

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1251 of 2016

Satish Kumar Sahu, S/o Shri Sammelal Sahu, aged about 30 years, R/o Village Semipali, Police Station Urga and District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police of Police Station Balconagar, District Korba, Chhattisgarh

--- Respondent

For Appellant	:	Shri Parag Kotecha, Advocate
For Respondent	:	Shri Amit Kumar Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

7.11.2019

1. The instant appeal has been preferred against the judgment dated 9.9.2016 passed by the Additional Sessions Judge (FTC), Korba in Special Sessions Trial No.2 of 2016, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(f) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.5,000/- with default stipulation
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for 10 years and fine of Rs.5,000/- with default stipulation

2. Prosecution case, in brief, is that on the relevant date, age of the prosecutrix (PW1) was about 10 years. According to the prosecution, the Appellant was posted as a teacher in the primary school situated at Village Pandripani. The prosecutrix was

studying in 5th standard of the said school. On 8.12.2015, when she went to the school along with her friend Sanjana (PW4), at about 1:00 p.m., the Appellant gave instructions to the prosecutrix to sit in the classroom which was next to the classroom in which all the students were present and studying. She followed the instructions and went to the said adjacent classroom. Suddenly, the Appellant came in that classroom and instructed the prosecutrix to sleep on the floor and thereafter he inserted his finger in the private part of the prosecutrix and committed rape with her. After return from the school, the prosecutrix disclosed the incident to her parents. The matter was reported. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. Charges were framed against the Appellant.

3. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded false implication. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the Trial Court without there being sufficient evidence on record against him. There was a previous enmity between the Appellant and Umashankar Patel (PW6), Up-Sarpanch of Village Pandripani. Umashankar Patel

(PW6) had done a fight with the Appellant and to save himself he falsely implicated the Appellant in the offence in question. The prosecutrix or her mother or none of the other prosecution witnesses has supported the case of the prosecution. Despite that, the Trial Court has convicted the Appellant only on the basis of the statement of Umashankar Patel (PW6). Dr. K.B. Sonkar (PW10), who examined the prosecutrix, has also found that there was no mark or injury present over the private part of the prosecutrix and clinically there was no sign of any type of penetration. Thus, Learned Counsel claims that no offence is made out against the Appellant.

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. The prosecutrix (PW1), in her Court statement, has not supported the case of the prosecution. She has turned hostile. After declaring her hostile, she has admitted that in her case diary statement, she had stated about the incident. During her cross-examination, in paragraphs 5 to 7, she has categorically admitted that on the date of incident, Up-Sarpanch Umashankar Patel (PW6) had come to the school and committed *marpeet* with the Appellant and thereafter the prosecutrix went along with Umashankar Patel (PW6) to the police station and on being asked by Umashankar Patel (PW6), she made a report and signed the same. In paragraph 8 of her cross-examination, she has

categorically stated that the Appellant had not done anything with her.

9. Mahetarinbai (PW2), mother of the prosecutrix, Sukh Singh (PW3), father of the prosecutrix and Sanjana (PW4), who was one of the students of the school, have also not supported the case of the prosecution and all have turned hostile. Mahetarinbai (PW2) has also admitted that only on being asked by Umashankar Patel (PW6), she had given her statement and no incident had taken place with the prosecutrix.
10. Umashankar Patel (PW6) has deposed that on 12.12.2015, father of the prosecutrix had come to him and told that the Appellant had done wrong behaviour with the prosecutrix. On this, he had gone to the school of the prosecutrix and inquired from the prosecutrix about the said behaviour. She had told him about the whole incident. Thereafter, he inquired from the Appellant about the same. On this, the Appellant admitted his guilt. In paragraph 8, this witness has admitted that this fact was narrated by him while recording his statement under Section 161 of the Code of Criminal Procedure. He has also admitted that he had gone to the school for the first time on 12.12.2015 and no incident had taken place with any of the students on that date.
11. Dr. K.B. Sonkar (PW10) is the witness who examined the prosecutrix on 12.12.2015. She did not find any visible injury over the private part of the prosecutrix and the prosecutrix was complaining of pain in her private part.
12. On a minute examination of the evidence available on record, it is clear that the prosecutrix (PW1), her mother Mahetarinbai (PW2),

her father Sukh Singh (PW3) and Sanjana (PW4), who was one of the students of the school have not supported the case of the prosecution and all have turned hostile. The Trial Court has convicted the Appellant only on the basis of the statement of Umashankar Patel (PW6). This witness is not an eyewitness and his statement is not corroborated by the prosecutrix (PW1) or by any other prosecution witness. The prosecutrix and her mother have admitted that they stated and reported the matter as was asked by Umashankar Patel (PW6) and no incident had taken place with the prosecutrix. Therefore, in my considered view, no offence is proved against the Appellant. The finding of the Trial Court is not in accordance with the evidence available on record.

13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
14. 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