

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1620 of 2017**

- Laxman Aghariya S/o Anant Aghariya, Aged About 22 Years R/o Village Kandri, Police Station Chando, At Present R/o Harri Line Para, Kusmi, Police Station Kusmi, District Balrampur Ramanujganj, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Kusmi, District Balrampur, Ramanujganj Chhattisgarh.

---- Respondent

 For the appellant :Shri CR Sahu, Advocate
 For the Respondent/State:Shri Raghavendra Verma, Govt.
 Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment****07.01.2020**

1. The appeal is preferred against judgment dated 09.8.2017 passed by Additional Sessions Judge/Special Judge under the Protection of Children from Sexual Offences Act, 2012 (For short 'the Act 2012'), Ramanujganj in Special Session Trial (POCSO) No.06/2015 wherein the said Court convicted the appellant for the commission of offence under Sections 450, 363, 366 of the Indian Penal Code and under Section 4 of the Act, 2012 and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.200/-; RI for 07 years and to pay fine of Rs.200/-; RI for 10 years and to pay fine of Rs.200/- and RI for 10 years and to pay fine of Rs.5,000/- respectively with default stipulation.

2. As per the version of the prosecution, on 20.5.2014 at about 12.00 noon, the appellant came to the house of the prosecutrix and forcefully committed sexual intercourse with her and thereafter he dragged her towards forest Bargadh, Ranka (Jharkhand) and house of the sister of the appellant at Village Pindra. On 28.5.2014, the police recovered the prosecutrix from Village Pindra. The matter was reported and investigated, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The trial Court has overlooked the material evidence of Dr. Shashikala Toppo (PW-5) who did not find any internal injury on the body of the prosecutrix.

(ii) The witnesses are the relatives of the prosecutrix and the age of the prosecutrix is also not proved to be below 18 years.

(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. Prosecutrix (PW-2) deposed before the trial Court that on the date of incident, she and her grand mother were at home

where the appellant entered into the house and made her lie down and committed sexual intercourse with her and thereafter he took her to forest and other places forcefully. Version of this witness is unrebutted during cross-examination. It is further supported by the version of Munni Bai (PW-1), Jitna Ram (PW-3) and Dr. T. Sai (PW-4).

7. Heera Singh (PW-6), Head Master of Middle School, Harri deposed that as per the School Register date of birth of the prosecutrix is 19.7.1998 while the date of incident is 20.5.2014. As per the school record, age of the prosecutrix comes out to 15 years and 10 months. As per the version of Dr. Shashikala Toppo (PW-5) after clinical examination, she assessed the age of the prosecutrix between 15-17 years. Looking to the school record and opinion of the expert it is clear that the prosecutrix was below 18 years on the date of incident and she was a child as per the definition of the Act, 2012.

8. From the entire evidence, charges levelled against the appellant is clearly established and the arguments advanced on behalf of the appellant is not sustainable. Accordingly, conviction of the appellant for the said offence is hereby affirmed.

9. Heard on the point of sentence:

No minimum sentence is required for offence under Sections 450, 363 and 366 of IPC. For offence under Section 4 of the Act 2012, the minimum sentence prescribed is 07 years. In view of the above, this Court is of the view that ends of justice would be met if the jail sentence awarded to the appellant for the

commission of offence under Sections 450, 363 and 366 IPC and under Section 4 of the Act 2012 is reduced to 07 years. The appellant shall suffer jail sentence of 07 years. However, fine sentence imposed by the trial Court shall remain intact. The appellant shall be released after completion of sentence of 07 years, if not required in any other case.

10. With aforesaid modification, the appeal is partly allowed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**