

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 20.09.2018

Judgment Delivered on : 28/09/2018

CR.A. No. 1194 of 2014

Sunil Giri, S/o. Shri Chandrika Giri, Aged About 33 Years, R/o. Indira Nagar Jamanipali Darri, P.S. Darri, Dist. Korba C.G.

---- Appellant

Versus

State of Chhattisgarh, S/o. Through Station House Officer, P.S. Darri Korba, Dist. Korba C.G.

-----Respondent

For Appellant	: Mrs. Madhunisha Singh, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

28/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (F.T.C.), Korba, District – Korba (C.G.) in Special Criminal Case No.12/2014 on 30.08.2014 convicting the appellant for the offence under Section 354(A) (1) of the Indian Penal Code and Section 10 of Protection of Child From Sexual Offences Act and sentencing him to under go R.I. for 2

years along with fine of Rs.1000/- and R.I. for 5 years and fine of Rs.2000/- with default stipulations respectively.

2. The case of prosecution in brief is this that the complainant Lilawati Giri (P.W.-3) was informed by her daughter Jyoti Giri (P.W.-4) that her husband, the appellant had outraged the modesty of younger daughter of the complainant, who is the victim (P.W.-2). The complainant enquired about the incident from the victim and then has lodged FIR (Ex.P-3) in the police station. After completion of the investigation, the charge-sheet was filed before the concerned Court.
3. Appellant was charged with offence under 354 (A) (1), 354(B) of the Indian Penal Code and Section 10 of Protection of Children from Sexual Offences Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 6 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. 3 witnesses were examined in defence. On completion of trial, impugned judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. It is submitted that

the FIR is belated in this case for which, there is no explanation given. The statement of witnesses of prosecution do not inspire confidence and there is possibility that victim (P.W.-2), who is child may have been tutored . The trial Court has failed to appreciate that the appellant has falsely implicated in this case on account of previous enmity with the complainant, regarding which, the evidence was adduced in defence, which was not considered by the trial Court. On due appreciation of all the evidence, the appellant would have been entitled for benefit of doubt. Hence, the conviction against the appellant suffers from infirmity, which can not be held in this case. It is prayed that this appeal be allowed. It has been prayed in alternative that in case this Court is not inclined to allow this appeal and acquit the appellant in that case, the sentence of imprisonment against the appellant, which is too harsh may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the

evidence beyond reasonable doubt?

8. Victim (P.W.-2) is age of just 12 years. She has stated before the Court that on 27.01.2014, her mother had been to her paternal home and the victim herself was in the house in Jamnipali. Her sister had gone to school and when her brother went out for playing, the appellant came to her and asked her to kiss him on his cheeks, lips and forehead and thereafter, his father, the appellant fondled her chest and said that he wants to see it, her breast were small or big. The witness could not tolerate further and went out of her house and informed about this incident to her cousin sister. When her elder sister Jyoti Giri (P.W.-4) came from school, she informed her about the incident. Subsequent to which, Jyoti Giri (P.W.-4) made a phone call to her mother, complainant Lilavati Giri (P.W.-3) and informed her about the incident. In cross-examination, her statement has remained totally un rebutted. She has denied all the adverse suggestions given by the defence and also about the dispute between her father and mother. She has also denied that she has falsely implicated the appellant at the instance of her mother. There is some omission and development in her statement but this is not material so as to contradict the statement given by her in examination-in-chief.
9. Jyoti Giri (P.W.-4) has clearly supported the case of the prosecution stating that she was informed about the victim (P.W.-

2) about the incident in detail and then she made a phone call to her mother and informed her accordingly. Some leading questions have been put to her by the prosecution i.e. on account of some statement, which she has omitted to state before the Court. In cross-examination by defence, she has made admission that she has not given any earlier statement to the police and she is making statement for the first time in the Court. Inspector, Shruti Singh (P.W.-6) is the investigator, she has stated that she recorded the statement of this witness according to the statement given by her. No question has been put to her in cross-examination by defence that she had in-fact not recorded the statement under Section 161 of Jyoti Giri (P.W.-4). Hence, the admission made by Jyoti Giri (P.W.-4) in her cross-examination is of no consequence.

10. Lilavati Giri (P.W.-3), mother of the victim and wife of this appellant, has stated about the telephonic information given to her by Jyoti Giri (P.W.-4) and then she made an enquiry about the incident from the victim (P.W.-2) and then presented a written complaint (Ex.P-2) to the police on the same day. On the basis of which, FIR (Ex.P-3) was lodged on the same day of the incident. Smt. Soni Devi (P.W.-5) has also supported the prosecution case and Inspector Shruti Singh (P.W.-6) has proved the investigation done in this case.

11. Before coming to any conclusion, the defence evidence is also taken into consideration. Smt. Kanti Devi (D.W.-1) has stated that her son, the appellant had been falsely implicated by Lilavati Giri (P.W.-3) because she had earlier threatened him to falsely implicate him in criminal case.
12. Lakheshwar Prasad (D.W.-2) has also given statement about some earlier dispute between the appellant and his elder daughter and the appellant had slapped her. In cross-examination, he has admitted that on 27.01.2014, he had been on duty from 8.30 morning till 5.30 in the evening and he is not in position to state, if the. appellant had done anything wrong with her daughter in the afternoon on that date and admitted that he is a hearsay witness. Sunil Giri (D.W.-3), the appellant himself has stated about earlier dispute raised and alleged on the chastity of his wife. He has stated he was being threatened to be falsely implicated and denied about the incident.
13. The evidence brought by defence is only in the shape of allegation and denial, but not in the shape of rebuttal to the evidence that has been brought by the prosecution in this case. After close scrutiny of the evidence of all the prosecution witnesses, it appears that the child witnesses (P.W.-2) and (P.W.-4) have no reason to falsely implicate this appellant and their grievances appears to be genuine, regarding which they have given clear statement before the Court.

14. On close scrutiny of the evidence present on record, it is found that no error has been committed by the trial Court in convicting the appellant for the offences in which he stands convicted. Further the appellant has been convicted with minimum imprisonment provided under Section 10 of the Protection of Children from Sexual Offences Act and hence there is no reason to consider on the ground of relaxation of the sentence of imprisonment against the appellant.
15. Resultantly, the appeal has no merit and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge