

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 944 of 2015

- Ram Kumar Banjare @ Sukhta S/o Guharam Aged About 23 Years R/o Saragbundiya, P.S. Urga, District Korba Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Urga, District Korba Chhattisgarh , Chhattisgarh

---- Respondent

For the Appellant : Mr. Rajesh Jain, Advocate.

For the State/Respondent : Mr. Avinash K. Mishra, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

11/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 28.7.2015 passed by the learned Additional Sessions Judge (FTC), District-Korba, Chhattisgarh in Special Sessions Trial No.65/2014 convicting the accused/appellant under Section 376 (2) (च) / 511 of the Indian Penal Code (for short 'the IPC') and under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentencing him to undergo RI for 7 years with fine of Rs.2,000/- and RI for 5 years with fine of Rs.2,000/-, with usual default clauses, respectively. Both the

sentences have been directed to run concurrently.

2. The prosecution case, in brief, is this that on 11.1.2014 the appellant finding the prosecutrix all alone in the field had disrobed her and while he was removing his own clothes, the prosecutrix managed to flee from there. FIR ExP-1 was lodged by Sunita PW-1 based on which the investigation has been started and after completion of investigation, charge-sheet has been filed before the concerned Court.
3. The appellant was charged with the offence under Section 376/511 of IPC and Section 10 of POCSO Act to which he denied and prayed for trial. Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. Two witnesses were examined in defence. After completion of trial, impugned judgment has been passed in which the appellant stands convicted and sentenced as aforesaid.
4. It is submitted by counsel for appellant that no case is made out under Section 376/511 of IPC because the appellant had not made any attempt to commit the offence of rape with the prosecutrix. As per evidence present in this case and the statement given by prosecutrix PW-3, she was only disrobed by the appellant and for which the appellant can be, at the most, held liable for the offence under Section 354(b) of IPC. Hence, the conviction against the appellant in the impugned judgment is bad in law. It is also submitted that though the evidence of main witnesses of this case do not inspire confidence

even then the trial Court has based the conviction against the appellant on the same. Under these circumstances, it has been prayed that appellant be acquitted of all the charges.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecution has proved its case beyond reasonable doubt and even the statement given by prosecutrix PW-3 clearly makes out the commission of an offence of attempt to commit rape, hence, there is no infirmity or illegality in the impugned judgment convicting and sentencing the appellant as aforementioned. Hence, the appeal is liable to be dismissed.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?
8. The main witness in this case is prosecutrix PW-3, who is only 9 years of age. She has stated that on the date of incident when she was playing with her brother, at that time the appellant came to her and forcibly took her to a nearby field. The appellant had disrobed her and when he started disrobing himself, then she gave him teeth bite on the hand of appellant, raised alarm and fled from there. Hearing alarm her brother reached the spot and seeing him the

appellant ran away from there by picking up his clothes. In the cross-examination, the prosecutrix remained firm and there is no other statement which had the effect of contradicting or rebutting the statement made by her in her examination-in-chief.

9. Ravi PW-2, brother of the prosecutrix, has stated, that on hearing cries of his sister, he rushed to the spot and saw her sister standing without clothes. The appellant was also standing without clothes. Seeing him the appellant ran away from the spot. This witness informed about the incident to his aunt Savita PW-1 who in turn lodged the report of ExP-1. In cross-examination, this witness also remained firm and nothing could be elicited by the defence to make his testimony unreliable or untrustworthy.
10. Savita PW-1 has also stated about gathering information from Ravi PW-2 and prosecutrix PW-3 and lodging of FIR.
11. Kamla Bai PW-4 & Narendra Kumar Lahre PW-5 are hearsay witnesses. Dr. Ku. Veena Agrawal PW-7 has examined the prosecutrix and she did not notice any injury on her private parts. Her report is ExP-5. Inspector S.K. Pathak PW-8 has scribed FIR ExP-1 and has done the investigation in this case.
12. After closely scrutinizing the entire evidence available on record, it appear that the main witness in this case is prosecutrix PW-3 herself whose version gets partial support from the statement of Ravi PW-2, who immediately came on the spot at the time of incident. According to the statement given by the prosecutrix, it appears that the

appellant had used force on her at the time of incident and had also successfully disrobed her, but he had not taken any step to commit rape with her, hence, at the most it can be said that the appellant was in preparation to commit such offence but he could not succeed in his pursuit of committing rape with the prosecutrix on account of arrival of PW-2 on the spot upon hearing alarm of the prosecutrix. Thus, I find force in the submission of learned counsel for appellant that the materials available in record do not make out the case of attempt to rape against the appellant. However, the appellant cannot escape his conviction under Section 354(b) of IPC for disrobing the victim by use of force. Therefore, it would be proper to convict the appellant under Section 354(b) of IPC instead of under Section 376/511 of IPC as has been done by the trial Court. Similarly, in the given facts and circumstances of the case, it cannot be said that the prosecution has been able to prove the charge under Section 10 of POCSO Act beyond doubt. However, there is sufficient material on record to hold the appellant guilty for commission of offence punishable under Section 8 of the POCSO Act. Thus, the impugned judgment needs to be interfered with.

13. Resultantly, on the basis of findings herein-above, the appeal is allowed in part. Conviction of the appellant under Section 376/511 of IPC and Section 10 of POCSO Act are hereby set aside instead thereof he is convicted under Section 354 (b) of IPC and Section 8 of POCSO Act. As regards the sentence, Section 354(b) of IPC and Section 8 of POCSO Act both prescribe minimum sentence of 3

years and the appellant has already undergone more than the minimum sentence prescribed for the aforesaid offences. Therefore, in the given facts and circumstances of the case, the appellant is sentenced to the period of detention already undergone by him and he is directed to pay fine of Rs.2,000/- for each offence. In default of payment of fine the appellant shall undergo R.I. for two months.

14. Accordingly the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha