

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2076 of 2018

State Of Chhattisgarh Through Police Station Ratanpur, District Bilaspur
Chhattisgarh

----Appellant

Versus

Kapil Narayan Tandon S/o Panchram Tandan Aged About 23 Years R/o Jaali
Mainroad Police Station Ratanpur District Bilaspur Chhattisgarh

--- Respondent

For Appellant/State : Shri Shubhash Yadav, Dy. Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

01/02/2019

Heard on application for condonation of delay in filing appeal.

Upon due consideration, the application is allowed.

Delay is condoned.

Heard on application for grant of leave to appeal.

1. Learned counsel for the State would argue that the learned Trial Court has committed patent illegality in not relying upon clinching evidence with regard to the age of the prosecutrix as recorded in the school record, according to which, on the date of alleged commission of offence, the prosecutrix was less than 18 years of age.

2. We have gone through the impugned judgment and evidence on record. Learned trial Court in order to hold that the prosecution has failed to prove that the prosecutrix was below 18 years of age, has not only relied the prosecutrix's own evidence, in which, she has stated that her date of birth is 12.10.1994 but also has taken into consideration that even the Headmaster, who produced the original record, could not say on whose declaration, the age of the prosecutrix was written in the school record as 12.10.1997. Moreover, it has also taken into consideration that the father of the prosecutrix made clear statement with regard to the age of the prosecutrix but he has also not supported the prosecution case and in the cross-examination, he has admitted that the age of the prosecutrix was approximately 20 to

21 years.

3. On the face of this evidence, we find ourselves unable to accept the submission of learned counsel for the State that the view taken by the learned trial Court suffers from any patent illegality or perversity. The view taken by the learned Trial Court is one of the possible view, which could be taken on the basis of the evidence before it. Therefore, no case is made out for grant of leave to appeal.

4. The present CRMP is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

Rekha