

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1350 of 2015

1. Suresh Ram, S/o Chuiya Ram, Aged about 22 years, R/o Village Pandersili, Police Chowki-Sonkyari, Police Station Sanna, District Jashpur Chhattisgarh.
 2. Heeralal S/o Jageshwar Ram Aged about 22 years R/o Village Pandersili, Police Chowki-Sonkyari, Police Station Sanna, District Jashpur Chhattisgarh.
- Appellants**

Versus

The State of Chhattisgarh Through The Incharge, Police Chowki Sonkyari, Police Station Sanna, District Jashpur Chhattisgarh.

---- Respondent

For appellant : Mr. Umakant Singh Chandel, Advocate
For State : Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

10/01/2020

1. This appeal is preferred against the judgment dated 29.06.2015, passed by learned Special Judge, constituted under Protection of Children from Sexual Offences Act, 2012 and Additional Sessions Judge(F.T.C.). Jashpur (C.G.), in Sessions Trial No. 87/2014, wherein the said Court convicted appellants as follows-

Conviction of Appellant No. 1	Conviction of appellant No.2	Sentences
U/s. 450 of IPC	U/s. 450 of IPC	R.I. for 4 years and fine of Rs.1000/-, in default of payment of fine 3 months
U/s. 363 of IPC	U/s. 363 of IPC	R.I. for 4 years and fine of Rs.1000/-, in default of payment of fine 3 months
U/s. 366 of IPC	U/s. 366 of IPC	R.I. for 4 years and fine of Rs.1000/-, in default of payment of fine 3 months

U/s. 4 of POCSO Act, 2012		R.I. for 7 years and fine of Rs.3000/-, in default of payment of fine 6 months
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2. In the present case, prosecutrix is (PW-10). As per version of the prosecution on 17th of June, 2014 at the time of *Patukhai* festival at about 7.30 pm, the prosecutrix was taking meal in her home and her mother went outside, at that time both the appellants entered into the house of the prosecutrix caught hold her and took her towards forest. Thereafter, appellant No. 2 Heeralal handed over the prosecutrix to appellant No.1 Suresh Ram, who committed sexual intercourse with the prosecutrix without her will. Thereafter, matter was reported, investigated, charge-sheeted and Court convicted the appellant as mentioned above.
3. Learned counsel on behalf of appellant submits that age of the prosecutrix is not proved to be below 18 years, therefore, case under Section 4 of the POCSO Act, 2012 is not made out. The report was lodged with a delay of about 7 days and evidence produced by the prosecution is contradictory in nature, therefore, finding of the trial Court is liable to be set aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of appeal.

5. Prosecutrix deposed before the trial Court that on the date of the incident, she was taking meals at her home, at that time the appellant Heera Lal entered into the house of the prosecutrix, took her outside, pressed her neck to outrage her modesty and thereafter, handed over to appellant Suresh. Appellant Suresh committed sexual intercourse with her without her will and consent. Version of this witness is supported by version of Moharani Bai (PW-11) who is mother of the prosecutrix. Both the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the defence. Version of this witness is supported by version of Dr. Kumud Kerketta (PW-1) who examined the prosecutrix and found multiple abrasion on waist region of the prosecutrix. The following injuries were noticed by this witness:-

External Examination:-

- (I) Multiple linear abrasions of various sizes in right side of back region just above the waist.
- (ii) One abrasion size 3"x2"x superficial skin at lower waist region of back after mid point.
- (iii) One linear abrasion size 5"x0.2cms.x superficial skin in left thigh laterally near left knee.
- (iv) One linear abrasion size 3"x0.1cm above left knee.
- (v) Multiple nail scratches of various sizes in back of right thigh.

(vi) Multiple nail scratches in left thigh medially.

(viii) Multiple nail scratches in right elbow.

(ix) Two nail scratches in left side of neck anteriorly.

(x) Tenderness present in waist, buttocks and lower abdomen.

(xi) Secondary sex characters (breast, axillary hairs and pubic hairs) are under developed.

Internal Examination:-

(i) Two vaginal semen taken.

(ii) Hymen ruptured.

(iii) Vagina can allow one index finger lightly.

(iv) Tenderness present in vagina.

(v) Foul smelling from vagina during pelvic examination.

6. This witness opined that rape was committed against the prosecutrix. Dr. G.J. Lakra(PW-4), who examined appellant Suresh found him capable to do intercourse. All these witnesses have fully supported the version of the prosecution. Harimansa Ram Sevak (PW-7) deposed before the trial Court that as per school certificate, date of birth of prosecutrix is 30th June, 1997. Date of incident was 17th of June, 2014 at that time the prosecutrix age was about 16 years, 11 months and 18 days and she was child as defined in the POCSO Act, 2012.

7. Looking to the entire evidence, the deposition made by the prosecutrix inspires confidence. When deposition of the prosecutrix is inspiring confidence then no corroboration is necessary but in the present case, there are multiple corroboration to the statement of the prosecutrix. There is nothing on record to prove that the appellants have been roped in false charges. There is nothing on record to disbelieve version of the prosecutrix and other witnesses. Therefore, argument advanced on behalf of the appellants is not sustainable. Therefore, conviction of the appellants for the said offence is hereby affirmed. The trial Court awarded 7 years sentence for offence under Section 4 of the Act, 2012. Under said Act during the period of 2015 minimum sentence prescribed for this offence was 7 years, therefore, less than minimum sentence cannot be awarded. Therefore, sentence awarded by the trial Court is also not liable to be interfered with.
8. Accordingly, the appeal filed by the appellants is liable to be and is hereby dismissed.
9. As per the report of jail authority, the appellants have suffered full jail term, therefore, no further order for their arrest etc.is required.

Sd/-
(Ram Prasanna Sharma)
Judge