

HIGH COURT OF CHHATTISGARH, BILASPUR

- State Of Chhattisgarh Through The Police Station Sarsiwa, District - Balodabazar - Bhatapara Chhattisgarh.

Versus

- Respondent

For Applicant-State :- Shri Chitendra Singh, PL

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

Prashant Kumar Mishra, J.

1. On due consideration delay of 97 days occurred in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01, application for condonation of delay is allowed.
2. The trial Court has acquitted the accused of the charges under Sections 363, 366, 376 of the I.P.C. and Sections 4,

18 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecutrix is related to the accused, therefore, they had prior acquaintance and the accused used to visit her house. On the date of incident, the prosecutrix was ready to attend classes in the school but on accused's request she changed her uniform and accompanied him to proceed to Chandrapur by bus. At this place she bathed in a swimming pool and thereafter they visited Chandrapur Temple. Accused and prosecutrix stayed in a lodge where she was subjected to forcible sexual intercourse.
4. The conduct of the prosecutrix is clearly suggestive of element of consent, therefore, the prosecution was required to prove that she was less than 18 years of age on the date of incident but the mark sheet of the prosecutrix has not been proved by examining the school authorities. In fact, the mark sheet has not been exhibited in course of trial. Despite recommendation for ossification test the prosecutrix was not subjected to the said test. Her parents have also not stated the exact date of birth of the prosecutrix.
5. PW-3 Gorelal, father of the prosecutrix has not stated as to on what documentary basis her date of birth was entered in the Dakhil Khareej Register. Thus, in view of lack of

conclusive evidence about the age of the prosecutrix, learned trial Judge has rightly held that the prosecution has failed to prove that prosecutrix was less than 18 years of age on the date of incident.

6. No case for grant of leave to appeal is made out.
7. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi