

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 29 of 2019

- State Of Chhattisgarh Through The Police Station Bemetara, District Bemetara Chhattisgarh

---- Petitioner

Versus

- Champeshwar Kothari S/o Babulal Kothari Aged About 24 Years R/o Village Kathiya, Police Station Bemetara District Mungeli

---- Respondent

For State / Petitioner : Shri Subhash Yadav, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

04/02/2019

Heard on I.A.No.1, application for condonation of delay in filing application for grant of leave to appeal.

Upon due consideration, the application is allowed.

Delay is condoned.

Also heard on application for grant of leave to appeal.

Learned counsel for the State would argue that even though in the school records, the date of birth of the prosecutrix was recorded as 12/09/1999, according to which, on the date of alleged commission of offence, the prosecutrix was 17 years, 8 months and 5 days of age, learned Trial Court has disbelieved the same.

2. We have heard learned counsel for the State and perused the impugned judgment and the evidence on record.

3. As far as the consent part is concerned, the evidence of the prosecutrix is

clear that there was consensual sexual intercourse between the prosecutrix and the accused.

On the aspect of determination of age of the prosecutrix, learned Trial Court has examined the entire evidence on record. It has been held that the prosecutrix herself stated that her date of birth was recorded in school was not correct and correct date of birth is 12/09/1997. Her emphatic statement that such date of birth was recorded in other register has also been taken note of. The evidence of father of the prosecutrix that 12/09/1997 as her date of birth, has been taken into consideration. Learned Trial Court has also considered that there is no evidence that on what basis, entry in the school register was made. Over and above, the examination of the prosecutrix by the doctor, her physical development, growth of bones have also been taken into consideration by the learned Trial Court and the opinion of the doctor that the prosecutrix appears to be more than 18 years of age. On the basis of aforesaid consideration, learned Trial Court has reached to the conclusion that on the date of incident, the prosecutrix could probably be more than 18 years of age and thus, by granting benefit of doubt, the accused has been acquitted.

4. The view taken by the learned Trial Court neither suffers from any patent illegality nor any perversity and the view appears to be possible and plausible one. Therefore, no case is made out for grant of leave to appeal. The application for grant of leave to appeal is rejected.

5. The present CRMP is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge