

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1539 of 2018**

Motiram Sen S/o Dwarika Ram Sen, aged about 33 Years R/o Baijalpur (Baiji), Thana - Bemetara, District - Bemetara, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh through Thana - Bemetara, District - Bemetara, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Samir Singh, Advocate
For State/Respondent	:	Mr. Amit Kumar Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

26.02.2020

1. This appeal has been preferred against the judgment dated 28.09.2018 passed in F.T.C. No.57/2017 by the learned Special Judge (POCSO Act), Bemetara (C.G.) wherein, the Appellant has been convicted under Section 354-A of IPC, under Section 08 of POCSO Act, 2012 and sentenced to undergo RI for 3 years and to pay fine of Rs.1,000/-, sentenced to undergo RI for 03 years and to pay fine of Rs.1,000/- respectively with default stipulations.
2. According to the case of prosecution, the Appellant was a teacher of primary school situated at village Baijee. Daughter of the complainant namely Kuleshwar Sahu (PW-01) is aged about 11 years was studying in that school. On 26.09.2017 father of the prosecutrix (PW-02) made a complainant before Police Station Bemetara stating therein that for the ceremony of 15th August (Independence Day) the Appellant used to call the daughter of complainant and other students to teach them dance and used to touch the students at their waist inappropriately and used to do

dirty acts with them. On the basis of said FIR has been registered. Vide Exhibit P-1 statement of the complainant as well as daughter and other girls and witnesses were recorded under Section 161 of Cr. P.C. The statement of complainant as well as her daughter were also recorded under Section 164 of Cr. P.C. After completion of investigation, charge-sheet was filed by the police. To robe the Appellant, prosecution examined as many as total 16 witnesses. In the statement recorded under Section 313 of Cr.P.C, Appellant abjured the guilt and pleaded his innocence and false implication in the matter. No defence witness was examined. After completion of trial, Trial Court convicted the Appellant and sentenced him as mentioned in Para 01 of this judgment. Hence this appeal.

3. It is submitted by counsel for the Appellant that the Trial Court has wrongly convicted the Appellant without there being sufficient evidence available against him on record. He submits that the complainant as well as her daughter and other students have not supported the case of prosecution and turned hostile inspite of that Trial Court has convicted the Appellant only on the ground that in their statement recorded under Section 164 of Cr.P.C. Both complainant and her daughter mentioned the name of one Pitamber, according to their statements, the incident was witnessed by Pitamber. Despite that prosecution neither cited nor examined the Pitamber. Thus, the accused person cannot be benefited for the negligence or Lacuna on the part of prosecution, such was the finding of the Trial Court, thus, it is argued that the above finding of the Trial Court is not in accordance with law and Trial Court has wrongly convicted the Appellant without their being any iota of evidence available on record against him.
4. On the contrary, learned State Counsel opposed the prayer and supported the impugned judgment.

5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
6. PW-01, Kuleshwar is the father of the prosecutrix who has not supported the case of prosecution and turned hostile. According to this witness he only made an application for transfer of the Appellant and he never made any report against the Appellant though, he admits his signature in F.I.R (Exhibit P-1) but he stated in the FIR that he made his signature only on the instructions of District Education Officer.
7. PW-02, prosecutrix is a girl aged about 11 years at that relevant time also not supported the case of prosecution and turned hostile. Other witnesses PW-03, PW-07, PW-08, PW-09 (minor girls) all students of the said same school also not supported the case of prosecution and have turned hostile. Other independent witness Suruj Bai Dehriya (PW-04), Rajesh Sahu (PW-05), Surendra Sahu (PW-06) have also not supported the case of prosecution. PW-10, Arun Kumar B.E.O only deposed that villagers made a complaint against the Appellant regarding his misbehavior with the students, he sent said complaint for inquiry to the Assistant Vikas Khand Shiksha Adhikari namely Bhanupratap Sharma and after receiving the inquiry report he sent the copy of the report to the concerned Police Station. In Para 08 of his cross examination this witness categorically admitted that he doesn't know the fact that when the villagers have done complaint against the Appellant. PW-11, Bhanupratap Sharma, deposed during enquiry that he recorded the statements of girls as well as Suruj Bai Dehriya who is the Sarpanch and also recorded the statements of other witnesses. According to this witness they have stated him during enquiry that

Appellant used to call the girls for rehearsal and during rehearsals used to touch them inappropriately and also done dirty acts with them. The above witness namely Bhanupratap Sharma also admitted that the complaint filed by the villagers was for the transfer of the Appellant but the above enquiry done by PW-11 and his enquiry report and the statements which have been recorded by him have not been duly filed by the prosecution. It has been earlier discussed that Suruj Bai Dehriya (PW-04) and all other witness all have been examined before the Court and have not supported the case of the prosecution. Sohan Lal Dewangan (PW-12), Avadhram Yadav (PW-13) also not supported the case of prosecution.

8. On minute examination of above evidence, it is made clear that complainant as well as his daughter and all other children of the school and other villagers have not supported the case of prosecution and have turned hostile. Though Bhanupratap Sharma (PW-11) deposed that the other students during enquiry told that the Appellant during rehearsals used to touch them inappropriately and also did dirty acts with them but the enquiry report and the statements which were recorded during enquiry have not produced by the prosecution. Thus, from the statements of Bhanupratap Sharma (PW-11) prosecution doesn't get any help inspite of that the learned Trial Court has convicted the Appellant only on the ground that in their statements recorded under Section 164 of Cr.P.C. Both Kuleshwar Sahu (PW-01) as well as prosecutrix (PW-02) have stated that the said incident was witnessed by Pitamber but prosecution neither cited nor examined the Pitamber. Thus, the accused person cannot be benefited for the negligence or Lacuna on the part of prosecution, such was the finding of the Trial Court but the finding of the Trial Court in this regard is not in accordance

with law because in their Court statement Kuleshwar Sahu (PW-01) & prosecutrix (PW-02) have not supported the case of prosecution nor they mentioned the name of Pitamber who is the witness of the alleged incident. The name of Pitamber was only mentioned by both the witness in their statement recorded under Section 164 of Cr. P.C. if prosecution has not cited Pitamber as witness and also not examined him then under Section 311 of Cr. P.C the Trial Court is fully empowered to call and examine the Pitamber as Court witness but Trial Court himself didn't do so. In these circumstances in my considered opinion without there being any evidence available on record Trial Court has wrongly convicted the Appellant, thus the finding of the Trial Court in this regard is not sustainable.

9. Accordingly, the Appeal is allowed. The judgment of the trial Court is set-aside. The Appellant is acquitted from the charge framed against him. It is reported that the Appellant is on bail. His bail bond be discharged.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge