

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.294 of 2020**

- State Of Chhattisgarh Through Its Station House Officer, Police Station Raipur, District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

---- Petitioner**Versus**

- Dinesh Tirkey S/o Pradeep Tirkey Aged About 26 Years Resident Of Village Baskepi, Police Station Chando, District Balrampur Ramanujganj , Chhattisgarh, District : Balrampur, Chhattisgarh

---- Respondent

Shri Lalit Jangde, Dy.GA for appellant/State.

Division Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt. Justice Vimla Singh Kapoor
Order On Board

16/06/2021

1. Heard on prayer for condonation of delay as also prayer for grant of leave to appeal against the impugned judgment of acquittal.
2. Learned State counsel would argue that the prosecutrix, PW-2 has clearly stated regarding commission of sexual intercourse, though as wife, by the respondent. It is next argued that though, the prosecution has led documentary evidence in the form of School Entry Register, Ex.P-16, wherein date of birth of the prosecutrix is recorded as 07-09-1998, the learned trial Court has committed patent illegality and perversity in rejecting aforesaid documentary evidence of age.
3. We have gone through the record and the impugned judgment, particularly the finding recorded by the learned trial Court in para 15 with regard to age of the prosecutrix.
4. The learned trial Court, in order to hold that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of alleged incident, has taken into consideration that Dakhil Kharij Register has been produced, but, on what basis, entries were made, is not supported by any documentary evidence. In addition to that, the learned Court below has also

taken into consideration the evidence of the prosecutrix herself, who has stated that at the time of beginning of menstruation, she was aged about 13-14 years and that was 6-7 years before the date of incident. On that basis, inference has been drawn that on the date of incident, even according to the prosecutrix, she was more than 18 years of age.

5. In our considered opinion, the aforesaid finding recorded by the learned trial Court with regard to age of the prosecutrix, does not suffer from any patent illegality or perversity. The finding is based on the evidence of the prosecutrix and absence of documentary evidence of age, on the basis of which, entries were made in the school register.

6. Looking to the limited scope of interference against the impugned judgment of acquittal, we find ourselves unable to interfere with the impugned judgment of acquittal, even if we were inclined to condone the delay in filing acquittal appeal.

7. Accordingly, Cr.M.P.No.294 of 2020 is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge