

HIGH COURT OF CHHATTISGARH, BILASPUR

- State Of Chhattisgarh Through Police Station Kawardha, District Kabirdham Chhattisgarh

Versus

- Respondent

For Applicant-State :- Mr. Neeraj Mehta, PL

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Order On Board

By

Prashant Kumar Mishra, J.

04/03/2020

1. On due consideration, delay of 33 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01/2018, application for condonation of delay is allowed.
2. The trial Court has acquitted the accused of the charges under Sections 376(2)(क), 363, 366(क); Section 6 the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Prosecutrix eloped with the accused and stayed at Bhilai for about two months and thereafter at Lucknow for about a month. Her date of birth is stated to be 29.09.2000 as entered in the Dakhil Khareej Register (Ex-P-9) which has been proved by PW-3 Sanjay Shrivastava, Head Master of the concerned school. However, in this school the prosecutrix was admitted in class VI and not in class I. Kotwari Register has not been filed to support the date of birth entered in the Dakhil Khareej Register. Statutory birth certificate of the prosecutrix is also not available. Her mother – Rajbai (PW-5) admits that they are residing at Kawardha from last 15-16 years and at the time when they shifted to Kawardha, the prosecutrix was aged about 4-5 years. Thus, age of the prosecutrix, on the basis of statement of the mother would be about 19 years. In ossification test, age of the prosecutrix has been assessed between 14-16 years. Thus, approximate age is varied by two years on either side. On this basis also prosecutrix could be aged about 18 years.
4. The trial Court has rightly held that the accused deserves benefit of doubt. Since the prosecutrix was apparently a consenting party and it is not proved that she was less than 18 years of age on the date of occurrence, no case for grant of leave to appeal is made out.
5. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi