

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1364 of 2019**

- Jodha @ Ayodhya S/o Chhannu Ram Aged About 45 Years R/o Village Aasandih (Kokrapara), Police Station Raghunathnagar, District- Balrampur-Ramanujganj, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Raghunathnagar, District- Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

 For the appellant :Mr. Arun Shukla, Advocate

For the Respondent/State :Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****16.01.2020**

Heard.

1. The appeal is preferred against judgment dated 08.08.2019 passed by the learned Additional Sessions Judge, Ramanujganj, District-Balrampur, C.G., in Special (POCSO) Case No.15/2016, wherein the said Court convicted the appellant for commission of offence punishable under Section 5(N)/06 of the Protection of Children from Sexual Offences Act of 2012 and sentenced him to R.I. for 10 years and fine of Rs.1,000/- with default stipulation.

2. In the present case, prosecutrix is P.W.-2. As per version of prosecution, the prosecutrix is minor on the date of incident that is 17th of February, 2016, the mother of the prosecutrix went to her maternal uncle's house in the village Pasani and prosecutrix was at home with younger siblings and father. The appellant, father of the victim, committed rape on her. The matter was reported and investigated, appellant was charge-sheeted and convicted as mentioned above.
3. Learned counsel for the appellant submits that there is no connecting piece of evidence to establish charge against the appellant but the trial Court recorded finding of conviction without any substance. The medical examination and report of forensic laboratory is also not a connecting piece of evidence against the present appellant but the trial Court depending on the report, recorded finding of conviction which is not permissible. All the witnesses including the prosecutrix have not supported version of the prosecution, therefore, finding of the trial Court is liable to be set aside.
4. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshaling of evidence, which is not liable to be interfered with by invoking jurisdiction of appeal.
5. Prosecutrix (P.W.-2) deposed before the trial Court that on the date of incident she did not cook and refused to go to

school that is why her father assaulted her and she reported the matter that her father assaulted her.

6. Manmati (P.W.-1), Sudhu (P.W.-3), Hari Prasad (P.W.-4), Amrit Lal (P.W.-5) and Ramjiyavan (P.W.-7) deposed on the same line that matter was surfaced because appellant assaulted his daughter. All the witnesses have been subjected to leading question by the prosecution side but nothing is elucidated in favour of prosecution.
7. Dr. Kamini Rai (P.W.-10), who examined the prosecutrix did not opined regarding intercourse with her. Slide prepared by the said doctor was sent for forensic examination and as per report of laboratory, sperm was found in the slide but from report, it is clear that semen found in the slide was not sufficient for serological examination. As no serological examination is conducted, the semen found in the slide is not a connecting piece of evidence against the appellant because it is not established that semen found in the slide was of appellant.
8. After going through the entire record, there is no connecting piece of evidence against the appellant to involve him in crime in question. The trial Court finding on the basis of medical evidence and forensic laboratory but as mentioned above, the report of medical expert and report of forensic laboratory is also not connecting piece of evidence against the appellant.

9. In view of the above finding arrived at by the trial Court is not sustainable, therefore, the appeal is allowed and the appellant is acquitted of the charge under Section 6 of the Act, 2012, his convicting and sentence is hereby set aside. The appellant is in jail, he be set at liberty forthwith if not required in any other case.

10. Accordingly, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Monika