

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 46 of 2019

- Applicant

- Mahendra Mirjha S/o Manharan Mirjha Aged About 20 Years
R/o Village Tigali, Jevra Chowki Chandanu, Police Station
Nandghat District Bemetara Chhattisgarh.

---- Respondent

For Applicant-State :- Shri Rajendra Tripathi, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

19/08/2019

1. Heard.
2. On due consideration, delay of 14 days in filing the Cr.M.P. is condoned. Accordingly, I. A. No.1 stands allowed.
3. The trial Court has acquitted the accused of the charges under Sections 376 and 506 Part II of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

4. The prosecutrix was allegedly subjected to forcible sexual intercourse at about 8:00 am on 25.04.2016. Her date of birth, as recorded in the Dakhil Kharij Register (Ex.P-16) is 26.02.2002. The same date of birth is mentioned in the School Progress Report, Article A-1, however, her mother PW-1 Bhuri Bai would admit that her marriage is 22-23 years old and the prosecutrix was born after 3-4 years of marriage. Thus, there is lack of conclusive proof that the prosecutrix was less than 18 years of age on the date of incident.
5. The prosecutrix as well as her parents would admit that the place of occurrence is 3-4 field away from their residence and that during the morning hours the agricultural fields are flooded with workers and field owners, however, no person of the locality has seen the presence of accused and the prosecutrix on the agricultural field. The prosecutrix as well as her parents would speak about suffering of injuries at the time of incident. However, medical opinion rendered by PW-13, Dr. Anamika Minj, has not found any external injury on the body of the prosecutrix. Similarly FSL report (Ex.P-25) has not found any traces of semen or human sperm on the underwear or over the vaginal slide.
6. There is another important aspect of the matter as has been highlighted by the Trial Judge in Para-16 of the judgment that the families of the prosecutrix and the accused are not in talking terms because of dispute concerning grazing of the

vegetables grown by the parents of the prosecutrix.

7. PW-11, Daya Das, Kotwar of the village, and PW-12, Dharam Kurre, Sarpanch of the Gram Panchayat, have admitted that few months before the alleged incident father of the prosecutrix had made a complaint to the Gram Panchayat that the cattle belonging to the family of the accused have destroyed the vegetable crop grown by them. Thus, denial of such dispute by the prosecutrix and her parents appears to be concealment of a material fact.
8. Considering either of the situation, first the age of the prosecutrix and the possibility of the incident being a consensual one and second the possibility of false implication because of previous dispute between the two families, the Trial Court has taken one possible view of the matter, therefore, in an application seeking leave to appeal against acquittal, it does not appear appropriate to take another view of the matter and allow the State to prefer appeal.
9. In view of the foregoing, the present application seeking leave to appeal deserves to be dismissed. Accordingly, Cr.M.P. is dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit