

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.382 of 2017**

- Rajan Sai Sarathi S/o Late Budh Ram Sarathi, Aged About 22 Years By Caste Ghasiya, R/o Ward No. 6, Durgarupara, Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Respondent

 For the appellant :Shri Govind Dewangan, Advocate
 For the Respondent/State:Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****10.01.2020**

1. The appeal is preferred against judgment dated 11.01.2017 passed by Second Additional Sessions Judge, Distt. Raigarh in POCSO ACT 2012/30/2015 wherein the said Court convicted the appellant for the commission of offence under Section 4 of the Protection of Children From Sexual Offences Act, 2012 (for short 'the Act 2012') and under Sections 363, 366 and 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 07 years and to pay fine of Rs.200/-; RI for 01 year and to pay fine of Rs.200/-; RI for 02 years and to pay fine of Rs.200/- respectively with default stipulation.

2. As per the version of the prosecution, allegation against the appellant is that on 17.02.2015 at about 8.00 pm, he took the prosecutrix away from the lawful guardianship of her parents to

jungle and committed forceful sexual intercourse with her. It is alleged that the prosecutrix was minor at the time of the incident.

On the next day, the prosecutrix herself reported the matter to the police. The matter was investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The independent witnesses have not supported the case of the prosecution and they have turned hostile.

(ii) The prosecutrix herself has turned hostile in the present case.

(iii) The trial Court has overlooked the contradictions and omissions in the statement of the prosecutrix and other witnesses, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. In the present case prosecutrix is PW-1. This witness deposed before the trial Court in examination-in-chief that the appellant is her maternal uncle and he took her to forest situated behind Atal Niwas. She further deposed that the appellant had physical relation with her. But this witness has withdrawn from her earlier statement in her cross-examination and deposed that

she has not stated that the appellant had taken her to forest and maintained physical relation with her. In this way, the prosecutrix has rebutted her earlier version deposed before the trial Court.

7. Though Netharin (PW-2), mother of the prosecutrix, deposed that the prosecutrix informed her that the appellant had taken her to forest area but the fact remains that the prosecutrix has rebutted this version that the appellant had taken her to forest areas.

8. In the matter of sexual assault, the evidence of the prosecutrix should be of sterling quality. If the evidence of the prosecutrix is wholly reliable, then no corroboration is necessary, but in the present case, the prosecutrix is not firm to her statements. In her examination-in-chief she deposed affirmative against the appellant but in her cross-examination she deposed in favour of the appellant and rebutted her version that the appellant had taken her and maintained physical relation.

9. It is the quality of the evidence which has to be weighed and not the quantity of evidence. The sexual assault is normally made in secrecy where the victim and the assailant are the parties and not other party to such assault. Therefore, evidence of the prosecutrix should be firm and qualitative, but in the present case evidence of the prosecutrix is not inspiring confidence. Therefore, conviction of the appellant for the offence in question is not sustainable.

10. Accordingly, the appeal is allowed. Conviction of the appellant for the offence under Section 4 of the Act, 2012 and

under Sections 363, 366 and 376(1) of the IPC is hereby set aside. He is acquitted of the said charges. The appellant is reported to be in jail. He be released forthwith if not required in any other case. The fine amount, if any deposited be refunded to him forthwith.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Bini