

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 324 of 2014**

- Schine Kurre S/o. Hajari Lal, Aged About 19 Years, Caste Satnami, R/o. Satnamipara, Danitola, Dhamtari, Police Station, Tahsil, Civil and Revenue District Dhamtari C.G., Chhattisgarh

---- Appellant

Versus

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

---- Respondent

For Appellant	: Shri Harshwardhan Jaiswal, Advocate.
For Respondent/State	: Shri N.K. Mehta, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

15-11-2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 22-02-2014 passed in Special Criminal Case No.07/2013 by the Additional Sessions Judge (FTC) Dhamtari, Distt. Dhamtari, C.G., convicting the appellant under Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act') and sentencing him with R.I. for 7 years and fine of Rs.4,000/- with default stipulation.
2. The prosecution case, in brief, is this, that on 06-04-2013 the appellant took the prosecutrix (PW-2), aged about 8 years, to a lonely place and by disrobing her touched the private part of the prosecutrix and thus committed penetrative sexual assault with her. Mother of the prosecutrix (PW-2), Bharati Singh Thakur (PW-1) lodged the FIR, on the basis of which the investigation was made

and charge sheet was filed before the concerned Court.

3. The appellant was charged with Section 4 of the POCSO Act, to which he denied and prayed for trial.
4. The prosecution examined 11 witness. After completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied the incriminating evidence against him, pleaded innocence and false implication. Three witnesses were examined in defence.
5. After completion of the trial, the impugned judgment has been passed wherein the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that no case is made out for conviction of the appellant, according to the evidence present in this case. The medical evidence does not report about any injury in the private part of the prosecutrix and the witnesses of the prosecution are not reliable and trustworthy, hence, their statement should not have been made the basis of the conviction against the appellant. Father of the victim is ready to make statement before the Court that this appellant has been falsely implicated. Hence, it is prayed that the appeal may be allowed.
7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made and submits that the prosecution has proved its case beyond reasonable doubt. According to the statement of the victim/the prosecutrix (PW-2), it is a clear case of penetrative assault which has been supported by the other witnesses. Hence, no case is made out for acquittal and

therefore the appeal may be dismissed.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-2) is a 8 years old girl. She has stated before the Court that on the date of incident the appellant took her to a lonely place and then inserted his finger inside her private part and then when the appellant was trying to open his pant she found opportunity to make her escape. In her cross-examination she has remained firm on this statement.
10. Bharati Singh Thakur (PW-1) has stated that she was informed by the prosecutrix (PW-2) about the incident. Thereafter, she lodged the FIR (Ex.-P/1). In cross-examination her statement has remained un rebutted that she was informed about the incident by her daughter, the victim/prosecutrix (PW-2) in this case, and there is no other such statement to show that her statement in examination-in-chief has been contradicted.
11. Tejeshwani (PW-7) appears to be eye-witness in this case and she has given statement that she saw the appellant doing penetrative sexual assault on the prosecutrix (PW-2) and at the same time he committed the penetrative assault with this witness also. In cross-examination her statement has remained uncontradicted. Uttarabai (PW-5) is her mother who has stated about the receiving of information about this incident from her daughter Tejeshwani (PW-7), according to which, the appellant had sexually abused her daughter as well as the prosecutrix (PW-2), and there is no such

statement in her cross-examination so as to consider that her statement in examination-in-chief as contradicted.

12. The examining doctor, Doctor Smt. Asha Tripathi (PW-6) could not give any opinion after medical examination of the prosecutrix vide Ex.-P/8.
13. According to the evidence on record, it has appeared that it is a case of inserting a part of body into private part of the prosecutrix, in such a case possibility of finding any injury or other symptoms is very remote. This falls clearly under the definition of penetrative sexual assault that is described in Section 3 of the POCSO Act.
14. After considering on the evidence present in the record of the trial Court and upon close scrutinizing the same, I am of this opinion that the trial Court has not committed any error in coming to this conclusion that this appellant has committed the offence as defined under Section 4 of the POCSO Act.
15. Learned counsel for the appellant has also prayed for reduction of the jail sentence imposed upon the appellant.
16. Section 4 of the POCSO Act provides minimum sentence of 7 years which has been imposed upon the appellant, hence, it cannot be reduced any further.
17. After due consideration, I do not find any merit in this appeal, hence, the appeal is hereby dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge