through District Magistrate, District- Janjgir-
Champa, Chhattisgarh ---- **Appellant**

Versus

1. Surendra Kumar Karsh S/o Vasudeo Bareth Aged About 20 Years R/o Sonadula, Police Station - Malkharauda, District- Janjgir- Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Rajkumar S/o Dr. B.P. Bareth Aged About 22 Years R/o Sonadula, Police Station - Malkharauda, District- Janjgir- Champa, Chhattisgarh.
3. Kirtan Lal S/o Udal Rathia Aged About 24 Years R/o Persada, Police Station- Bhupdeopur, District- Raigarh, Chhattisgarh.
4. Teckchand S/o Haricharan Aged About 34 Years R/o Sonadula, Police Station- Malkharauda, District- Janjgir- Champa, Chhattisgarh.
5. Yashwant Patel S/o Goverdhan Patel Aged About 26 Years R/o Parsada Police Station- Bhupdeopur, District- Raigarh, Chhattisgarh.

---- **Respondents**

For Appellant/State : Mr. K.K. Singh, G. A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

07/02/2019

Heard on (I.A. No.1) application for condonation of delay in filing application for grant of leave to appeal.

Upon due consideration, delay in filing application for grant of leave to appeal is condoned.

The application (I.A. No.1) is allowed.

Also heard on application for grant of leave to appeal.

1. Learned counsel for the State would argue that even though the prosecutrix has stated in her Court statement that she had gone along with the respondents/ accused, they having an affair, the prosecution led clinching evidence to prove that prosecutrix was less than 18 years of age. Therefore, consent was immaterial. He would submit that, in any case, once the prosecutrix states that she had gone with the respondents, commission of offence under Section 363 & 366 of IPC would be made out.

2. We have perused the impugned judgment and the evidence with regard to age of the prosecutrix. Learned Trial Court has taken into consideration that as far as a school register entries are concerned, there is some interpolation because the entries have been changed by use of whitener. The prosecutrix has stated that she is 20 years of age. The evidence of the father and mother of the prosecutrix has also been scrutinized by the learned Trial Court to come to the conclusion that they have failed to give any specific date and if the age is estimated on the basis of the evidence of mother, it appears to be about 20 years of age. On this consideration, learned Trial Court has given benefit of doubt, particularly, when the prosecutrix has not supported the story of she having been subjected to any rape.

3. In view of the above, we do not find that there is any patent illegality or perversity in the judgment of the Trial Court warranting inference against the judgment of acquittal. Therefore, no case is made out for grant of leave to appeal and the same is accordingly dismissed.

4. We find that records of Trial Court have already been summoned. Let the records be remitted to concerned Court forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge