

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27-01-2020

Delivered on 17-02-2020

CRA No. 1494 of 2019

- Babu Lal Sahu S/o Shri Nohar Sahu Aged About 25 Years
R/o Khamharmuda, Police Station Bhimkhoj, District
Mahasamund Chhattisgarh....

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Bhimkhoj,
District Mahasamund Chhattisgarh....

---- Respondent

For Appellant : Mr. Pushpendra Kumar Patel, Adv.

For respondent/State : Mr. Ishwar Jaiswal, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 14-1-2015 passed by the additional Sessions Judge (FTC)/Special Court (Protection of Children from Sexual Offences Act, 2012) in Special Sessions Case No. H-31 of 2014 wherein the said Court has convicted the appellant for commission of offence under Sections 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the Act, 2012") and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/4. As per prosecution case, age of the prosecutrix is about 5 years. It is alleged that the appellant committed rape on her on 29-7-2014. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Kushal Sahu (PW/2) who is father of the prosecutrix deposed before the trial court that prosecutrix did not inform him about the incident at 5.00 pm when he returned after his work.
- ii) Dr. Karuna Aawde (PW/8) deposed that redness was found on the private part of the prosecutrix and she opined that it may be caused due to fall, therefore, medical evidence is not connecting piece of evidence.
- iii) The trial court has not evaluated the entire evidence in its true perspective, 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 29-7-2014 and report was lodged in Police Station Bhimkhoj on the next day i.e., 30-7-2014 as per Ex.P/1 in which name of the appellant is mentioned as culprit and his act of rape is also mentioned in the said report. Prosecutrix (PW/5) who is aged about 5 years deposed before the trial court that appellant committed rape on her. Version of this witness is supported by version of Ghurwa (PW/1), Kushal Sahu (PW/2), Manoj Kumar (PW/3) to whom the incident was informed. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Dr. Vijay Pratrap (PW/5) who examined the appellant found him capable of intercourse. Dr. Karuna Aawde (PW/8) examined the prosecutrix and noticed her age to be four years.

7. Taking into consideration the entire evidence, it is clearly established that the appellant committed rape on minor prosecutrix aged five years. Report is lodged promptly and the statement of the prosecutrix and other witnesses inspires

confidence. The evidence is full of corroborative piece of evidence and there is nothing on record to take a contrary view what is recorded by the trial court. The act of the appellant is aggravated penetrative sexual assault as defined in Section 5 of the Act, 2012 and same is committed against a child of four years which falls in the said category and punishable under Section 6 of the Act, 2012. Taking into consideration the totality of the fact, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant is for the said offence is hereby affirmed. The trial Court awarded RI for ten years for the said offence which is minimum prescribed and less than minimum cannot be awarded.

8. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju