

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved for Judgment on :17/01/2019****Judgment delivered on : 31 /01/2019****CRA No. 1106 of 2014**

- Ravindra Sinha S/o. Maksudan Sinha, Aged About 32 Years, R/o. Chuchrungpur, Police Station Charama, District North Bastar Kanker C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, through Police Station Charama, District Kanker C.G., Chhattisgarh

---- Respondent

For Appellant	: Shri Sandeep Shrivastava, Advocate.
For Respondent/State	: Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Judgment

31-01-2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 05-11-2014 passed in Special Sessions Trial No.11/2013 by the Special Judge (Atrocities) North Bastar Kanker, C.G., convicting the appellant under Section 67 of the Information Technology Act, 2000 and sentencing him with R.I. for 02 years and fine of Rs.25,000/- with default stipulation.
2. The prosecution case, in brief, is this, that the prosecutrix (PW-1) went missing in December, 2012. Father of the prosecutrix Dayaluram Sahare (PW-3) lodged a missing report on 31-12-2012. While the father of the prosecutrix and others were searching the prosecutrix (PW-1), Sanjay Mahavir (PW-4) informed that one

obscene MMS has been prepared of the prosecutrix which was also shown to them. The FIR, Ex.-P/25 was lodged in Police Station Kanker, in which, the offence was registered under Section 67 of the Information Technology Act. Later on the prosecutrix was found in Delhi who was recovered and she gave statement, that in November, 2012, the appellant had by inducement and by giving allurements that he will get her appointed to some job and get her a house, had physical relation with her and despite objection of the prosecutrix he prepared one obscene MMS of that act. The prosecutrix belongs to Scheduled Tribe. The investigation was done in this case, in which, seizure of mobile and chips were made from the prosecutrix and seizure of some articles were made from the appellant. After completion of the investigation charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 376 of the IPC, Section 3(1)(xii) and 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 67 of the Information Technology Act, 2000, to which he denied and prayed for trial.
4. The prosecution examined as many as 15 witnesses. After completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. After completion of the trial, the impugned judgment has been passed wherein the appellant has been convicted and sentenced as

aforementioned. However, the appellant has been acquitted of charges under Section 376 of the IPC, Section 3(1)(xii) and 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

6. It is submitted by learned counsel for the appellant that there is no evidence of prosecution to support the conviction of the appellant under Section 67 of the Information Technology Act. There is no evidence present that the appellant was the person who published or transmitted the obscene material in any social networking website. No seizure of any electronic equipment has been made from possession of the appellant in the investigation to show that the same was used for publishing or circulating the obscene material. The micro SD card containing obscene material has been seized from the possession of witness Sanjay Mahavir (PW-4) and he had not made any statement, that from where he obtained that micro SD card. Hence, even if it is assumed that the MMS of obscene material in connection with the prosecutrix was circulated or published, it cannot be said that it was the appellant who has done it. Therefore, it is prayed that the appellant may be acquitted of the charge and the appeal may be allowed.

Learned counsel for the appellant placed reliance on the judgment delivered by Hon'ble the Supreme Court in the matter of **Tomaso Bruno and another Versus State of Uttar Pradesh**, (2015) 3 SCC (Cri) 54.

It is also prayed on behalf of the appellant that if this Court is not convinced to set aside conviction of the appellant, then his

sentence of imprisonment may be reduced to the period of detention which he has already undergone in jail.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecution has proved its case beyond reasonable doubt. The victim/prosecutrix (PW-1) in this case has made clear statement that the appellant was the person who had prepared the MMS and there is evidence that the same was circulated, given by witnesses Ghanshyam Mandavi (PW-2), Dayaluram Sahare (PW-3) and other witnesses. Therefore, no case is made out for acquittal of the appellant.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-1)/victim has stated that she was informed by Sanjay Mahavir (PW-4) that one obscene MMS in which she is shown in naked condition has been prepared and then she was informed by Ghanshyam Mandavi (PW-2) that this obscene MMS was prepared by the appellant. She has also stated that the appellant himself has stated that he is making one MMS just to view it later on, on which he was asked to delete it after viewing. In cross-examination she has admitted that she was acquainted with the appellant since 2008-09 and she had been meeting with him. On question put by the defence counsel she has stated that she had met with the appellant in jungle where the MMS was prepared and it is the suggestion of defence that she has admitted that she had

accompanied the appellant to jungle on the day the MMS was prepared she went with him with her consent. These statements and cross-examination further confirms that the witness was having knowledge that the appellant was preparing her obscene MMS, regarding which she had also asked to delete it later on.

10. Ghanshyam Mandavi (PW-2) has stated about giving MMS in mobile phone of some persons and has not stated as to who was the person who had prepared or circulated it.
11. Dayaluram Sahare (PW-3) is father of the prosecutrix, he has stated that he was informed by Madan Satnami that one obscene MMS has been prepared of his daughter and then on his asking Sanjay Mahavir (PW-4) had provided him with one micro SD card containing that MMS which was seized by the police vide Ex.-P/3.
12. Sanjay Mahavir (PW-4) has not supported the prosecution and he was declared hostile. Similarly Hitesh Yadav (PW-5), Narendra Yadav (PW-6) and Tilak Yadav (PW-7) also have not supported the prosecution case and they have also been declared hostile by the prosecutor.
13. Narendra Sahare (PW-8) is brother of the prosecutrix (PW-1) who has stated that he was informed by Sanjay Mahavir (PW-4) about preparation of the obscene MMS of his sister and he has stated on his own that the appellant was the person who had prepared that obscene MMS, but he has not disclosed about the source of this information.
14. After closely scrutinizing of all the relevant evidence of the

witnesses it has appeared that according to the unrebutted statement of the prosecutrix (PW-1) the appellant was the person who had prepared her obscene MMS. As the same MMS was found in circulation which has been supported by Ghanshyam Mandavi (PW-2), it can be easily assumed that the appellant was the person who had passed on the same for circulation. Although evidence is lacking with respect to electronic gazettes and the investigation has lacuna that no mobile or electronic gazette was seized from possession of the appellant which was very much necessary in this case, but outcome of preparation of MMS is very clearly seen that the same was in circulation, therefore, there is no requirement of any further proof. Therefore, in view of this Court the trial Court has not committed any error in convicting the appellant for the offence as aforementioned and there is no need for interference in the order of conviction passed by the Court below. Accordingly, conviction of the appellant under Section 67 of the Information Technology Act is maintained.

15. Considered on the prayer for reduction of sentence. The appellant was arrested and placed in detention on 21-02-2013 and by order of bail dated 17-11-2014 he has been released on bail, in this way he has undergone detention of period of more than 1 year and 8 months. Hence, at this stage, no purpose would be served if the appellant be sent back to jail to serve out only four months of sentence of imprisonment that is remaining to be undergone by him. Hence, after due consideration, I feel inclined to allow this prayer for reduction of sentence of imprisonment. Accordingly, the sentence of

rigorous imprisonment of two years imposed upon the appellant by the trial Court for the aforesaid offence is reduced to the period of detention of the appellant already undergone by him in jail. The appeal is partly allowed with the aforesaid modification in the sentence part of the impugned judgment.

Sd/-
(Rajendra Chandra Singh Samant)
Judge