

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 772 of 2014

1. Rajat Thakur @ Abhishek Thakur, S/o Shyam Thakur, aged about 18 years, R/o Nandi Chowk Marathi Mohalla Near residence of Jaggu Thakur, Tikrapara, Distt. Raipur civil & revenue Distt. Raipur C.G.

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh Thorough Ps Tikrapara, Distt. Raipur C.G.

---- Respondent

For Appellant:
For Respondent:

Shri Ajay Mishra, Advocate.
Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

04/02/2016

1. This appeal is directed against the impugned judgment dated 5.7.2014 passed by the Additional Sessions Judge, FTC, Raipur in S.T. No.20/2013 convicting the accused/appellant under Section 354 of the Indian Penal Code (for short 'the IPC') & Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act, 2012') and sentencing him to undergo RI for 01 year & fine of Rs.500/- and RI for 03 years & fine of Rs.500/-, plus default stipulations.
2. Case of the prosecution in brief is that on 28.8.2013 a FIR (Ex.P-1) was lodged by the prosecutrix (PW-1) alleging that on 15.8.2013 at about 5.00 p.m. when she was playing in front of her house along with her friends, accused/appellant came there, caught hold of her hand and dragged her with bad intention. It is further alleged that on earlier occasions also the accused/ appellant had chased & teased her. On the aforesaid basis, the offence under Section 354 IPC has been registered against the

accused/appellant. After investigation challan was filed under Section 354 IPC. The Court below however framed the charges against him under Section 354 IPC and Section 12 of the Act, 2012.

3. The prosecution in order to bring home the charges levelled against the accused/ appellant examined 05 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication.
4. After hearing counsel for the parties the trial Court has convicted & sentenced the accused/appellant for the offences as mentioned above.
5. Heard counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the accused/appellant submits that there is no legally admissible evidence related to the age of the prosecutrix and therefore he cannot be convicted under Section 8 of the Act, 2012. He further submits that at best the appellant is liable to be convicted under Section 354 IPC for which he has already remained in jail for more than 1½ years, whereas maximum sentence which has been awarded to him under Section 354 IPC is one year. He further submits that considering the fact that at the relevant time the appellant was young led aged about 18 years and further that he undertakes to be careful in future and no offence of like nature would be repeated, he has to be dealt with leniently.
7. On the other hand supporting the impugned, counsel for the State submits that conviction of the accused/appellant is in accordance with material available on record and therefore no interference is warranted with the same.
8. While recording the evidence of the prosecutrix, in the opening paragraph it has been observed by the trial Court that the prosecutrix is a minor as she appears to be of 12-13 years.

9. The prosecutrix (PW-1) has stated in her evidence that on the date of incident while she was playing near her house, the accused/appellant had come there and caught hold of her hand. Immediately thereafter she has informed about the incident to her mother. She has further stated that while going to her tuition, the accused/appellant used to be on her way and whistle at her. She has further stated that she had informed the police that the accused/appellant caught hold of her hand, dragged her and tried to outrage her modesty. She has further stated that she is aware that accused/appellant is working in the D.J. shop situated near his house.
10. Smt. Sushma Yadav (PW-2) is the mother of the prosecutrix. She has stated that on the date of incident the prosecutrix came to her crying and informed that the accused/appellant had caught hold of her hand. She has further stated that prior to the incident also the accused/appellant used to follow the prosecutrix and whistle at her.
11. Kumari Rakhi Yadav (PW-3) is a child witness aged about 11 years. While supporting the prosecution case she has stated that on the date of incident when she & the prosecutrix were playing in front of her house, the accused/appellant came by two wheelers, caught hold of hand of prosecutrix and forcibly took the prosecutrix with him in his vehicle. In the cross-examination this witness has denied the suggestion that the prosecutrix had voluntarily accompanied the accused/appellant in his motorcycle.
12. Shrawan Kumar Mishra (PW-4) is the person who recorded FIR (Ex.P-1).
13. N.K. Tiwari (PW-5) is the investigating officer and he has duly supported the prosecution case.
14. Close scrutiny of the evidence available on record makes it clear that the accused/appellant used to be on the way of the prosecutrix, tease her and whistle at her and on 15.8.2013 the accused/appellant had used criminal

force for the purpose of outraging the modesty of prosecutrix. The prosecutrix (PW-1) has duly supported the prosecution case and her evidence also gets corroboration from the statement of Kum. Rakhi Yadav (PW-3), an eyewitness, who has categorically stated that it is the accused/appellant who caught hold of hand of the prosecutrix and dragged her. The defence has not been able to elicit anything in the cross-examination of the prosecutrix or aforesaid witness on which basis it can be said that their testimonies are not reliable or the same can be disbelieved. Thus the findings of conviction under Section 354 IPC recorded by the Court below are just and proper and do not call for any interference in this appeal.

15. As regards the conviction under Section 8 of the Act, 2012, it is admitted position that the prosecution has not adduced any evidence relating to age of the prosecutrix showing her to be minor on the date of incident which is *sine qua non* for attracting the provisions of the Act, 2012 and therefore conviction of appellant under Section 8 of the Act, 2012 being contrary to provisions of law cannot be sustained and it is accordingly set aside.

16. In view of above, the appeal is partly allowed. Impugned judgment convicting the accused/appellant under Section 8 of the Act, 2012 is hereby set aside and he is acquitted of the said charge. However, so far as conviction under Section 354 IPC is concerned, the judgment impugned is maintained. As the appellant has already been in jail for the last more than 1½ years, whereas the total sentence imposed on him under Section 354 IPC is R.I. for 1 years, he be set at liberty forthwith, if not wanted in any other case.

Sd/-
(Pritinker Diwaker)
Judge

roshan