

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 134 of 2015

Ganesh Manikpuri, S/o Padum Manikpuri, aged about: 18 years, 4 months, 16 days, R/o Mathpara, Kawardha, Police Station: Kawardha, Revenue and Civil District- Kabirdham (Kawardha) (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station- Kawardha, District- Kabirdham (Kawardha) (C.G.)

---- Respondent

For Appellant : Ms. Laxmin Kashyap, Advocate.

For State/respondent : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

16/10/2019

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 07.08.2014 passed by Additional Sessions Judge (F.T.C.)/ Special Judge under POCSO Act, 2012, Kabirdham (Kawardha), (C.G.) in Special Sessions Trial No. 35/2014, wherein the said court convicted the appellant for commission of offence under Section 363, 366A of IPC, 1860, Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") and in alternate Section 376(1) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- on each count with further default stipulations.
2. As per Section 2(1)(d) of the POCSO Act, 2012, child means any person below the age of eighteen years. In the present

case, from evidence of Pramod Shukla (PW-4) who is Principal of Government Girls Higher Secondary School, Kawardha, date of birth of the prosecutrix is 08.12.1996. This witness deposed in his cross-examination that the entries were made by him and he proved the entries by original register before the trial court. Version of this witness is unrebutted during cross-examination. Evidence of this witness is supported by version of father of the prosecutrix namely Ishwari Jaiswal (PW-1), who deposed before the trial court that age of the prosecutrix is 17 years. Version of this witness is unrebutted in cross-examination. From evidence of school register and father of the prosecutrix, it is established that the prosecutrix was below 18 years on the date of incident i.e. 25.01.2014, therefore, she is child as per definition of child as per Section 2(1)(d) of the POCSO Act.

3. As the prosecutrix is below 18 years, she was in custody of lawful guardianship of her father and mother. From evidence of the prosecutrix (PW-3) and evidence of her father Ishwari Jaiswal (PW-1), it is established that the appellant taken her without consent of her guardian, therefore, it is established that the appellant kidpanned the prosecutrix from lawful guardianship. On overall assessment of the evidence, charge under Section 363 of IPC is established against the appellant.
4. From evidence of the prosecutrix, it is also established that the appellant committed sexual intercourse with her which proves that she was taken with intent that she may be forced or

seduced to illicit intercourse, therefore, charge under Section 366A of IPC is also established against the appellant. As the prosecutrix is child, the sexual intercourse committed against her by the appellant comes within definition of penetrative sexual assault as per Section 3 of the POCSO Act, which is punishable under Section 4 of the said act.

5. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to record a contrary view what is recorded by the trial court. The trial court awarded minimum sentence for commission of offence under Section 4 of the POCSO Act and less than minimum cannot be awarded. Conviction of the appellant is hereby affirmed. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
6. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge