

**(2019) 08 CHH CK 0076**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 1872 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Girwar Sahu

RESPONDENT

**Date of Decision:** Aug. 13, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 376, 376(2)(n), 506
- Protection Of Children From Sexual Offences Act, 2012 - Section 5(y), 6
- Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Section 3(2)(v)

**Hon'ble Judges:** Prashant Kumar Mishra, J

**Bench:** Single Bench

**Advocate:** Rajendra Tripathi

**Final Decision:** Dismissed

**Judgement**

Prashant Kumar Mishra, J

1. This is an application for condonation of delay in filing the application.
2. For the reasons mentioned in the application, the delay of 24 days in filing the application is condoned.
3. Accordingly, I.A.No.1 stands disposed of.
4. Trial Court has acquitted the accused from the charge under Section 366, 376(2)(n), 506 Part II of the Indian Penal Code; Section 5(y)/6 of the POCSO Act, 2012; and Section 3(2)(v) of Cr.M.P.No.1872 of 2019 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
5. As per the Court statement of the prosecutrix (PW-1) she was in contact with the accused over mobile and has stayed for about one month while

earning livelihood at Kondapur, Near Hyderabad (Telengana). Before this stay also they were working together at different places and at all these places she was allegedly subjected to forcible sexual intercourse on promise to marry her.

6. In the school register the date of birth of the prosecutrix has been mentioned as 27-4-2000 whereas in the Kotwari register as also in the Aadhar Card her date of birth has been mentioned as 1-1-1999, therefore, there is no definite proof in respect of her age.

7. Father of the prosecutrix (PW-2) has stated that the date of birth of his daughter (prosecutrix) is 27-4-2000. He also admitted that his daughter has once failed in class 10th. Thus, there is no definite proof that on the date of incident i.e. 20-7-2017 the prosecutrix was less than 18 years of age.

8. In absence of proof of age and considering the conduct of the prosecutrix, who appears to be a consenting party to the act of sexual intercourse, the present is not a fit case for grant of leave to appeal.

9. In the result, the appeal, sans merit, is liable to be and is hereby dismissed.