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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 759 of 2008

Lekharam S/o. Govind Sahu, aged about 18 years, R/o. Village Dhokla,
PS Gurur, at present resident of Sikchhak Nagar Durg, District Durg
(CG)

---- **Appellant**

Versus

State of Chhattisgarh, through District Magistrate Durg (CG)

---- **Respondent**

For Appellants : Mr. NK Chatterjee, Advocate.
For Respondent : Mr. Rakesh Sahu, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

29.10.2020

The accused and the parents of the prosecutrix (PW-11) were known to each other even prior to the incident as the accused was living as tenant in their house. Prosecutrix (PW-11) was just 4 years of age at the relevant time and she used to call the accused/appellant as uncle. On 03.02.2005 in the evening hours when she was playing near her house along with her friends, the accused/appellant took her to his house and committed forcibly sexual intercourse with her. It is relevant to note that he used to take her for a trip more often than not and when the prosecutrix did not return home for sufficient long time, her mother PW-2 got

worried and asked her son to look for her. Thereafter when the brother of the prosecutrix (PW-6) aged 8 years went to search her, he found that his sister was standing near Shitla Temple. Thereafter, she was brought home by PW-6 and PW-1 and on reaching home she narrated the incident to her mother. After her father returned from his work place, mother of the prosecutrix (PW-2) told him about the entire incident as was informed to her by the victim herself and on the next date the report was lodged by him. On the basis of report offence under Section 376 IPC was registered against the appellant vide Ex.P-1. After completion of the investigation including the medical examined of the victim, charge sheet under the said section was filed followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 28.09.2007 passed in Sessions Trial No. 23 of 2006 convicted the accused/appellant of the charge under Section 376 (2)(F) IPC and sentenced him to undergo RI for 10 years with fine of Rs. 2000/- with default stipulations. Hence, this appeal.

3. Counsel for the appellant submits that the conviction of the accused is not based on the evidence of independent witnesses, PW-6, PW-2 and PW-3 being the interested witnesses are bound to support the prosecution. According to him, the medical evidence also does not stand by the prosecution and therefore, the judgment impugned cannot be sustained in law.

4. State counsel however, supports the impugned judgment to be fully justified that thus requires no interference in this appeal.

5. Prosecutrix (PW-11) at the relevant time was just four years of age and this fact is not disputed by anyone. Since she was minor, learned court below first assessed her intelligence level and then put question to her about the incident she came across. The prosecutrix has categorically stated in her deposition that on the date of incident when she was playing in front of her house, the accused/appellant came to her, took her on his bicycle to his home where he tried to poke his penis into her vagina and in that process she was feeling extreme pain in her private part. She has further stated that after trying to invade with her vagina, he dropped her near Shitla temple from where she was brought by PW-6 and PW-1. The manner in which the incident had been narrated by this witness speaks a lot about the perpetration of a heinous offence by the accused/appellant on a daughter like prosecutrix. Since the accused/appellant was earlier the tenant of the parents of the prosecutrix, there was probability of false implication at their hands but in this case the prosecutrix has categorically denied that there was any dispute like this between the accused and the parents of the prosecutrix on account of rent etc. PW-1 - another minor witness has categorically stated that on the date of incident, the accused/appellant had taken her with him and she come along with PW-6 to her home. PW-6 has also stated that when he searched the

prosecutrix, she was found standing near Shitla temple and was weeping there. On being inquired by him the prosecutrix is stated to have informed him about the pain in her private part. Mother of the prosecutrix PW-2 has also stated that on coming back home the prosecutrix described the manner in which she was subjected to sexual exploitation by the accused/appellant after being taken home. Father of the prosecutrix (PW-3) has also stated that after reaching home from his work place, he came to know about the act of the accused/appellant on his daughter through his wife (PW-2). He has also stated that the prosecutrix has also conveyed to her painful exercise to which she was subjected to her by the appellant regarding her sexual exploitation. Other witnesses have also supported the case of the prosecution. Dr. Mamta Pandey (PW-10) who medically examined the prosecutrix has stated that hymen of the prosecutrix was intact and well placed and there was no blood or vaginal swab in her private part. Of course, medical evidence does not speak enough for the prosecution. If the other witnesses including victim are considered judicially, though all of them stated about the prosecutrix being taken away by the accused and after a while she returned home and complained her agony experienced at the hands of the accused/appellant. There is no reason for a tender age girl like the prosecutrix to implicate anyone in a false case so can be the position with PW-6 and PW-1 who escorted the minor prosecutrix home from the temple. It is settled legal position that even if the slight penetration is there, the conviction can

follow even on the basis thereof and no further medical analysis is required to be looked into.

6. In this case the evidence of the minor prosecutrix is fully corroborated by PW-2, PW-3, PW-1 and PW-6 therefore, there appears no reason for this Court to discard the same. The Court below has correctly analysed the evidence of the witnesses while arriving at the conclusion of the conviction of the accused/appellant and sentencing him as above. No interference with the judgment impugned is therefore, necessary by this Court.

7. As regards sentence, the report received from the Superintendent, Central Jail, Jagdalpur, dated 29.05.2020 shows that after getting the benefit of remission, the accused/appellant Lekhram Sahu has been released from the jail on 15.11.2014 therefore, no observation regarding the sentence part is required to be made by this Court.

8. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)
JUDGE