

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 53 of 2016**

Sanjay Gupta S/o Rampal Gupta, aged about 22 years, R/o Village: Atara, Gandhi Nagar, Police Station: Atara, District: Banda (U.P.) at present R/o Deepka Colony, Police Station: Deepka, Civil and Revenue District: Korba (C.G.)

---- Appellant

Versus

State Of Chhattisgarh through Station House Officer, Police Station: Uрга, District: Korba, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Sandeep Yadav, Advocate
For State/Respondent	:	Mr. Shubham Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

07.02.2020

- This appeal has been preferred against the judgment dated 19.08.2015 passed in Special Sessions Trial No.55/2014 by the learned Additional Sessions Judge (F.T.C) Korba, District: Korba (C.G.) wherein, the Appellant has been convicted as mentioned below:

Conviction	Sentence	In Default
U/s 376 (2) (f) of IPC	RI for 10 years and a fine of Rs.3,000/-	In default of payment of fine amount additional SI for 01 year
U/s 06 of POCSO Act, 2012	RI for 10 years and a fine of Rs.3,000/-	In default of payment of fine amount additional SI for 01 year
Both the sentences were directed to run concurrently.		

2. According to the case of prosecution, on 29.01.2013 at around 07:00 O' clock in the evening, the prosecutrix (PW-03) who was aged about 05 years, had gone to the house of her neighbor Subodh Sahu to celebrate the birthday of his son. At around 09:00 O'clock she came back to her home and she was crying. On being asked, she stated that the Appellant offered her a chocolate and took her near the Deepka Colony Maszid at lonely place, and removed her undergarments with bad intention, but subsequently, he saw somebody and ran away from the spot. Thereafter, the matter was reported vide Exhibit P-3. The prosecutrix was medically examined by Dr. Vinita Raote (PW-10). After examination, she found that a scratch occurred in the right hand fist of the prosecutrix. There was redness found in her private part. Initially, the police has registered case under Section 354 of IPC and Section 08 & 12 of POCSO Act. Thereafter, statements of witnesses were recorded under Section 161 of Cr. P.C. During course of investigation, statement of prosecutrix was also recorded under Section 164 of Cr.P.C. On the basis of statement of the prosecutrix and other witnesses, other offence have been added. After completion of investigation, charge-sheet was filed by the police. To robe the Appellant, prosecution examined as many as total 13 witnesses. In the statement recorded under Section 313 of Cr.P.C, Appellant abjured the guilt and pleaded his innocence and false implication in the matter. No defence witness was examined. After completion of trial, Trial Court convicted the Appellant and sentenced him as mentioned in Para 01 of this judgment. Hence, this appeal.
3. It is submitted by counsel for the Appellant that the Trial Court has wrongly convicted the Appellant without there being sufficient

evidence available on record. He submits that Subodh Sahu (PW-01) has not supported the case of prosecution, but the learned Trial Court overlooked the same and passed the impugned judgment which is bad in law. As opined by Dr. Smt. Vinita Raote (PW-10), no definite opinion has been given by her regarding recent sexual intercourse occurred with the prosecutrix, but the learned Trial Court has also ignored this fact and convicted the Appellant. It is further submitted by the counsel that in this case, the prosecutrix is a girl aged about 05 years, therefore, it cannot be denied the possibility that she can be tortured. Thus, her statement is also not reliable. Thus, the finding of the Trial Court is not in accordance with law and the Trial Court has wrongly convicted the Appellant without their being any iota of evidence available on record against him.

4. On the contrary, learned State Counsel opposed the prayer and supported the impugned judgment.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
6. There is no dispute on the point that at the time of incident, the age of the prosecutrix was about 05 years. Regarding incident, prosecutrix (PW-03), in her Court statement deposed that at the time of incident, she had gone to the house of Solu to celebrate his birthday. According to this witness, at that time the Appellant came there and took her by saying that, he will give her chocolate. Thereafter, he took her to his house and removed her underwear. She further deposed that the Appellant had inserted his penis in her mouth and also committed bad acts with her. She also deposed that when the Appellant was doing such acts, she was

suffering from a lot of pain and was crying. The Appellant offered her chocolate and warned her that if she told anyone about this incident, he will kill her and throw her somewhere. After the incident, she was moving towards her house, where she found father of Solu namely Subodh Sahu (PW-01) to whom she told everything about the incident. She also told about the incident to her parents. Though, Subodh Sahu (PW-01) has not supported the entire case of prosecution, but he admitted the fact that at the time of incident, he was in his shop and at that time the prosecutrix reached there and she was crying and told him that the Appellant had done bad acts with her. Thus, from the statements of Subodh Sahu (PW-01) it is also established that immediately after the incident, the prosecutrix told this witness about the incident. From the perusal of the deposition sheet of the prosecutrix, it reveals that when some suggestions were made before prosecutrix, during her cross-examination, she started to cry, therefore, from the above conduct and act of the prosecutrix indicates the genuineness of the complainant made by the prosecution. Apart from this from the perusal of Para 11 of cross-examination of prosecutrix, it is established that defence has himself admitted the fact that Appellant left the prosecutrix in her way to her house. Father of the prosecutrix Parveen Vishwas, PW-05, deposed that when he reached the spot, at that time public were committing *Maar-peet* with the Appellant on the allegations that he had committed bad acts with her daughter i.e. prosecutrix. The above statements of this witness were not rebutted during his cross examination. From the statements of Dr. Vinita Raote (PW-10) who gave MLC report of the prosecutrix, it is established that at that time of examination, one scratch was found in the right-hand fist of the prosecutrix and there was redness in her private part also.

7. On minute examination of above evidence, it makes clear that the prosecutrix (PW-03) has categorically stated that the Appellant had offered her chocolate and took her to his house, he inserted his penis in her mouth and also removed her underwear and thereafter committed bad acts with her. This witness duly remained firm during her cross examination. From the statement of Dr. Vinita Raote (PW-10), it is established that there was redness in the private part of the prosecutrix and one scratch was found in the right-hand fist of the prosecutrix. From the statement of Subodh Sahu (PW-01), it is established that immediately after the incident the prosecutrix came to him, she was crying and narrated the entire incident to him. From the statement of Parveen Vishvas (PW-05), it is established that the public were committing *Maar-peet* with the Appellant on the allegations that he had committed bad acts with the prosecutrix. The above statements of this witness were not rebutted during his cross examination. Moreover, it is also established that Appellant himself admitted that he left the prosecutrix in her way to her house. From the entire evidence available on record, it is well established that the Appellant had committed rape with the prosecutrix, therefore, I do not find any irregularity in the finding of the learned Trial Court. Thus, the learned Trial Court has rightly convicted the Appellant.
8. Accordingly, the Appeal is dismissed.
9. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

**(Arvind Singh Chandel)
Judge**