

HIGH COURT OF CHHATTISGARH, BILASPUR

- State of Chhattisgarh Through The Station House Officer, Police Station Dabhara, District Janjgir Champa Chhattisgarh.

Versus

- Balkumar Mali S/o Kundru Mali Aged About 27 Years R/o Village Dabhra, Ward No.13, Police Station Dabhra, District Janjgir Champa Chhattisgarh.

For Applicant-State :-Shri Rajesh Singh, Dy. G.A.

Prashant Kumar Mishra, J

1. Heard learned State counsel on I.A. No. 1 as also on admission.

2. This is an application for condonation of delay in filing the application seeking leave to appeal.

3. On due consideration, application is allowed and delay of

151 days in filing the application is condoned.

4. The trial Court has acquitted the accused from the charges under Sections 363 and 366A of IPC and under Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012. The accused was sent for trial on the allegation that on 04.11.2016, the prosecutrix eloped with the accused and was recovered when the accused's father produced her before the police on 13.11.2016. It is alleged that during this period and for a period of 1 year prior to the elopement, the accused was committing forcible sexual intercourse with the prosecutrix on promise to marry. The charge-sheet was filed for offence under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 for the reason that the prosecutrix was treated to be less than 18 years of age.
5. From the evidence produced by the prosecution in course of trial it appears prosecutrix's date of birth as per the Dakhil Kharij Register of the primary school where she got admitted is shown as 08.08.1999, the same date of birth is mentioned in her Aadhaar Card. However, both the documents have not been proved in accordance with law. In her deposition she would admit in Para 5 of the cross examination, after being declared hostile, that she is studying in Class XII and has failed twice during her studies from Class I to Class XII.

Ordinarily the child is admitted in Class I at the age of 6 years, therefore, if the prosecutrix was studying in Class XII and having failed twice in her career, her approximate age would be 19 years. With this admission of the prosecutrix and for the fact that the Dakhil Kharij Register and Aadhaar Card have not been proved in accordance with law, the trial Court has not committed any illegality or perversity in recording the finding that the prosecutrix appears to be more than 18 years of age on the date of incident.

6. If we consider alternatively that even if she was more than 18 years age an offence under Section 376 of IPC could be made out, it is to be seen that in case her diary statement and in her deposition as well, the prosecutrix states that she had an affair with the accused for about an year and during this period they had developed physical relation. In her deposition she states in her Examination-in-Chief that when her parents fixed her marriage with some other boy, she requested the accused that they would not be meeting any further but hearing this the accused assaulted her and committed forcible sexual intercourse. Thereafter, she went to her friend Ku. Jamuna Yadav's (PW-4) house. At this stage, if we read deposition of Jamuna Yadav, she would state that when the prosecutrix reached her house she disclosed that she is in love with the accused and when they

met at Dabhra, the accused assaulted her and committed forcible sexual intercourse. It would thus appear that the accused was in love with the prosecutrix but when she refused to meet the accused further as she was getting married to a different boy, the accused wanted to continue the affair and in this sequence the sexual intercourse took place. The prosecutrix would not say that she resisted the effort of the accused in performing the sexual intercourse and moreover when she was having an affair and physical relation for last about an year, it appears she was a consenting party on 04.11.2016 also. The prosecutrix being more than 18 years of age and there being an affair between her and accused, the trial Court has not committed any illegality in acquitting the accused from the charges. With regard to other offences, the prosecutrix admits that she had eloped with the accused of her own and the accused had not abducted her.

7. Accordingly, there is no substance in this application seeking leave to appeal, it fails and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Ankit

Sd/-

(Gautam Chourdiya)
Judge