
(2018) 02 CHH CK 0143

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 1457 Of 2017

State Of Chhattisgarh

APPELLANT

Vs

Kiran Basod

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2018) 02 CHH CK 0143

Hon'ble Judges : Prashant Kumar Mishra, J; Ram Prasanna Sharma, J

Bench : Division Bench

Advocate : Satish Gupta

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. Heard on IA No.01/17 for condonation of delay of 120 days in filing the petition.
2. On due consideration, the application is allowed and the delay of 120 days in filing the petition is hereby condoned.
3. Also heard on admission.
4. This application for leave to appeal has been preferred by the State assailing the impugned judgment of acquittal passed on 21.02.2017 by Second Additional Sessions Judge, Distt. Raigarh (CG) in Case No. POCSO Act 2012/104/2015 whereby the accused has been acquitted of the charges under Sections 363, 366 and 376 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.
5. As per the prosecution story, the prosecutrix eloped with the accused on 28.01.2015. She remained in the company of the accused till 26.3.2015. During this period, they went to Bargarh and thereafter to Vijayawada where they were

working as labourers in one thread factory. During their stay they resided together as married couple. She never raised any protest from the inception till she appeared with the accused in the Office of concerned Superintendent of Police. From her statement it also appears that her father runs a grocery shop where the accused used to visit frequently and thus, they developed intimacy. On the date of incident, she proceeded to attend the school on bicycle but on the way, the accused, who was driving the motorcycle reached near the prosecutrix and thereafter she abandoned the bicycle and went along with the accused.

6. Since there is abundance of evidence to conclude that it was a case of consent, the trial Court has laid emphasis on the issue concerning the age of the prosecutrix. There is no ossification test conducted by the prosecution despite recommended by the lady doctor who medically examined the prosecutrix. The evidence in respect of her age is in the form of dakhil kharij register and dakhil kharij certificate proved by Tularam (PW-6). The said witness is the Headmaster of the Govt. Higher Secondary School, Rengalpali. This witness he admits that he himself has not made the entry relating to the date of birth of the prosecutrix. He further admits that entries were made by some clerk but nothing has been mentioned in the register as to on whose information or on the basis of which document the entries were made. He presumes that the entries must have been written on the basis of transfer certificate produced by the parents of the prosecutrix. However, the transfer certificate itself has neither been produced nor the dakhil kharij register or any other documents maintained in the previous school where the prosecutrix might have studied, has been produced. Even in the dakhil kharij register and the dakhil kharij certificate different dates of birth are mentioned. It is thus, apparent that there is no legally acceptable evidence proving that the prosecutrix was less than 18 years of age on the date of incident. If there is no proof of the date of birth, the prosecutrix cannot be presumed or deemed to be a minor on the date of incident. Therefore, considering the evidence available on record that she appears to be a consenting party from the stage of elopement and subsequent sexual intercourse, the trial court has not committed any illegality nor the judgment of acquittal is passed on perverse finding.

7. The application for leave to appeal is without substance, which deserves to be and is hereby dismissed.