

## HIGH COURT OF CHHATTISGARH, BILASPUR

**CRMP No. 2313 of 2019**

- Applicant

1. Sanju Kumar Yadav S/o Din Prasad Aged About 20 Years  
R/o Village Jogi Dongri, Police Station Gaurela, District  
Bilaspur Chhattisgarh.

2. Mohammad Israil, S/o Mod. Ibrahim Khan, Aged About 32 Years R/o Village Sarbahara, Police Station Gaurela District Bilaspur Chhattisgarh.

---- Respondents

For Applicant-State :- Shri K.K. Singh, GA

**Hon'ble Shri Prashant Kumar Mishra**

**Hon'ble Shri Gautam Chourdiya, JJ.**

### Order on Board

**By**

**Prashant Kumar Mishra, J**

05/11/2019

1. Heard.
2. On due consideration, delay of 239 days in filing the present CRMP is condoned. Accordingly, I.A. No.1 is allowed.

3. The trial Court has acquitted the accused of the charges under Sections 363 and 376(घ) of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
4. The accused persons were sent for trial for committing rape with two prosecutrix one of whom, examined as PW-1, has turned hostile without supporting the prosecution case at any stage of her examination. The other prosecutrix, examined as PW-13, has deposed about commission of rape by both the accused. However, perusal of the entire evidence would demonstrate that when the prosecutrix were taken in a car they were attending *durga festival* in a crowded place however, they did not raise any protest. They were kept in a farmhouse, which is again situated adjacent to the village basti having surrounded by houses.
5. In the first night, after sexual intercourse, the prosecutrix were dropped in the house of one Radha Bai. During the entire night, the prosecutrix again went to attend various functions at the *durga pandaal* and were going to village pond in the morning when they were again taken by the accused persons to the same farmhouse. This time they were detained in the farmhouse after committing forcible intercourse.

6. It is also disclosed in the statement of PW-13 that after they were released they had again gone to attend *mela* in the village where they were seen by cousin brother of PW-13, who informed her parents and thereafter father of PW-13 came to village *Kasaibahra* and took her with him. During their entire stay on both the occasions the prosecutrix neither raised protest nor resisted the act even though the act of sexual intercourse lasted, as per her own saying, for one and half hour. She admits that if they would have raised alarm people living near the farmhouse would have known about the incident, however, for fear of being exposed they did not raise any alarm.
7. Considering the entire evidence in totality it appears to be a case of consent and finding to these effect recorded by the trial Court does not appear to be perverse.
8. At this juncture, learned State counsel would argue that PW-13 was less than 18 years of age on the date of incident, therefore, the case of commission of forcible sexual intercourse or aggravated sexual assault is made out.
9. Considering the submission, we have examined the evidence concerning age of PW-13. The only evidence about her age is the mark-sheet issued by the school administration where she has studied upto Class X. Her

father-PW-17, Kripal Singh, stated that her date of birth was recorded by the school management on approximate basis. Similar is the statement of PW-18, Phoolkuwar, mother of PW-13. This witness further states that she had informed the birth of the prosecutrix to the village Kotwar, however, Kotwari Register has not been seized and produced to prove and corroborate the date of birth recorded in the school's progress report. The prosecutrix was not sent for radiological examination. Thus except for the mark-sheet there is no evidence that the PW-13 was less than 18 years of age on the date of incident.

10. Considering all relevant aspects of the matter including the conduct of the prosecutrix and the deficit of proof in respect of her age, the present does not appear to be a fit case for grant of leave to appeal. Accordingly, the present CRMP deserves to be and is hereby dismissed.

Sd/-  
**(Prashant Kumar Mishra)**  
Judge

Sd/-  
**(Gautam Chourdiya)**  
Judge

Ankit