

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1361 of 2020**

- State of Chhattisgarh, Through Station House Officer, Police Station Pendra, District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Umesh Tiwari S/o Gaurishankar Tiwari, Aged About 26 Years,
 2. Gaurishankar Tiwari S/o Mangalram Tiwari, Aged About 61 Years,
- Respondents No.1 & 2/accused both are R/o Village Sakola, Outpost - Kotmikala, Police Station Pendra, District : Bilaspur, Chhattisgarh

--- Respondents

For Appellant/State : Shri K. K. Singh, G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava****07/12/2020**

Heard.

1. There is prayer for grant of leave to appeal against the judgment of acquittal dated 05.12.2019 passed by the Court of the Special Judge SCST (PA) Act, 1989 Bilaspur, District – Bilaspur in Special Criminal Case SCST (PA) Act, 1989 No.23/2017, by which, the respondent/accused is acquitted of the charges of commission of Offences under Section 376 (2) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(11), 3(1)(12) & 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.
2. Learned counsel for the State prayed for condonation of delay of about 217 days in filing application along with memo of appeal against the judgment of acquittal.

3. On due consideration, delay is condoned.

4. Learned counsel for the State would argue that the learned trial Court has committed patent illegality and perversity in acquitting the accused, though the prosecution led reliable oral and documentary evidence with regard to the age of the prosecutrix, according to which prosecutrix was minor in age at the time when the alleged commission of offence was committed against her. He would argue that the evidence of the prosecutrix school records all show that the date of birth of the prosecutrix is 09.04.1999 and the school records have been duly proved by the custodian Head Master of the concerned school. He would further submit that the school records also reflected that the date of birth was recorded on the declaration given by the father of the prosecutrix not only this, it is argued, the prosecutrix herself has stated regarding her age being only 15 years at the time when the alleged offence was committed. The other submission of learned State counsel is that the prosecutrix has clearly stated in her evidence that when she was sleeping in the night, the respondent/accused came to her house quietly and slept along with her and committed rape on her. Despite this specific evidence of prosecutrix that she has been subjected to sexual intercourse and she being minor in age, acquittal has been ordered recording a finding that it appears to be a case of consent and the prosecutrix is more than 18 years of age.

5. We have considered the submission of the learned State counsel and carefully scrutinized the impugned judgment and the prosecution evidence particularly the evidence of the prosecutrix her father and the documentary evidence with regard to her age produced by the prosecution.

6. So far as the finding with regard to the age of the prosecutrix is concerned, learned trial Court has considered serious discrepancy in the prosecution evidence in this regard. The entries made in the school register

were based on the declaration made by the father of the prosecutrix/Narayan Prasad (PW-4). But, when he was examined in the Court he did not state anything with regard to the age of the prosecutrix in his examination in chief. In his cross examination this witness admitted that at the time of admission of his daughter in the school no other birth certificate was produced. He has stated that he does not remember the date of birth of elder daughter and younger daughter and even does not remember the year of his own marriage. He has further deposed that his daughter left the school 4 years before and does not even know in which class his daughter failed.

7. Taking into consideration this discrepancy in the prosecution evidence when the evidence of the father on whose statement entries alleged to have been made in the school register have been disbelieved, the finding recorded by the learned Trial Court upon consideration of over all evidence with regard to the age of the prosecutrix appears to be a plausible and possible view. Merely because another view is possible on the same set of evidence, we are not inclined to interfere with the said findings because the approach of the learned trial Court also does not appear to be against any settled legal principle with regard to appreciation of evidence. Moreover, it is not a case where while arriving at finding with regard to the age of the prosecutrix, any clinching evidence led by the prosecution has been completely omitted for consideration.

8. The finding of the trial Court with regard to it being a possible case of consent has been recorded after close scrutiny of evidence not only of the prosecutrix and her father and many of the prosecution witnesses which shows that the prosecutrix was having an affair with accused since 2012 and after they were found sleeping in one house, a Panchayat was also convened, thereafter the prosecutrix had started living with the accused also and the report was lodged after two years of the alleged incident of

2015. prosecutrix was found to be habitual to sexual intercourse. Taking into consideration the cumulative effect of the aforesaid set of evidence led by the prosecution itself, the learned trial Court has drawn an inference that it appears to be a case of consent as between the prosecutrix and the accused.

9. As we are not inclined to interfere in the finding with regard to the age of the prosecutrix, the possible case of consent itself creates doubt on the story of the prosecution and that has been the back drop of the finding of the learned trial Court to grant acquittal to the accused by giving him benefit of doubt.

10. We do not consider present to be a fit case for grant of leave to appeal, given the limited scope of interference against the judgment of acquittal as settled in catena of decisions of Apex Court and this Court. Accordingly, application is rejected.

11. CRMP is accordingly closed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge