
(2010) 02 CHH CK 0009
In the Chhattisgarh High Court

State of Chhattisgarh

APPELLANT

Vs

Madhu Kerketta

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2010) CriLJ 2562

Hon'ble Judges : Sunil Kumar Sinha, J; Prashant Kumar Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Heard.

2. By allowing LA. No. 2/2010, the documents filed along with this application are taken on record.

3. Mr. Akhil Agrawal, learned Panel Lawyer, for the State is heard on LA. No. 1/2010, which is an application for condonation of delay in filing the leave petition.

4. According to the office report, petition is barred by 23 days of limitation.

5. On due consideration of the submissions made by learned Counsel for the State and the grounds taken in the application for condonation of delay, we are satisfied that the State has shown sufficient cause for the delay in filing this petition and the same deserves to be condoned. Accordingly, the delay of 23 days in filing the petition is hereby condoned.

6. Mr. Akhil Agrawal, learned Panel Lawyer, is heard on admission.

7. Being aggrieved with the judgment of acquittal dated 26-8-2009 passed in Sessions Trial No. 6/2009 by the Additional Sessions Judge (F.T.C.), Pendra Road, Distt. Bilaspur, the State has filed this petition for grant of leave to file an appeal.

8. The facts briefly stated are as under:

On 13-6-2008, the prosecutrix (P.W. 2) had gone to work in a dam. After completion of the work in the evening, the prosecutrix and the respondent boarded a bus and went to village Rajadih, where they stayed for two days. Thereafter the respondent took the prosecutrix to her house in Baikunthpur where she resided for a month. From Baikunthpur, they went to Raipur. After residing there for two days, they again returned to Baikunthpur. When the prosecutrix did not return in the late evening on 13-6-2008, search was made by her father but she could not be found. Ultimately when she was found in the house for the respondent in Baikunthpur, the First Information Report was lodged by her father on 15-7-2008.

9. The respondent was charged Under Sections 363, 366 of IPC.

10. The prosecution came with a case that the prosecutrix was minor on the date of incident and was abducted and subjected to sexual intercourse by the respondent, therefore, the respondent was liable for punishment under the aforementioned sections of IPC.

11. The learned Sessions Judge recorded a finding that the prosecution could not establish that the prosecutrix was below 18 or 16 years of age on the date of incident. On due appreciation of the entire evidence on record, the learned Sessions Judge held that in the facts and circumstances of the case, the prosecution failed to establish the guilt of the respondent, therefore, the respondent was acquitted of the charges framed against him.

12. Mr. Akhil Agrawal, learned State Counsel argued that the Sessions Judge erred in law in recording the finding that the prosecution could not establish that the prosecutrix was below 18/16 years of age. He also argued that in the facts and circumstances of the case, the aforesaid offences were made out against the respondent.

13. We have heard learned State Counsel at length and have also perused the records of the petition.

14. For proving the age of the prosecutrix, her mark sheet of 6th Class and a certificate of age (Ex. P. 11) based on the entry of the school admission register was produced.

15. Mandaran (P.W. 1) has been examined to prove the certificate. He deposed that the certificate has been issued on the basis of entry made in school register. The Sessions Judge observed vide para 6 of the judgment that an additional paper was pasted at the relevant place in the original school register (Ex. P10) and then the date of birth of the prosecutrix was written as 5-3-1993. With a view to find out the truth, the aforesaid paper was removed in the Court and then it was found that beneath the said paper, the date of birth of the prosecutrix, in the original sheet of the register, was mentioned as 5th of March 1986. In these facts and circumstances, the Sessions Judge held that there was a manipulation in the register and he further held that, in fact, according to the

School Register, the date of birth of the prosecutrix was 5-3-1986 and not 5-3-1993. Besides the above, the father of the prosecutrix has been examined as P.W. 1. He has deposed that the prosecutrix was aged about 15 years on the date of incident but he could not say the date of birth of the prosecutrix. Therefore, the evidence of the father relating to the date of birth was vague. It is in these circumstances, the learned Sessions Judge held that the prosecution could not establish that the prosecutrix was below 18/16 years of age on the date of incident.

16. We note that the prosecutrix in her examination-in-chief deposed that after the completion of work in the evening, she had accompanied the respondent and both boarded a bus and went to village Rajadih. In Rajadih they stayed for two days and thereafter the respondent took her to Baikunthpur where they resided for a month and then they had gone to Raipur. In para 2, she has very categorically deposed that respondent did nothing against her. He never made physical relations with her. Even he did not say her to marry. It is on this evidence, the public prosecutor prayed to the Court for cross-examination of the prosecutrix which was allowed. In the cross-examination, though she admitted that she was taken by the respondent to Baikunthpur but she denied that she was sleeping along-with the respondent in the night. She added that she was sleeping along with the sister of the respondent. After going through the entire evidence of the prosecutrix it does not appear that it was a case in which the prosecutrix was subjected to forcible intercourse by the respondent.

17. In the above facts and circumstances, we do not find any ground for grant of leave to file an appeal in this matter.

18. The petition has no merits. The same is liable to be dismissed and is hereby dismissed.