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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.96 of 2018

Mohan Mahanand, S/o Dileep Mahanand, aged about 21 years, R/o Behind Dashnal, Santoshi Nagar, P.S. Tikrapara, Raipur, Civil and Revenue District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Tikrapara, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Ms. Bulbul Agrawal, Advocate
For Respondent	:	Ms. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

29.8.2019

1. The instant appeal has been preferred against the judgment dated 21.6.2017 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the POCSO Act'), Raipur in Special Sessions Trial No.1072 of 2014, whereby the Appellant has been convicted under Section 323 of the Indian Penal Code and sentenced with fine of Rs.500/- with default stipulation. The Appellant has also been convicted under Section 354D of the Indian Penal Code and Section 8 of the POCSO Act, but he has been sentenced only for the offence under Section 8 of the POCSO Act with rigorous imprisonment for 3 years and fine of Rs.500/- with default stipulation.
2. Brief facts of the case are that on the relevant date, age of the prosecutrix (PW2) was about 16 years. On 21.6.2014, the prosecutrix (PW2) lodged a report (Ex.P2) in Police Station

Tikrapara alleging that the Appellant used to chase her while her going to school. He wanted to talk to her, but she did not talk to him. On 21.6.2014 at about 11:00 a.m., she was going along with her cousin Shivam (PW6). At that time also, the Appellant chased her and told her that he wanted to talk to her. She refused to talk to him. Shivam (PW6) also prevented the Appellant. On this, the Appellant, asking Shivam (PW6) why was he intervening, slapped him. On the basis of the report, offence was registered and statements of witnesses were recorded. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 354D, 294, 506, 323 of the Indian Penal Code and Section 8 of the POCSO Act. Charges were framed against him under Sections 354D, 294, 323 and 506 of the Indian Penal Code and Section 8 of the POCSO Act.

3. In support of its case, the prosecution examined as many as 6 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After completion of the trial, the Trial Court acquitted the Appellant of the charges framed under Sections 294 and 506 of the Indian Penal Code, but convicted him under Sections 323 and 354D of the Indian Penal Code and Section 8 of the POCSO Act and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that without there being any clinching evidence, the Trial Court has wrongly

convicted the Appellant. She further submits that in her Court statement, the prosecutrix (PW2) has not stated anything on the basis of which it could be said that at the time of incident the Appellant made any physical contact with the prosecutrix. Therefore, the Appellant made any sexual assault on the prosecutrix is not established. Thus, the Trial Court has wrongly convicted the Appellant for the offence punishable under Section 8 of the POCSO Act. She further submits that the statement of the prosecutrix is not reliable and is not supported by the independent witnesses and, therefore also, the conviction of the Appellant is not sustainable.

6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In her Court statement, the prosecutrix (PW2) has stated that the Appellant used to chase her and stop her on the way while her going to school 5-6 months prior to lodging of the FIR (Ex.P2). Even on being prevented, he did not stop. He used to tell her that she was his and he will not let her be someone else. It has been further stated by her that on 21.6.2014 also, when she was going with her cousin, the Appellant, chasing her, came to her and committed *marpeet* with her cousin. Thereafter, she lodged the report (Ex.P2). The above statement of the prosecutrix is duly corroborated by her cousin Shivam (PW6).

9. Usha Mishra (PW3), mother of the prosecutrix has also stated that after the incident, the prosecutrix had told her about the whole incident and she had gone along with the prosecutrix to lodge the report (Ex.P2).
10. Assistant Sub-Inspector T.L. Soni (PW4) is the witness who conducted the entire investigation. Dr. S.K. Bohra (PW1) examined Shivam (PW6), cousin of the prosecutrix on 21.6.2014 and gave his report (Ex.P1). As stated by this witness, at the time of examination, Shivam had told him that he was suffering from pain in cheek.
11. On a minute examination of the above evidence, it is clear that the prosecutrix (PW2) has categorically stated that the Appellant used to chase and stop her on the way and on the date of incident also, when she was going along with her cousin Shivam (PW6), he committed *marpeet* with her cousin. Her above statement is duly corroborated by Shivam (PW6). Both have remained firm during their cross-examination. In their cross-examination, there is nothing to show that there was any previous enmity between the Appellant and the prosecutrix. Therefore, considering the entire evidence available on record, I find that the Trial Court has rightly convicted the Appellant for the offence punishable under Sections 354D and 323 of the Indian Penal Code.
12. So far as the offence punishable under Section 8 of the POCSO Act is concerned, from the statement of the prosecutrix made before the Court, it is clearly established that the Appellant used to chase her only and he never made any physical contact with her

as defined in Section 7 of the POCSO Act. Therefore, the act of the Appellant cannot be said to be a sexual assault on the prosecutrix as defined under Section 7 of the POCSO Act. Thus, the finding of conviction under Section 8 of the POCSO Act arrived at by the Trial Court is not in accordance with the evidence and law.

13. As a result of the aforesaid discussion, the conviction of the Appellant under Sections 354D and 323 of the Indian Penal Code is affirmed, but he is acquitted of the charge framed under Section 8 of the POCSO Act.

14. As regards sentence for the offence under Sections 354D and 323 of the Indian Penal Code, it is reported that the Appellant has already undergone a period of about 2 years and 9 months and is still in jail. I am of the considered view that the ends of justice would be served if for the offence under Section 354D of the Indian Penal Code the Appellant is sentenced for the period undergone by him and with fine of Rs.500/-. Ordered accordingly. The Appellant has been acquitted of the charge under Section 8 of the POCSO Act, but, the fine of Rs.500/- imposed by the Trial Court against the conviction under Section 8 of the POCSO Act, if already paid by the Appellant, shall be adjusted against the fine of Rs.500/- imposed today against the conviction under Section 354D of the Indian Penal Code. In case, this fine of Rs.500/- has not already been paid by the Appellant, he shall deposit the fine within a period of 1 month from the date of receipt of a copy of this order or else he shall suffer 3 months' additional rigorous imprisonment for default of payment of fine against conviction under Section

354D of the Indian Penal Code. The sentence of fine of Rs.500/- imposed upon the Appellant by the Trial Court for the offence under Section 323 of the Indian Penal Code is affirmed.

- 15.** Consequently, the appeal is allowed in part to the extent indicated above.
- 16.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge