

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2603 of 2018**

- State Of Chhattisgarh Through Its Station House Officer, police Station Abhanpur Distirct Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant**Versus**

- Akbar Khan S/o Rahamat Khan R/o Behind Goverment Hospital Abhanpur Police Station Abhanpur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent**PRESENT:-**

Shri K.K. Singh, G.A. for Appellant/State.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****08/02/2019**

1. Heard on application (IA No.1/2018) for condonation of delay in filling the instant appeal.
2. Upon due consideration, the application is allowed and the delay in filling the instant appeal is condoned.
3. Also heard on prayer for grant of leave to appeal.
4. Learned State counsel would argue that despite prosecution has come out with the clinching, oral as well as documentary evidence with regard to age of the prosecutrix being less than 18 years of age, she had eloped with the respondent/accused, the learned Trial Court has disbelieved the evidence of age .
5. We have gone through the impugned judgment and the evidence led by the prosecution. The evidence of the prosecutrix clearly shows that present was a case of consent, in which the prosecutrix had run away with the respondent accused in the

night. It appears to be a case of affair.

6. From the findings recorded by the learned Trial Court in paras 7 to 18, We find that the learned Trial Court has meticulously examined and scrutinized the evidence, oral as well as documentary, and has taken into consideration that the basis of recording of date of birth in the school records, has not been proved, the father has not given any specific evidence and no other clinching evidence with regard to age including medical evidence to prove the age of the prosecutrix before the trial Court. The view taken by the learned Trial Court cannot be said to be suffering from patent illegality and perversity in the sense that while deciding the issue of the age, any evidence led by the prosecution was omitted for consideration.

7. We find that in the present case, the prosecutrix has not whispered anything about any sexual intercourse against her by the respondent accused. Therefore in the circumstances, in our considered opinion, the present is not a fit case for grant of leave to appeal.

8. Accordingly, the petition is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge