

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2310 of 2019

- Applicant

- Mukesh Chandra Vishwas S/o Late Subodh Vishwas, Aged About 32 Years R/o. Village Kapsi, Police Station Pakhanjur, District North Bastar Kanker Chhattisgarh.....Accused.

---- Respondent

For Applicant-State :- Shri Avinash Choubey, PL.

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

23/10/2019

1. Heard.
2. On due consideration, delay of 33 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, 366 and 376(2)(झ)(ढ) of the IPC and Sections 5(ढ) and 6 of the Protection of Children from

Sexual Offences Act, 2012.

4. Plain reading of the deposition of the prosecutrix would reveal that on the date of incident she received a text message on her mobile from the accused and thereafter she went to a predetermine place and eloped with the accused. She stayed with the accused for about 3-4 months and during this period she was allegedly subjected to forcible sexual intercourse. Her statement in cross examination would reveal that she was consenting party from the stage of leaving her house to all the stages when she stayed with the accused. In this circumstance age of the prosecutrix is a relevant factor to determine as to whether the accused has committed the alleged offence.
5. Admittedly the date of birth of the prosecutrix as mentioned in her Aadhaar Card is 09.03.2001, whereas Dakhil Kharij Register (Exhibit P-8) of the school carries her date of birth as 09.03.2002. This apart, she was admitted to Standard 1st in the year 2005. Ordinarily a child is admitted to Standard 1st in a school upon completion of 6 years of age, therefore, on the date of her admission to school she must be at least 6 years of age and calculating her age on this basis she appears to be more than 18 years of age on the date on incident.

6. In any case, in the absence of any conclusive evidence to prove her date of birth, the trial Court has rightly found that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of incident.
7. No case for grant of leave to appeal against the acquittal is made out.
8. Accordingly, the CRMP deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit