

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2560 of 2019

The State of Chhattisgarh Through- District Magistrate
Mungeli Chhattisgarh. ---- **Petitioner**

Versus

Mahaveer Chandrakar S/o Shivsahay Chandrakar Aged About
19 years R/o Village Bundeli, Police Station City Kotwali,
Mungeli, Chhattisgarh. ---- **Respondent**

For Petitioner/State : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

09/01/2020

1. Heard on I.A. No. 01/2019, 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 47 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is directed against judgment dated 22nd of June, 2019, passed by learned Special Judge (POCSO Act), Mungeli (C.G.), in Special Criminal Case No. 56/2015, wherein the said court acquitted the respondent for charge punishable under Sections 363, 354, 354(b) of IPC and Section 8 of the POCSO Act, 2012.
5. In the present case, prosecutrix is (PW-1). No birth certificate was produced before the trial Court to ascertain the age of the

prosecutrix. Though, one school certificate was produced as per Ex.P-11 but no one was examined to prove the said certificate. For commission of offence under Section 363 of IPC, it has to be established that prosecutrix was below 18 years of age on the date of incident. Therefore, charge for kidnapping under Section 363 is not established.

6. For commission of offence under Section 354 of IPC, it has to be established that there was intention for outraging modesty of the prosecutrix, which can be ascertained by the act of sexual advancement but from the evidence of the prosecutrix the same is not established.
7. For commission of offence under Section 354 (b) of IPC, it has to be established that there was intention of disrobing or compelling the woman to be naked, but that evidence is also not adduced in the record of the trial Court and even from the evidence of the prosecutrix, the same is not substantiated.
8. For commission of offence under Section 8 of POCSO Act, 2012, the ingredients of Section 7 of the Act should be established. Section 7 of the Act, 2012 may be read as under:-

Sexual assault (Section 7): Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. All acts of physical nature without penetration. For example, stalking a

child, showing dirty pictures, touching private parts of a child or making a child touch the private parts of someone else etc. It also includes any other act committed with sexual intent, which involves physical contact without penetration.

9. In the present case, there is nothing in the statement of the prosecutrix that anything was done by the accused/respondent to show any sexual intent.
10. The trial Court recorded finding that witnesses have diverted from their foundational statement recorded under Section 161 of CrPC. It is settled law that if two views are possible, the view which is favourable to the respondent/ accused, should be accepted.
11. After going through the record, it is not a case where any interference of this Court is required. The trial court has elaborately discussed the entire evidence and came to conclusion that the charges leveled against the respondent is not established. After reassessing the evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition.
12. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge