

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 352 of 2017**

Motu @ Gulshan S/o Gitaram Rajput, Aged About 21 Years R/o Umariya, Police Station Bilha, District Bilaspur Chhattisgarh , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Station House Officer, Police Of Police Station Bilha District Bilaspur Chhattisgarh , Chhattisgarh.

---- Respondent

For Appellant	:	Shri Rajkumar Gupta, Advocate.
For Respondent/ State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****13/12/2018**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 1.2.2017 passed by Learned Additional Sessions Judge (FTC), Bilaspur, District Bilaspur, Chhattisgarh in Sessions Trial No. 175 of 2015 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Sections 363 and 366 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, sentenced him to undergo rigorous imprisonment for 1 year, 2 years and 2 years and to pay fine of Rs.500/-, Rs.500/- and Rs.1,000/-, in default of payment of fine, to further undergo additional RI for 3 months, 3 months and 3 months, respectively with a direction to run all the sentences concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 6.3.2015 at about 6:00 pm, the appellant allured the minor victim aged about 4 years saying that he will get her chocolate and took her to a lonely place in the agricultural field. The parents of the minor victim got alarmed and started search. When they arrived near the place of incident, the appellant was found present, who fled from the spot. The parents of the child victim was informed by the child that the appellant was kissing her private parts. After consulting with the Sarpanch of the village FIR Ex. P/2 was lodged by Anand Ram (PW-2), father of the victim. The case was taken up for investigation in which the victim was medically examined.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant was charged under Sections 363 and 366 of the IPC and Section 12 of the POCSO Act. The appellant denied the charges and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 12 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the

crime in question. No witness was examined in defence.

(6) After affording opportunity of hearing to both the parties, the appellant stands convicted and sentenced the appellant as aforementioned in the impugned judgment.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that no case is made out on the basis of the material present on record of the trial Court. Statements of the witnesses are contradicting each other, full of omissions and contradictions which were not worth reliable. The appellant is in jail since 7.3.2015 and he could not furnish bail bonds pursuant to the order of suspension of sentence of imprisonment passed by this Court. Therefore, he must have completed his sentence of imprisonment. Hence, it is prayed that the appeal be allowed and the release order of the appellant be issued.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. Hence, there is no scope for interference in the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) The victim (PW-3) assessed to be aged about 5 years. She has stated that on the date of incident the appellant allured her that he wants to give her something to eat and took her to a place in agricultural field. The appellant then removed the underwear of the victim. She has not made any further statement and her statement has remained unrebutted in her cross-examination.

(12) Anand Ram (PW-2), the father of the deceased has stated that on the date of incident he was informed by his wife that the appellant has taken his daughter to the agricultural field and has touched her private parts after removing her underwear. Thereafter, he lodged FIR Ex. P/2. In cross-examination, he has remained firm on the same statement and there is no other statement to show that the statement in examination-in-chief is contradicted or varied.

(13) Inspector, Dilip Chandrakar (PW-6) has stated that Anand Ram (PW-2) had given a written complaint, on that basis, FIR Ex. P/2 was recorded. There is no such question put to him in cross-examination so as to suggest that the lodging of FIR suffers from any infirmity.

(14) Dr. Geeta Pradhan (PW-9) has examined the minor victim and she did not find any symptom of rape vide Ex. P/19.

(15) After scrutinizing the evidence present on record of the trial Court, the unrebutted statement of the victim (PW-3) and her father Anand Ram

(PW-1) it is clearly proved that the appellant without the consent of the parents or guardian of the victim had taken her to the agricultural field which amounts to abduction and the intention of the appellant was very clear to sexually harass the victim and then he also disrobed the minor victim which is an Act as defined under Section 11 of the POCSO Act. Therefore, the finding of the conviction of the appellant under Sections 363 and 366 of the IPC and Section 12 of the POCSO Act does not suffer from any infirmity. The prosecution has proved its case beyond reasonable doubt.

(16) After due consideration, it is found that this appeal is without any substance which is dismissed accordingly. According to the details given regarding the arrest and detention of the appellant, the appellant is in jail and looking to the length of sentence of imprisonment imposed upon him, it appears that he must have undergone the whole period of sentence imposed upon him by this time. Therefore, this appeal is disposed off with a direction that in case the appellant is not detained in any other case he can be released from jail on the basis of completion of sentence of imprisonment imposed upon him in this case.

(17) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE