

**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.A. No. 1296 of 2015**

Vicky Jediya, S/o. Ganesh Jediya, Aged About 21 Years, R/o. Solah Kholi, Stationpara, P.S. Rajnandgaon, Civil and Revenue Distt. Rajnandgaon, Chhattisgarh.

**---- Appellant**

**Versus**

State Of Chhattisgarh, Through : The Station House Officer, P.S. Kotwali, Distt. Rajnandgaon, Chhattisgarh.

**-----Respondent**

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| For Appellant        | : Mr. Tarun Kumar Dadsena, Advocate |
| For Respondent/State | : Mr. Anant Bajpai, Panel Lawyer    |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**13/12/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Fast Track Court of Additional Sessions Judge and Special Judge (Protection of Children from Sexual Offence Act, 2012), Rajnandgaon, District – Rajnandgaon (C.G.), in Sessions Trial No.21/2013 on 25.08.2015, convicting the appellant for the offence under Section 363 of the I.P.C. and sentencing him to under go R.I. for 7 years and fine of Rs.1000/-, for offence under Section 376 of the Indian Penal Code and sentencing him with R.I. for 10 years and fine of Rs.2000/-, for

the offence U/s. 307 of the Indian Penal Code and sentencing him with R.I. for 10 years and fine of Rs.2000/- and for the offence under Section 3, 4 of Protection of Children from Sexual Offences Act, 2012 and sentencing him with R.I. for 7 years and fine of Rs.1000/-, with default stipulations.

2. The case of the prosecution is this that the on 06.10.2013 at about 6.00 PM, the appellant abducted the minor prosecutrix of age about 3 years from the custody of her lawful guardian in front of Ganesh Baghel (P.W.-1). Thereafter, the victim was not to be found because of which she was searched. The appellant was found and interrogated, who made an admission statement that he abducted the minor prosecutrix on the pretext that he will get her biscuits and then had committed the offence of rape with her and thrown the child in swamp. The appellant was caught hold of the witnesses and handed over to the police and then the minor victim was searched and found. On the basis of the information given by Ganesh Baghel (P.W.-1), FIR (Ex.P-1) was recorded by Archana Dhurandhar (P.W.-18). The victim was examined by the doctor and thereafter, the investigation was conducted. After recording of statement and completion of investigation, charge-sheet has been filed before the concerned Court.
3. Appellant was charged with offence under Section 363, 376 and 307 and Section 3/4 Protection of Children from Sexual Offences Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 18 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. No witness was examined in defence. On completion of trial, 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. The conviction is based on the evidence of interested witnesses only. The victim herself has not been examined and there is no positive finding in the FSL report about presence of spermatozoa in the slides prepared from the vaginal secretion of the victim. Hence, the order of conviction is bad in law. Hence, it is prayed that the appellant be acquitted of the charges.
5. Counsel for the State opposes the submission made in the grounds raised in the appeal submits that the prosecution has proved its case beyond all reasonable doubts. There are eye-witnesses present, who have proved the abduction of the minor victim by this appellant and there is evidence of extra judicial confession and thereafter the medical examination report of the victim also confirms that she was raped. 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. Ganesh Baghel (P.W.-1) has stated that on 06.10.2013 at about 6.00 in evening, he was in front of his house, when he saw the minor victim of age 3 years present there. The appellant came and then he picked-up, the child on his lap. When this witness asked him where he is taking the child, then the appellant replied he is taking her to get biscuits for her. Thereafter, the victim did not return because of which this witness and mother of the child got alarmed and started searching her. This witness and other found the appellant is near pond wondering only wearing an underwear. On asking about the victim, the appellant replied that he had raped the victim and has thrown her in the swamp of the pond. The girl victim was found in the swamp of the pond, who was in unconscious condition and was rescued, she was immediately shifted to the hospital. Appellant was caught by this witness with the help of others and handed over to the police. He has stated about lodging of FIR, Ex.P-1. In cross-examination, his statement in examination in chief has remained unrebutted. There is no such other statement so as to hold that the statement of the witness is contradicted and falsified.
9. Pushpraj Singh (P.W.-2) is the witness, who saw the other person searching the victim and he also joined them. He is one of the witness to the extra judicial confession made by the appellant

regarding the rape committed by him on the victim and throwing her in the pond. He has stated about recovery of the child victim. In the cross-examination, his statement has remained unshaken. Yabesdas (P.W.-3) was also present in the search and when the appellant was found, he informed that he has thrown the child in the pond. He is though not a witness of extra judicial confession but has stated that the appellant has raped the child victim. His statement has remained unchanged and there is no such contradictory statement made by him so as to affect the credibility of the statement given in examination in chief. Sheikh Anis (P.W.-4) has also similarly stated.

10. Bajrang Bareth (P.W.-5) is the father of the child victim, who came to know about the incident later on. Kamal Baghel (P.W.-7) has witnessed extra judicial confession made by the appellant, in which he has stated that he raped the child victim and has also admitted the because it was burying her in the mud, there is no contradictory statement in his cross-examination. Sharda (P.W.-12) is the mother of the of the victim, who was informed about the incident. Similarly Kuldeep Sewate (P.W.14) was also informed about the incident by the other witness.
11. Dr. Ekka Denial (P.W.-8) examined the child victim, who found her partly unconscious and covered with mud. She has stated that on examining her private part, she found a torn in the hymen and the injury of the tear extended till rectum and thus a cavity had been created of vagina and rectum. Wall of the vagina and rectum was

totally torn, which was bleeding, she prepared two slides for FSL examination and has opined in her report Ex.P-5 that the child victim was raped and her condition was very serious and she has denied all the adverse suggestions given by defence counsel in cross-examination.

12. Dr. Jeewan Lal Patel (P.W.-16) is Assistant Professor in Pediatrics in Medical College Hospital, Raipur. He has stated that child victim of age about 3 years was referred to Dr. Bhimrao Memorial Hospital, Raipur for treatment, where, she was admitted for treatment. On examining, he and his team was found that there was tear and laceration from vagina to rectum. Her vagina was totally destroyed and uterus had also moved from the place and the vagina was also full with mud. Thereafter, further treatment and surgery of the child victim was taken up by him and his team. His statement has totally remained unchallenged and he has denied all the suggestions given by the defence counsel. Dr. Mohd. Amin (P.W.-17) Associate Professor (Paediatrics Surgery) Medical College Hospital, Raipur, he was also one of the member of the team, who examined the child victim and had participated her treatment and surgery.
13. Sub-Inspector, Archana Dhurandhar, (P.W.-18) has recorded the FIR (Ex.P-1) and has conducted the investigation. Constable - Rohit Ram Thakur (P.W.-9), Hariram Netam (P.W.-10), Nakchhedan Ram Sahu (P.W.-13) and A.S.I., Shankar Barve (P.W.-15), have also contributed in the investigation of the case.

14. After closely scrutinizing the evidence of all the witnesses, I am of this opinion that the trial Court has not committed any error in convicting the appellant for the offences as mentioned herein above and sentencing him accordingly. Even the Court finds that the appellant has been punished with minimum sentence of imprisonment provided under Section 376 of the I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, whereas, the appellant deserved to be sentenced with more severe punishment. However, the State has not filed any appeal for enhancement of sentence, therefore, after making this observation, I do not find any reason to interfere with the impugned judgment,
15. Resultantly, the appeal has no merit and it is dismissed accordingly.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge