

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2091 of 2018

- State of Chhattisgarh, Through -Police Station Sonhat, District Korea, Chhattisgarh

---- **Petitioner**

Versus

- Suchendra Yadav @ Chiput, S/o Ashok Kumar Yadav, Aged About 22 Years, R/o Village Keshgawan, Police Station Sonhat, District -Korea, Chhattisgarh

---- **Respondent**

For Petitioner/State : Shri Subhash Yadav, Dy.G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board by Hon'ble Shri Justice Manindra Mohan Shrivastava

19.02.2019

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 filed by the State.
5. Learned counsel for the State submits that even though the prosecutrix evidence may reflect that there was some kind of affair between the prosecutrix and accused/respondent followed by marriage and they lived together as husband and wife, the prosecution led clinching evidence to prove that the prosecutrix was less than 18 years of age on the date when she went along with the accused/respondent and performed marriage. Therefore, consent of the prosecutrix is immaterial in the eye of law and the accused/respondent is liable to be convicted.
6. We have gone through the impugned judgment of acquittal and the evidence led by the prosecution, particularly that of the prosecutrix. The evidence of the prosecutrix clearly reflects that present is a case of consent between the prosecutrix and the accused/respondent. The prosecutrix has clearly stated that she had performed marriage with the respondent/accused. So far as the age of the prosecutrix is concerned, the learned trial Court has meticulously examined the oral and documentary evidence on record.

7. Taking into consideration that the entries made in the school record could not be proved by examining the custodians of the record or one who recorded the entry, and there being no evidence as to on whose declaration the date of birth was recorded and further, taking into consideration the oral evidence of mother and father of the prosecutrix, the trial Court has come to the conclusion that the prosecution has failed to prove the age of the prosecutrix that on the date of alleged commission of offence she was less than 18 years of age. We do not find any conclusive medical test also, including ossification test. Therefore, the finding of the learned trial court does not suffer from any patent illegality, perversity so as to warrant interference by this Court, keeping in view the limited scope of interference against the judgment of acquittal. We, accordingly, do not consider present to be a fit case to grant leave to appeal.
8. Accordingly, CRMP is dismissed at the admission stage itself.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge