

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.166 of 2019**

State Of Chhattisgarh Through The Station House Officer,
Police Station Kharora, District Raipur Chhattisgarh

---- Petitioner**Versus**

Virendra Sahu S/o Shriram Sahu Aged About 18 Years and 05
months R/o Budera, Azad Chowk, Police Station Kharora,
District Raipur Chhattisgarh

---- Respondent

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

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****15/01/2020**

1. Heard on I.A. No. 1/2019, which is an application for condonation of delay in filing the instant petition.
2. For the reason mentioned in the application delay of 506 days in filing this instant 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 09.07.2018 passed by learned Special Judge (Protection of Children from Sexual Offence Act, 2012), in Special Criminal POCSO Case No.33/2018, wherein the said Court acquitted the respondent

for charge punishable under Sections 363 and 366 of IPC, 1860 and under Section 18 of Protection of Children from Sexual Offences Act, 2012.

5. In the present case, the prosecutrix is (P.W.-1), as per version of this witness, the respondent has not taken her to seduce her for illicit intercourse or for marrying to her. The trial Court after evaluating the entire finding recorded finding that charge under Section 366 of I.P.C., 1860 is not established. The trial Court also recorded finding that attempt to commit offence as mentioned in Section 18 of the Act, 2012 is also not established. Looking to the evidence of prosecutrix, as the prosecutrix has not deposed anything against the respondent regarding his criminal act, this Court has no reason to record contrary finding.
6. Learned counsel for the appellant submits that on the date of offence, the prosecutrix was minor, therefore, trial Court is incorrect in acquitting the respondent for charge under Section 363 of I.P.C. To establish age of the prosecutrix, the prosecution side examined Ram Kumar Kosariya (P.W.-3), who is headmaster of primary school village- Budera, C.G.
7. This witness has brought the entry register of school, who in his cross-examination (Para-4) has admitted that entry regarding the age of the prosecutrix is not made by him. He is also unable to state as to who made the entry. Therefore, entry of school register is not proved by the evidence of this witness. No one examined before the trial Court to establish as to who really admitted the prosecutrix in school and same

is not substantiated by the evidence of the person who admitted her in school.

8. Further Vikash Dhiwar (P.W.-2) deposed before the trial Court, the age of the prosecutrix is 12 years. He is also not able to state as to what is the date of birth of prosecutrix in his examination-in-chief. He was subjected to leading question and when he has been suggested regarding date of birth of prosecutrix, he replied affirmative. But looking to examination-in-chief of this witness, the date of birth of the prosecutrix is not established.
9. It is settled law that if two views are possible, the view which is in favour of respondent should be preferred. In view of the above, it is not a case where interference of this Court is required that the judgment of trial Court, it is not a fit case where respondent should be called for hearing again for full consideration of this petition.
10. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge