

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1360 of 2020**

- State of Chhattisgarh Through Its Station House Officer, Police Station Akaltara, District : Janjgir-Champa, Chhattisgarh

**---- Petitioner****Versus**

- Fulchand Kaushik S/o Kapil Kaushik Aged About 21 Years R/o Village Kosmanda, Police Station Champa, District : Janjgir-Champa, Chhattisgarh

**--- Respondent**

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

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**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 25.06.2019 passed by the Court of the Special Judge (Atrocities), Janjgir, District – Janjgir Champa in Special Sessions Case No.23/2018, by which, the respondent/accused is acquitted of the charges of commission of Offences under Section 376 (2) (N) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Learned counsel for the State though began his argument with prayer condonation of delay of about 397 days in filing application along with memo of appeal against the judgment of acquittal, we also heard on the merits of the case to convince ourselves, whether it is a fit case for grant of leave to appeal.

3. Learned counsel for the State would argue that the impugned judgment of acquittal has been passed without proper appreciation of evidence on record and even though the learned Trial Court disbelieved the testimony of the prosecutrix, it has not given any due weightage to the corroborating evidence recorded under Section 164 of Cr.P.C. before the Magistrate. He would further argue that so far as the age of the prosecutrix is concerned, the learned Trial Court has also recorded perverse finding.

4. Even if, we are to accept the submission of the learned State counsel that the prosecutrix is minor in age, her evidence "recorded as PW-1" does not disclosed the commission of any offence as alleged against the respondent/accused. Further it is too well settled legal position a statement under Section 164 Cr.P.C. recorded by the Magistrate could at best be used as corroborating piece of evidence and not substantive piece of evidence and in the present case the prosecutrix does not belong to the category of persons whose statement under Section 164 Cr.P.C. would itself be treated as examination in chief. It is not even case of the prosecution that the prosecutrix is temporarily or permanently, mentally or physically disabled. The summon substance of the evidence of the prosecutrix is that she and the accused were in love affair and the prosecutrix proposed to marry, the accused refused and therefore, out of vengeance and anger, got the report lodged. Therefore, in our considered opinion there is no scope of interference given that the limited scope of interference against the judgment of acquittal as settled in catena of two decisions of learned Apex Court and this Court. Accordingly, application is rejected.

5. CRMP is accordingly closed.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**(Vimla Singh Kapoor)**  
**Judge**