

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1900 of 2018

Judgment Reserved on : 29.11.2019

Judgment Delivered on : 10.2.2020

Chandrashekhar Gond @ Badku, son of Mangal Singh Gond, aged about 25 years, resident of Village Sirri (Chouratikrapara), Police Station Passan, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station Passan, District Korba, Chhattisgarh

--- Respondent

For Appellant : Shri Sanjeev Kumar Sahu, Advocate
For Respondent : Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 26.10.2018 passed by the Special Judge under the Protection of Children from Sexual Offences Act (henceforth 'the Pocso Act'), Katghora in Special Criminal (Pocso) Case No.42 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.10,000/- with default stipulation

2. Prosecution case, in brief, is that on the relevant date, age of the prosecutrix (PW1) was about 16 years. She was studying in 8th

standard in Government Middle School, Sirri. On 19.8.2015, the prosecutrix (PW1) was returning from school. At that time, the Appellant came there suddenly, caught and dragged her towards a *mahua* tree and committed forcible sexual intercourse with her there. The prosecutrix narrated the incident to her parents. Thereafter, First Information Report (Ex.P9) was lodged by her mother Mankunwar (PW2). The prosecutrix was medically examined by Dr. Namita Walter (PW8). Her report is Ex.P5. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Sections 506 Part II, 376 of the Indian Penal Code and Section 4 of the Pocso Act.

3. In support of its case, the prosecution examined as many as 14 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted the Appellant of the charges under Section 506 Part II of the Indian Penal Code and Section 4 of the Pocso Act, but convicted him under Section 376 of the Indian Penal Code and sentenced as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being sufficient evidence on record against the Appellant, the Trial Court has wrongly convicted him. Mankunwar

(PW2), mother of the prosecutrix and Asman Singh (PW3), brother of the prosecutrix have not supported the case of the prosecution and turned hostile. From the admissions made by Mankunwar (PW2) and Asman Singh (PW3), it is also established that there was a previous enmity between both the families. Therefore, possibility of implicating the Appellant falsely cannot be ruled out. Statement of the prosecutrix is suspicious and not reliable. The prosecution has failed to prove its case beyond reasonable doubt.

6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence and submitted that the prosecutrix has duly supported the case of the prosecution. Though some contradictions and omissions have occurred in her statement, they are natural. The statement of the prosecutrix is duly corroborated by the medical evidence. Thus, the Trial Court has rightly convicted the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1), in her Court statement, has deposed that on the date of incident, when she was returning from her school, on the way, the Appellant came to her and dragged her towards the jungle and there he committed forcible sexual intercourse with her. According to her, at that time, the Appellant had gagged her mouth and pressed her neck. She has further deposed that she came out of his clutches anyhow and went to her house and told about the incident to her grandmother Manmatiyabai (PW5). Thereafter, she went to the police station along with her mother and told about the incident to police officials. According to the

case of the prosecution, the matter was informed to Mankunwar (PW2), mother of the prosecutrix as well as the prosecutrix also narrated the incident to her brother Asman Singh (PW3), but both Mankunwar (PW2) and Asman Singh (PW3) have not supported the case of the prosecution and turned hostile.

9. Dal Pratap (PW4) has stated that father of the prosecutrix had come to him and told that some boy had caught the prosecutrix. But, according to Dal Pratap, father of the prosecutrix had not told the name of the person who had caught the prosecutrix. This witness has also turned hostile.
10. Krishna Pratap (PW7), who is a teacher of the school where the prosecutrix was a student, has deposed that father of the prosecutrix had come to their school and told that when the prosecutrix was returning from the school, at that time, the Appellant caught the prosecutrix on the way and caused her fall down.
11. Manmatiyabai (PW5), grandmother of the prosecutrix has deposed that on the date of incident, the prosecutrix had returned home at about 4 pm and she had kept her underwear and slacks in her hands and told her that on the way the Appellant caught her and caused her to fall down. This witness has further deposed that the prosecutrix had also told her that the Appellant had also committed forcible sexual intercourse with her.
12. Dr. Namita Walter (PW8) examined the prosecutrix on 22.8.2015 and gave her report (Ex.P5) in which she found that there was a swelling on the private part of the prosecutrix. The prosecutrix was

complaining of pain on being touched on that part. 2 fingers were being inserted into her vagina with pain. According to this witness, sexual intercourse was committed with the prosecutrix.

- 13.** On a minute examination of the evidence available on record, it is clear that the prosecutrix has categorically stated that the Appellant had dragged her to the jungle and committed forcible sexual intercourse with her. Though Mankunwar (PW2) and Asman Singh (PW3), mother and brother of the prosecutrix, respectively have not supported the case of the prosecution, Manmatiyabai (PW5), grandmother of the prosecutrix has supported the case of the prosecution. She has categorically stated that when the prosecutrix had returned home, at that time, she had kept her underwear and slacks in her hands and had told her that the Appellant had committed forcible sexual intercourse with her. Both the prosecutrix and her grandmother have remained firm during their cross-examination. From the statement of teacher Krishna Pratap (PW7), it is also established that after the incident, father of the prosecutrix had come to him and told that on the way the Appellant had caught the prosecutrix and caused her to fall down. From the medical report (Ex.P5) of the prosecutrix also, it is corroborated that there was a swelling on the private part of the prosecutrix and she was complaining of pain on being touched there. As opined by the examining doctor, two fingers were being inserted in the vagina of the prosecutrix with pain and sexual intercourse was committed with her. On consideration of the evidence available on record, it is clear that sexual intercourse was committed with the prosecutrix and it was committed forcefully by the Appellant. Thus, the finding of the Trial Court is in accordance

with the evidence available on record. The Trial Court has rightly convicted the Appellant. Therefore, the conviction of the Appellant is affirmed. The sentence imposed upon him is also just and proper and does not call for any interference.

14. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
15. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE