

The High Court Of Madhya Pradesh**CRR No. 211 of 2021***(AMIT KUMAR TIWARI Vs THE STATE OF M.P)***Jabalpur, Dated : 02-12-2021**

Shri Prakash Upadhyay, learned counsel for the applicant.

Shri Devendra Gangrade, learned Panel Lawyer for the respondent/State.

They are heard.

The applicant has preferred this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure seeking quashment of the order dated 18.12.2020 passed by learned Special Judge, POCSO, Tyonthar, District Rewa in Special Case No. 156/2020 whereby charge of Section 376 of IPC and 5/6 of POCSO Act has been framed against the applicant saying that he had developed physical relations with the deceased and at the relevant point of time, she had not attained the majority.

Shri Prakash Upadhyay, learned counsel for the applicant, on the other hand has criticized the observation made by the trial Court mainly on the ground that the date of birth of the deceased, as per her school record was 20.08.2001 and as per her recorded date of birth, she attained the majority on 20.08.2019 whereas she has given birth to a child on 27.04.2020 with eight months' pregnancy and according to him, it makes clear that on the date of developing physical relations, the deceased was major. He submits that there is no material available on record to indicate that the present applicant had developed physical relations with the deceased forcefully without her consent. He further submits that even there is no suicidal note in which deceased had herself disclosed this fact that the present applicant had made physical relations with her without her consent and as such, she was victim of rape as has been defined under Section 375 of IPC. Learned counsel has also submitted that the case has been registered against the present applicant on the basis of the complaint made by the mother of the deceased and if the statements of parents of the deceased are seen, nowhere it is disclosed that

the present applicant had forcefully developed physical relations with the deceased. He submits that even otherwise, if it is assumed that whatever has been alleged against the appellant is correct, it is not established that physical relations had been developed by the present applicant with the deceased against her consent. According to the learned counsel, as per the date of birth of the deceased recorded in her school record and considering the date of giving birth to a child after eight months pregnancy, it is clear that deceased was major on the date when she conceived. He further submits that under such a circumstance, case of Section 376 of IPC is not made out and the charge has been framed merely because the trial Court presumed the fact that as per the statement of parents of the deceased, she was minor. Learned counsel further submits that the date of birth recorded in the school record is a material piece of evidence and that cannot be discarded for ascertaining the age of the deceased and, therefore, the learned trial Court has committed an error in framing the charge of Section 376 of IPC and Section 5/6 of POCSO Act.

Shri Devendra Gangrade, learned Panel Lawyer appearing for the respondent/State on the other hand has opposed the submissions made by learned counsel for the applicant and has read over 161 statement of mother of the deceased that the sexual act was committed with the deceased on 07.07.2019 and according to her, the deceased at the relevant point of time was 17 years of age. The statement of mother also reveals that there was love-affair between the applicant and the deceased and the deceased told her mother that she wanted to marry the applicant.

According to Shri Upadhyay, learned counsel for the applicant, the statement of mother of the deceased indicates that physical relations developed between the applicant and the deceased with consent but not otherwise. He submits that the age of the prosecutrix cannot be presumed ignoring the recorded date of birth in her school record and on the basis of presumption, offence of Section 376 of IPC and Section 5/6 of POCSO Act

is not made out and the applicant cannot be charged for the said offences. According to him, the order dated 18.12.2020 passed by the trial Court framing charge under Section 376 of IPC and Section 5/6 of POCSO Act is, therefore, not sustainable in the eyes of law and it is liable to be set aside.

Although the fact regarding delay has not been argued but from perusal of the record, it also reflects that the deceased at the time of death had eight months pregnancy but FIR and complaint to the police was not made in time. Even in the life time of the deceased, she did not approach the police. The story as narrated by the mother of the deceased seems to be doubtful on the ground of delay.

Considering the arguments advanced by the learned counsel for the parties as also meticulously perusing the record, I am also of the view that the order passed by the court below dated 18.12.2020, which is impugned in this revision, framing charge under Section 376 of IPC and Section 5/6 of POCSO Act is not sustainable and is accordingly set aside. Accordingly, the applicant is discharged from the charge of offence framed vide Special Case No. 156/2020.

Ex-consequencia, the Criminal Revision is **allowed**.

(SANJAY DWIVEDI)
JUDGE