

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25.02.2020****Delivered on 08.05.2020****CRA No. 1493 of 2019**

Tilakram Sahu S/o Madanlal Sahu Aged About 52 Years R/o Village
Ward No. 9, Guru Govind Singh Ward, P.S.- Gariyaband, District-
Gariyaband, Chhattisgarh. **---- Appellant**

Versus

State of Chhattisgarh Through Police Station- Gariyaband, District-
Gariyaband, Chhattisgarh. **---- Respondent**

For appellant	: Mr. Azad Siddique, Advocate
For State	: Mrs. Shubha Shrivastava, P.L.

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

1. This appeal is preferred against the judgment dated 25th of February, 2016 passed by Additional Sessions Judge, Gariyaband (C.G.) in Special Case No.12/2015 wherein the said Court has convicted the appellant for charge under Sections 363, 376 of Indian Penal Code, 1860 and under Section 6 of the POCSO Act, 2012 and sentenced him to undergo R.I. for four years with fine of Rs. 200/-, R.I. for ten years with fine of Rs. 200/-, R.I. for ten years with fine of Rs.200/- with default stipulations.
2. In the present case, the prosecutrix is PW-7, who is aged about 8 years. As per version of the prosecution on 6th of October 2014 from 11.30 am the prosecutrix and her elder sister playing with other children in front of appellant's house. The appellant was sitting in front of his house, all of sudden he came to prosecutrix and dragged her to his room. The appellant inserted his finger in the private part of the prosecutrix. The prosecutrix screamed due to pain and from

her private part blood oozed out due to injury of finger. Prosecutrix told the incident to her elder sister (PW-3) who have seen the blood stain on private part of the prosecutrix. Thereafter, elder sister told the story to her mother (PW-2) and she also saw blood stain in private part of the prosecutrix. Mother of the prosecutrix told about the incident to the father of the prosecutrix namely Devsharan Yadav who was outside of the home for vehicle engineering work and when he came back his house the mother of the prosecutrix lodged an F.I.R. at Police Station Gariyaband. Matter was investigated and charge-sheeted and after completion of trial the trial Court convicted him as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Age of the prosecutrix is not proved to be below 18 years therefore, case under Section 6 of the Act, 2012 is not made out.

(ii) Mother and father of the prosecutrix threatened the respondent that they will rope him in false charge that is why report was lodged. Dashrath Lal Manjhi (PW-8) is not corroborating version of the prosecution therefore, case of the prosecution is doubtful.

(iii) The appellant has suffered more than five years of jail term therefore, his sentence to may be reduced to the period already undergone by him.

4. Learned counsel for the respondent submits that case of the prosecution is proved by version of the prosecutrix and other witnesses who are the mother, father, and sister and it is

further supported by Dr. Snehlata (PW-1) therefore, no interference is required with the finding of the trial Court.

5. Prosecutrix (PW-7) deposed before the trial Court that she was paying on the date of the incident, the appellant taken her to his house in his room, he inserted his finger into the private part that is why blood oozed out and she came out with screaming and informed about incident to her sister and thereafter father and mother. Mother, father and sister of the prosecutrix have been deposed in same line. They have been subjected to searching cross examination but nothing could be elicited in favour of the defence.
6. In the present case, date of incident is 6th of October, 2014 and report was lodged on same day at police station Gariyaband, in F.I.R. name of the appellant was mentioned as culprit and his act is also mentioned in the said report.
7. Dr. Smt. Snehlata (PW-1) who examined the prosecutrix on 6th October, 2014 at about 5.00 pm at community health centre Rajim and noticed reddishness and swelling on her vaginal part and also found blood clots. This witness opined that it may be a case of inserting finger on her private part. Version of medical expert was unrebutted during cross examination and there is no other expert opinion contrary to opinion of this expert. Though, defence witnesses namely Tusliram (DW-1), Subhash (DW-2) deposed that between family of the prosecutrix and accused have inimical terms but their version is not sufficient to rebut the facts emerged from the evidence of the prosecution.

8. In the present case date of incident is 06.10.2014. As per amended Section 375 of IPC, definition of rape vide enforced from 03.02.2013 as under:-

“A man is said to commit “rape” if he – (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person.”

From the definition which was already enforced on the date of incident, insertion of part of the body into the vagina amounts to rape. As per Section 376(2) (i) of the IPC, whoever commits rape on a woman when she is under sixteen years of age will fall in this category.

9. On an overall assessment of the entire evidence, argument advanced on behalf of the appellant is not sustainable. Dr. Snehlata (PW-1) assessed age of the prosecutrix is about 7 years and same is assessed by the trial Court.
10. After going through the records, there is nothing on record to take contrary view regarding age of the prosecutrix. Rape with below below 12 years age girl is offence under Section 376(2) (i) of IPC. Again, girl below 18 years of age is a child as per definition mentioned in the POCSO Act, 2012. Therefore, act of the appellant falls within mischief of Section 376(2)(i) of IPC and Section 6 of the POCSO Act, 2012. Again, taking minor girl from her lawful guardianship without consent of guardian is offence under Section 363 of IPC for which Court convicted the appellant and same is hereby affirmed.

11. The trial Court awarded sentence of 10 years for the offence under Section 376(2) (i) of IPC and alternative Section 6 of the POCSO Act, 2012 which is minimum prescribed Sentence for the said offence. Less than minimum sentence cannot be awarded, therefore, sentence part is not liable to be interfered with.
12. Accordingly, the appeal is hereby dismissed. The appellant is reported to be in jail therefore, no further order for his arrest etc. is not required.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle