

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRMP No. 659 of 2016

State Of Chhattisgarh **Versus** Gorelal Kurre

30/06/2016	<p>Shri Ashish Shukla, G.A. for the State/Applicant.</p> <p>This CRMP is barred by 544 days.</p> <p>IA No.1 is an application for condonation of delay in filing the application for leave to appeal. It is stated that the applicant had earlier preferred CRMP No.824/2015, which was also barred by limitation. However, vide order dated 15.09.2015 the Division Bench condoned the delay but dismissed the application for leave to appeal with observation that the state may pursue the remedy if it is so advised after taking action against those who have been found at fault by the trial Court in Para-11 of the judgment.</p> <p>After hearing learned State counsel, we are satisfied that the delay in filing the application seeking leave to appeal has been satisfactorily explained.</p> <p>Accordingly, the delay in filing the application is condoned. IA No.1 is allowed.</p> <p>With the consent of learned counsel for the State the matter is heard on admission. It is argued that despite the prosecutrix having not been subjected to ossification test, there are other documentary evidence which proves that she was less than 16 years of age on the date of incident. Therefore, the trial Court has committed serious error of law by concluding that the prosecutrix was a consenting party.</p>	

We have perused the record. The evidence brought before the Court includes article No.A3 and A4, which are the mark sheet of school examination of the prosecution recording her date of birth as 13.9.1998. The incident having taken place on 30.03.2013, she appears to be less than 16 years of age on the date of incident. The documents article A3, A4 and A5 having been issued by a government school there has to be a presumption that it was in possession of an officer, therefore, it was in safe custody and was kept as record of the school under government instruction.

We are fully satisfied that this is a fit case for granting leave to appeal to the State to file acquittal appeal against the impugned judgment.

Accordingly, CRMP No.659 is allowed. Let regular acquittal appeal be registered and notice thereafter be issued on payment of PF as per rules.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Chandra Bhushan Bajpai)

Judge

Nisha

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