

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 470 of 2018

State of Chhattisgarh Through The Incharge Police Station Janjgir,
District Janjgir Champa, Chhattisgarh. **---- Petitioner**

Versus

Mukesh Yadav S/o Baisakhu Yadav Aged About 19 Years R/o
Village Putpura, Police Station Janjgir, District Janjgir- Champa,
Chhattisgarh. **---- Respondent**

For State/petitioner : Mr. Ishwar Jaiswal, P.L.

For Respondent : Mr. Ravindra Sharma and Dr. Kumaresh
Tiwari, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

20.02.2020

1. Heard on I.A. No.1, which is an application for condonation of delay in filing the instant petition.
2. On due consideration, the application is allowed and the delay of 12 days in filing the instant petition is hereby condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of Cr.P.C.
4. This petition is preferred against the judgment dated 07.11.2017, passed by learned Special Judge (POCSO Act) Janjgir, District- Janjgir-Champa (C.G.), in Special Criminal Case No. 33/2016 wherein the said Court has acquitted the respondent for commission of offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012(for short "the Act") and under Sections 354 & 506 (Part-II) of Indian Penal Code, 1860.

5. In the present case, prosecutrix is (PW-1). As per version of the prosecutrix, when she was coming back from the school the respondent/accused started to teasing her, caught her hand and told her that he is in love with her and he will make her escape and threatened her. Thereafter, matter was reported, investigated and after completion of trial he was acquitted from the charge.
6. As the respondent was charge-sheeted under Section 8 of the POCSO Act, 2012. For commission of offence under Section 8 of the Act, 2012 the definition of Sexual assault defined in Section 7 of the said Act and specified Section 7 of the Act, 2012 may be mentioned as under Section-

Section 7 of POCSO Act defines "Sexual Assault" wherein it has been provided that "whoever, with sexual intent touches the vagina, penis, anus or breast of child or makes the child touch the vagina, penis, anus or breast of such person or any person or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

7. From the evidence, there is nothing on record that any of the ingredients which is defined in sexual assault is done against the prosecutrix by the respondent. Therefore, the trial Court recorded finding under Section 8 of the POCSO Act, 2012 is not made out.

8. For offence under Section 354 of IPC there should be sexual advancement against the prosecutrix but in the present case there is nothing in the statement of the prosecutrix that any sexual advancement is done by the respondent. Therefore, evidence under Section 354 of IPC is also lacking.
9. As per version of the prosecutrix, the respondent threatened her that if she narrates story to anyone then he will kill her. The Charges levelled against the respondent is based on bald statements and from statement of the prosecutrix, it is not clear that respondent was determined to execute his threat. The respondent does not have any weapon therefore, there was no determination on the part of the respondent. Any word uttered by the respondent is mere fury which has sound but no substance therefore, mere word is not sufficient to established the charge under Section 506 (Part-II) of IPC.
10. The trial Court elaborately discussed the entire evidence and in view of the legal position, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case where respondent should be called for hearing again for full consideration of this petition.
11. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
 Judge