

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 476 of 2014

- Vijay Lal Kaser S/o Ganga Ram Kaser Aged About 47 Years R/o. Ward No.2, Patan, Distt. Durg, Present Address Semhara, Bichpara, P.S. Chhura, Civil Distt. Raipur Rev. Distt. Gariyaband, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through P.S. Chhura, Civil Distt. Raipur and Rev. Distt. Gariyaband, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Suresh Tandan, Advocate.
For State/Respondent	:	Shri Alok Nigam, G.A. and Smt. Seema Dixit, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

06/03/2020

1. By the impugned judgment dated 07/04/2014 passed in S.T. No. 46/2013 by the Additional Sessions Judge, Gariyaband, District – Raipur, Chhattisgarh, Appellant has been convicted under Section 376(1) of the Indian Penal Code; Section 3(B), 4 of POCSO and Section 5(M) & 6 of POCSO and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1,000/-; rigorous imprisonment for 7 years and fine of Rs. 1,000/-; and rigorous imprisonment for 10 years and fine of Rs. 1,000/- with default stipulations respectively. All jail sentences to be run concurrently.
2. Facts of the case, in brief, are that on the relevant date, age of the

prosecutrix (PW-15) was about three years. According to the case of the prosecution, on 31.08.2013, mother of the prosecutrix, namely, Kalyani Sinha (PW-1) and her *jethani* namely Kavita Bai (PW-12) were present in the house along with their children. At around 10:30 AM, accused/appellant, who is a pot seller came to their house and asked for water to drink from Kavita Bai (PW-12). Then, Kavita brought water for him in small water pot (*lota*). Thereafter, the accused/appellant put down the underwear of the prosecutrix to check whether the child was a male or female. Then Kavita stopped him. Appellant gave some chips to the prosecutrix and thereafter, took her outside in his lap. On hearing the cry of the prosecutrix, mother of the prosecutrix came out of her house and saw that appellant was holding her daughter on his lap and has put his finger in the private part of the prosecutrix. Thereafter, accused/appellant ran away from the spot. Mother of the prosecutrix, Kalyani (PW-1) informed her husband about the said incident. On 31/08/2013, Kalyani Bai (PW-1) lodged the F.I.R. i.e. (Ex.P-1) before the police station. Statement of the prosecutrix and other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. Prosecutrix was medically examined by Dr. Snehlata Humane (PW-8) vide (Ex. P-12). After completion of the investigation, a charge-sheet was filed against accused/appellant and charges were framed against him by the trial Court.

3. In support of its case, the prosecution examined as man as 17 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the appellant denied the guilt and pleaded innocence. No witness has been examined in defence.

4. After trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
5. Learned Counsel appearing on behalf of the appellant submitted that without there being any clinching evidence on record against the appellant, the trial Court has wrongly convicted him. There are material contradiction occurred in the statements of Kalyani Sinha (PW-1), Santosh Kumar Sinha (PW-2) and Kunti Sinha (PW-4). Therefore, their statements are not duly reliable. It is further submitted that prosecutrix (PW-15) is a child witness aged about 3 years, therefore, this possibility cannot be denied that she was tutored and caused to give the statement. Therefore, statement of prosecutrix is also not reliable. Thus, no offence is made out against accused/appellant.
6. Learned Counsel appearing for the State/Respondent supported 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. With regard to age of the prosecutrix, mother of the prosecutrix Kalyani Sinha (PW-1) and father of the prosecutrix Santosh Kumar Sinha (PW-2) have categorically stated that on the date of incident, she was about three years old. Kunti Sinha (PW-4), who is a *Aanganbadi* worker has deposed that as per the entries made in the *Aanganbadi* register (Ex.P-8), prosecutrix had completed three years of age as on 30.09.2013. Thus, from the statements of above witnesses, it is well established that at the time of incident, age of the prosecutrix was about three years.

9. Prosecutrix (PW-15), in her Court statement has categorically stated that on the date of incident, accused/appellant inserted his finger in her private part. Though, prosecutrix is a child witness, aged about three years but she remained firm during her cross-examination. Her statement is duly corroborated by the statement of her mother Kalyani Sinha (PW-1), father (PW-2) and Kavita Bai (PW-12). Kalyani Sinha (PW-1) and her *jethani* i.e. Kavita Bai (PW-12), both have stated that on the date of incident, they were present in the house and accused/appellant had come to their house. According to Kavita Bai (PW-12), appellant had asked her for water to drink, on this, she had given him water. After some time, appellant came back to her holding the prosecutrix on his lap, at that time prosecutrix was crying. Again, appellant took the prosecutrix with him in his lap toward boring. After some time, Kavita Bai came to know that appellant had put his finger in the private part of the prosecutrix. Kalyani Sinha (PW-1) has also deposed that appellant took the prosecutrix outside with him holding her on his lap. Thereafter, they witnessed some redness in the private part of the prosecutrix. Santosh Kumar Sinha (PW-2), who is father of the prosecutrix, has deposed that when he came to his house, then he came to know about the incident through his wife and his sister-in-law. At that time, he found her daughter (prosecutrix) in unconscious condition. When he came to know that appellant has inserted his finger in the private part of her daughter, then he checked her by removing her underwear. On being checked, he found swelling in the private part of the prosecutrix. The prosecutrix was medically examined by Dr. Snehlata Humane (PW-8) vide Ex. P-12. According to her, while examining, she found that there was swelling in Labia Majora, redness

and pain in the private part of the prosecutrix. There was also swelling in the Labia Minora, redness in private part and prosecutrix was feeling pain in her private part on pressing and touching. Blood stain was also found in the private part of the prosecutrix. Dr. Snehlata Humane (PW-8), in her report i.e. Ex. P-8 has opined that sexual assault may have occurred with the prosecutrix.

10. On minute examination of the above evidence available on record, it is clear that on the date of incident, accused/appellant had visited the house of the prosecutrix and as stated by Kalyani Sinha (PW-1) and Kavita Bai (PW-12), appellant took the prosecutrix on his lap and when he returned, they found that prosecutrix was crying and there was swelling in her private part. Prosecutrix (PW-15) herself has deposed that appellant inserted his finger in her private part. Her statement is corroborated with the medical report i.e. Ex. P-12 which is opined by Dr. Snehlata Humane (PW-8). As opined by the Doctor, there was swelling in the Labia Minora and Labia Majora, redness and pain in the private part of the prosecutrix. Blood stain was also found in the private part of the prosecutrix. Thus, as opined by the Doctor, sexual assault has occurred with the prosecutrix.
11. From the above material, it is well established that accused/appellant has committed the alleged offence. Hence, the conviction of the appellant under Sections 376(1) of the Indian Penal Code, Section 3(B), 4, 5(M) and 6 of POCSO is affirmed. The sentence imposed by the trial Court is also just and proper.
12. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

13. 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**

Prakash