

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1370 of 2020**

- State Of Chhattisgarh Through Station House Officer, Police Station Rajim, District : Gariyabandh, Chhattisgarh

---- Petitioner**Versus**

- Janak Dhruw S/o Ramesh Dhruw Aged About 22 Years R/o Gobra Nawapara, Bhoipara, Police Station Gobra Nawapara, District : Gariyabandh, Chhattisgarh

---- Respondent

For Appellant/State : Ms. Hamida Siddiqui, Dy. A.G.

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 23.01.2020 passed by the Court of the Learned Additional Sessions Judge Fast Track Special Court (POCSO & Rape Case), Gariyaband, C.G. in Special Sessions Case No.36/2016, by which, the respondent/accused is acquitted of the charges of commission of Offences under Section 363, 366 and 376 (2) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Learned counsel for the State would argue that though the prosecution has led specific and clinching documentary as well as oral evidence with regard to the age of the prosecutrix, the learned trial Court has unwarrantedly recorded a finding that the evidence with regard to the

age of the prosecutrix is doubtful. The other submission is that once the prosecutrix is held to be minor in age, consent becomes immaterial.

3. We have heard learned counsel for the parties and carefully scrutinized the impugned judgment and the oral and documentary evidence led by the prosecution. Even if we were to condone the delay, on merits, we are not inclined to grant leave to appeal. The learned trial Court after close scrutiny of oral and documentary evidence with regard to age of the prosecutrix, after taking into consideration entire evidence on record with regard, has recorded a finding in Para 25 of the judgment that the date of birth recorded in different documents is different, the evidence of the father and mother of the prosecutrix is also discrepant and despite opinion of the Doctor, no ossification test was conducted. On such consideration, the evidence available on record with regard to the age is disbelieved and has been found to be a case of doubtful nature.

4. The aforesaid findings recorded by learned trial Court can neither be said to be suffering from perversity or patent illegality. It cannot be said that the clinching evidence was not taken into consideration. The reasons assigned by learned trial Court to record a finding that the evidence with regard to age is doubtful, is based on various discrepancy noticed by learned trial Court with regard to age of prosecutrix in more than one documentary as well as oral evidence. Therefore, the finding recorded by the trial Court are plausible and possible and merely because another view is possible, we are not inclined to grant leave to appeal, given the limited scope of interference against judgment of acquittal. We also wish to point out that the prosecutrix evidence also shows that there was an affair between the prosecutrix and the accused and in her cross examination she has admitted that as she belong to a different caste, the report had to be lodged and had they belonged to the same caste, there would have been no occasion to lodge FIR against the accused.

5. In view of the above, present is not a fit case for grant of leave to appeal. Accordingly, application is rejected.

6. CRMP is accordingly closed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge