

HIGH COURT OF CHHATTISGARH, BILASPUR
Hon'ble Shri Justice Rajendra Chandra Singh Samant

CRA No.323 of 2014

Sachin Kurre

Versus

State Of Chhattisgarh

CAV JUDGMENT

Post for_____/01/2017

JUDGE

_____/01/2017

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.323 of 2014

Judgment Reserved on 07/12/2016

Judgment Delivered on 03 /01/2017

- Sachine Kurre, S/o. Hajari Lal, Caste Satnami, aged about 19 years, R/o. Satnamipara, Danitola, Dhamtari, Police Station, Tahsil, Civil and Revenue District Dhamtari (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Dhamtari Civil and Revenue District Dhamtari (C.G.)

---- Respondent

For the Appellant: Shri Kamal Kishore Patel, Advocate.

For the State : Shri Neeraj Sharma, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

03/01/2017

1. This appeal has been brought against the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge (F.T.C.), Dhamtari(C.G.) in Special Criminal Case No.06/2013, whereby appellant has been convicted under Section 4 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo R.I. for 7 years along with fine of Rs.4000/- with default stipulation.

2. The facts of the case are these, that the complainant Uttra Bai (PW/1) is resident of Atal Awas, Dani Tola, Dhamtari. Prosecutrix (PW/2) is her youngest daughter, who is six years of age. On the date of incident, complainant came back to her residence from work at about 6:30 p.m. in the evening, Prosecutrix (PW/2) told her that appellant/accused asked the prosecutrix and her friend Shailkumari (PW/8) to come and play with him then appellant/accused took both of them to the Kotha of Larha Satnami, where he took off the underwear of Shailkumari (PW/8) and undressed himself and tried to rape her, after that he left Shailkumari (PW/8) and made the prosecutrix (PW/2) sit on his lap and inserted his private part into the private part of the prosecutrix, due to which she got swelling in her private parts. Complainant informed about this incident to Aghari Satnami and Ajjju Satnami, thereafter, she lodged F.I.R. Ex.P/1 in P.S.Dhamtari on 08.04.2013. Offence was registered under Section 376 of IPC. Prosecutrix (PW/2) was examined by Dr. Asha Tripathi (PW/5) vide Ex.P/5 and appellant/accused was examined by Dr. R.K. Tripathi (PW/7) vide Ex.P/8. Undergarments of prosecutrix were seized vide Ex.P/3, which were examined by Dr. Asha Tripathi (PW/5) vide Ex.P/6. Similarly, undergarments of appellant/accused were seized vide Ex.P/11, which were examined by R.K. Tripathi (PW/7) vide Ex.P/8. Spot map of the incident was prepared vide Ex.P/4. Slide prepared from the

semen of appellant/accused was seized vide Ex.P/12. Seized articles were sent for F.S.L. examination, report Ex.P/7 was submitted which is on record. Statements of the witnesses were recorded. On completion of investigation, appellant was charge-sheeted under Section 376 of IPC.

3. Appellant was charged under Section 4 of Protection of Children from Sexual Offences Act, 2012, to which he denied and demanded for trial. Prosecution has examined 9 witnesses. On examination under Section 313 of Cr.P.C., appellant/accused denied all the circumstances and evidence against him and pleaded innocence. The defence was taken, that on the date of incident, he had been to village-Mohira to accompany his aunt. Further his father refused to give money to complainant Uttra Bai(PW-1), that is why false report has been lodged against him. The impugned judgment was passed by the trial Court in which appellant has been convicted and sentenced, as mentioned above.
4. The grounds in this appeal are these, that the finding of conviction and sentence against the appellant by the trial Court is bad in law. It is very clear from the evidence of Dr. Asha Tripathi (PW/5), that no injury on body and private parts of the prosecutrix were found. Shivnath (PW/3) and Bharti Singh Rajput(PW/4)

have not supported the prosecution case. The evidence of defence witnesses were wrongly appreciated, by which he had established that on the date of incident, appellant was in village-Mohira and that his father refused to give money to the mother of prosecutrix, because of which this false story has been developed. On these grounds, it is prayed that impugned judgment be set aside.

5. It was submitted in the argument by the counsel for appellant that F.I.R. was lodged after a delay of two days, after due deliberation. The medical opinion is very clear that no injury was found on the private part or the body of prosecutrix and no opinion has been given by the examining doctor regarding any sexual assault on the prosecutrix. Independent witnesses have not supported the case. For these reasons, the appellant was entitled for benefit of doubt.
6. Counsel for the State has opposed the grounds raised in this appeal and the argument submitted on behalf of the appellant, it is submitted that prosecution has proved its case beyond reasonable doubt.
7. Considering the grounds raised and the argument submitted, question before this Court is, whether the conviction against the appellant is supported with prosecution evidence beyond

reasonable doubt. The evidence before the trial Court is perused and finding is arrived at.

8. Prosecutrix (PW/2) is a child witness, who has stated that on the date of incident she along with her friend Shailkumari (PW/8) was playing near the house of Chandu, appellant took her towards the place where bricks were kept and there he put his finger in the private part of the body of Shailkumari (PW/8) and thereafter he did similar thing with her as well. Further she explained, that appellant put his finger in her urinary place and then he put his body as well. When her mother came back in the evening, she told her about the incident. After the incident she was having pain in the place of urination. In cross examination, she has stated that it was her mother, who gave all the statement in police station. Further there is admission that she told her mother about the incident after two days. Further her admission is, that she was not feeling any pain on the date when report was lodged and she was examined, this is not a ground to reject her statement in examination-in-chief about the act and conduct of the appellant. At first, she denied that she is giving statement as she was told about her mother and again she admitted that as her mother told her she is stating in the similar manner. She is a child witness, her statement has to be examined cautiously, the admission that she is stating as her mother told her, whether is sufficient to

discard her whole evidence, it can be appreciated on the basis of corroboration from the other witnesses.

9. Uttara Bai (PW/1) has stated that on the date of incident, she came back from her work at about 6:30 p.m. and saw that her daughter prosecutrix (PW/2) was lying and was having fever. She took her daughter to hospital, then prosecutrix (PW/2) told her about the incident. She saw the private parts of the prosecutrix and found it swollen, she treated her by giving home remedy. Later on, when her husband came into home she told him about the incident and she went to P.S. Dhamtari to lodge report Ex.P/1 after two days, no explanation has been given about the delay in her cross-examination. She has denied all the adverse suggestion given in defence and the suggestion given on the ground of defence. No question has been put to explain the delay of two days.
10. Shivnath (PW/3) is father of prosecutrix (PW/2), has stated that he came to know about the incident, in cross-examination, he has denied all the adverse suggestion given by the defence counsel. Bharti singh Rajput (PW/4) has stated in examination-in-chief, that she heard from others that appellant took her daughter Shailkumari (PW/8) and prosecutrix (PW/2) to the place where bricks of Larha Satnami were kept. On her asking, her daughter Shailkumari confirmed it, she has not supported the prosecution

in other particulars, she was declared hostile and leading question was asked by the prosecution, in which she admitted and supported the prosecution by stating that her daughter told her about the whole incident, in which, appellant/accused abused her daughter by putting his finger in her urinary organ, after which Shailkumari(PW/8) fled from that place. In cross-examination, she has been confronted with her previous statements Ex.D/2, though there is some improvement in her Court's statement compared to her previous statement which cannot be regarded as material. For this reason, that her daughter narrated to her about the act of the accused with extra details do not make her statement unreliable.

11. Aghari Ram (PW/6) is hostile witness, who has not supported the case of the prosecution. Shailkumari (PW/8) is important witness, she has stated that appellant took her and prosecutrix to the place where brinks of Larha Satnami were kept, by making her sit on his legs he removed her underwear and put his finger in her urinary organ, after that she fled from the spot. She does not know what was done by the appellant with prosecutrix. In cross-examination, she was confronted with her previous statement Ex.D/3. There is a little change in her version in the Court statement, that the appellant/accused used his finger for sexual assault on her, but her statement that appellant sexually

assaulted her, remains unrebutted.

12. To rebut the evidence of prosecution, defence witness Vijay Laxmi(DW/1) has stated that she had been to Dhamtari on 5th of April, after staying over the night on the next day 6th of April, she along with appellant /accused left for Mohira village and appellant/accused stayed in her residence that night and came back to Dhamtari on 07th of April. Later on, she came to know that appellant was falsely implicated. In cross-examination, she has stated that she went to Police-Station to give statement that on the date of incident, appellant/accused was with her but her complaint was not recorded, she did not lodge any complaint with the higher authorities. Seema Sinha(DW/2) has stated similarly, in cross-examination, her statement has remained unrebutted. Shashikala Kurre (DW/3) is mother of appellant has stated that her sister Vijaylaxmi came to her residence on 5th of April, 2013 and her son appellant/accused accompanied her aunt Vijaylaxmi and Seema while going to village Mohera, from where he came back on 7th of that month. In cross-examination, she has stated that she informed the police about the absence of accused on the date of incident and admitted that she did not make any complaint to the higher authorities.
13. The defence on the basis of alibi has been raised before the trial Court. Inspector Sapan Chaudhary(PW/9), who has investigated

the case, was not suggested in cross-examination, that on the date of incident, appellant was not present in Danitola (Dhamtari). This suggestion was given to Uttrabai (PW/1) who has denied it. This version of defence has not been accepted by the trial Court which has rightly not been accepted, the reason being this had there been such a ground of defence available to the appellant, he would have raised it at the time of investigation and efforts would have been made to approach the higher authorities of police.

14. On the other ground of defence regarding the false implication, Shashikala Kurre (DW/3) has stated that Uttarabai(PW/1) and Bharti (PW/4) used to borrow money from her time to time, 15-20 days before the month of April, Uttrabai (PW/1) came to borrow Rs.2000/- from her to which she refused, then Uttra Bai threatened her of the consequences. This statement is contrary to the evidence led by the defence that she came to borrow from father of the appellant/accused, hence, this ground of defence is also not believable, which has been rightly rejected by the trial Court.

15. Dr. Asha Tripathi (PW/5) has stated that she examined prosecutrix (PW/2) on 09.04.2013 and found, that she was a child of about 8 years of age, prosecutrix(PW/2) told her that appellant removed her underwear, touched her private parts with

hands, she did not find any injury on the body of prosecutrix neither any injury were found on her private parts. She opined that no symptoms were found about forceful sexual intercourse with prosecutrix, hence, no opinion could be given. This evidence is altogether not supporting the case of prosecution that prosecutrix was subjected to any penetrative sexual assault as defined in Section 3(a) of Protection of Children from Sexual Offences Act, 2012. The evidence of prosecutrix, itself, is to this extent, that appellant touched her urinatory organ with finger and the statement of Uttra Bai(PW/1), she found swelling in the private parts of the prosecutrix, supports the statement of prosecutrix (PW/2). Shailkumari (PW/8) though not corroborated about the incident with prosecutrix, but her statement shows the act intention of the appellant, with respect to taking the prosecutrix to the place of incident, which can be regarded as indirect corroboration to the statement of prosecutrix. On the basis of the evidence about act and conduct of the appellant, the case made out against the appellant, is of sexual assault, which is defined in Section 7 of Protection of Children from Sexual Offences Act, 2012 and punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012.

16. On these grounds the conviction recorded by the trial Court under Section 4 of the Act is not a proper finding which has to

interfered with.

17. In view of above discussions, this appeal is partly allowed.

Conviction and sentence of the appellant under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is set aside. Instead, appellant is committed under Section 8 of POCSO Act, 2012. Appellant is continuously in jail since his date of arrest on 10.04.2013 till date. The minimum of punishment prescribed under Section 8 of the Act is three years. Looking to the facts and circumstances of the case, appellant who has undergone more than the minimum period of sentence prescribed, hence, it is a fit case where he can be punished with a period of custody already undergone by him. Hence, appellant is sentenced with imprisonment of custody of the period already undergone by him along with fine of Rs. 4000/- with default stipulation, that on non further payment of fine, he shall be required to undergo R.I. for 4 months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge