

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.7 of 2021

Judgment Reserved on : 28.7.2021

Judgment Delivered on : 17.8.2021

Gulshan Suryavanshi @ Gulshan Kumar Suryavanshi, age about 23 years,
son of Shri Harprasad Suryavanshi, R/o Kisan Parsada, P.S. Masturi, District
Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station
Masturi, District Bilaspur, Chhattisgarh

--- Respondent

For Appellant : Shri A.N. Bhakta, Advocate
For Respondent : Shri H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 23.12.2020 passed by 1st F.T.S.C. (Pocso)/Additional Sessions Judge, Bilaspur in Special Sessions Trial No.261 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 294 of the Indian Penal Code	Fine of Rs.1000, in default of payment thereof, 3 months rigorous imprisonment
Under Section 323 of the Indian Penal Code	Fine of Rs.1000, in default of payment thereof, 3 months rigorous imprisonment
Under Section 506 Part II of the Indian Penal Code	3 years rigorous imprisonment and fine of Rs.1000, in default of payment thereof, 6 months rigorous imprisonment

Under Section 377 of the Indian Penal Code	10 years rigorous imprisonment and fine of Rs.2000, in default of payment thereof, 2 years rigorous imprisonment
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act')	10 years rigorous imprisonment and fine of Rs.2000/- in default of payment thereof, 2 years rigorous imprisonment
	All the jail sentences are directed to run concurrently

2. In this case, age of the victim boy (PW1) was about 8 years. According to the case of prosecution on 1.7.2015 at about 11 am the victim boy had gone to purchase some grocery to a grocery shop. At that time, allegedly, the Appellant dragged the victim boy nearby one room adjoining to the said grocery shop and committed unnatural mouth sex by entering his male organ into the mouth of the victim boy. It was further alleged that at that time the Appellant also abused the victim boy filthily and threatened him of life on making report. The incident was witnessed by friends of the victim boy Suresh (PW5) and Vishnu (PW6). At the time of incident Akriti (PW13) reached the spot and knocked the door of the said room on which the Appellant opened the door and ran away from there. Since the Appellant had threatened the victim boy of his life on making a report, he did not disclose the incident at his house. When the friends of the victim boy Suresh (PW5) and Vishnu (PW6) disclosed the incident at the house of the victim boy, then he also told about the incident at his house. Thereafter elder brother of the victim boy made a written complaint (Ex.P3) on 4.7.2015. On the basis of Ex.P3, First Information Report (Ex.P4) was registered. Statements of the victim boy and other witnesses were recorded

under Section 161 of the Cr.P.C. Medical examination of the victim boy was conducted by Dr. S.K. Sinha (PW10). His report is Ex.P10. On completion of investigation, charge-sheet was filed against the Appellant. The Trial Court framed charges.

3. To bring home the offence, the prosecution examined as many as 14 witnesses. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being clinching evidence available on record the Appellant has been wrongly convicted. The written complaint (Ex.P3) was lodged after 3 days of the incident and the delay in lodging the said complaint has not been explained. There are material contradictions and omissions occurred in the statements of the victim boy (PW1) and eyewitness Suresh (PW5). Therefore, their statements are not reliable. In this regard, reliance has been placed upon **2018 (1) CGLJ 258 (Bhagwan Singh v. State of Chhattisgarh)**. It was further submitted that other witnesses Vishnu (PW6) and Akriti (PW13) who had been reported to be present on the spot immediately after the incident and got the door of the room opened where the victim boy was kept by the Appellant have not

supported the case of the prosecution. Therefore also the statements of the victim boy (PW1) and Suresh (PW5) do not appear to be natural and trustworthy. In this regard, reliance has been placed on **Raju alias Pralhad Vitthal Naik v. State of Maharashtra**, Criminal Appeal No.223 of 2017, judgment dated 19.8.2020 delivered by a Single Bench of High Court of Judicature at Bombay. In the case in hand, it was further submitted that since there was a land dispute between both the families, therefore, false implication of the Appellant cannot be ruled out.

6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record of the Trial Court including statements of the witnesses and other material.
8. There is no dispute on the point that at the time of alleged incident age of the victim boy (PW1) was about 8 years. With regard to the incident, the victim boy (PW1) deposed that on the date of incident, he along with Suresh (PW5) and Vishnu (PW6) went to a shop for purchasing some articles relating to food where the Appellant and shop owner Kirti (not examined) were also present. He further deposed that thereafter the Appellant took him inside room adjoining the said shop and made his friends Suresh (PW5) and Vishnu (PW6) run away from there. Thereafter, the Appellant inserted his penis into his mouth. Thereafter, niece of shop owner Kirti namely Akriti (PW13) knocked the door of the said room on

which the Appellant opened the door and ran away from there. On being asked by the Trial Court, it was stated by the victim boy that after taking him by the Appellant inside the room the Appellant had bolted the door from inside and thereafter the Appellant inserted his penis into his mouth. When he began to weep, the Appellant beat him on his head and back. During cross-examination, he admitted that during the time when he was kept inside the room by the Appellant he had not shouted. He further admitted that soon after the incident he went to his house. He found her mother at his house, but he did not disclose about the incident to her. When Suresh (PW5) and Vishnu (PW6) told about the incident at his house then he disclosed about the incident at this house.

9. Eyewitness of this case Suresh (PW5), another child witness, aged about 12 years supported the statement of the victim boy (PW1) and deposed that he had gone along with the victim boy to the grocery shop. He further deposed that thereafter the Appellant took the victim boy inside the rear room. Then he saw from the window that the Appellant was inserting his penis into the mouth of the victim boy. He saw that when the victim boy was stopping the Appellant to do so then the Appellant threatened the victim boy of his life. He further deposed that thereafter Akriti (PW13) reached there and knocked the door of the room on which the Appellant opened the door and ran away from there.
10. Vishnu (PW6) and Akriti (PW13) have not supported the case of the prosecution and turned hostile. Pyarelal (PW2) and Meenabai (PW7) are father and mother of the victim boy respectively. Both

deposed that the incident was told to them first by Suresh (PW5) and Vishnu (PW6) and thereafter the victim boy (PW1) also told them about the incident.

11. Virendra (PW3), who is elder brother of the victim boy and submitted the written complaint (Ex.P3) on 4.7.2015 deposed that on the date of incident he had gone to Village Sipat at the house of his maternal uncle. Next day, he returned his village then he was told about the incident by Suresh (PW5) and Vishnu (PW6) and thereafter the victim boy (PW1). Thereafter, he asked about the same from his father Pyarelal (PW2) also. Pyarelal (PW2) also told him about the incident. Thereafter, he again went to Village Sipat at the house of his maternal uncle and told him about the incident. Next day, he returned his village and made the written report (Ex.P3).
12. Dr. B.P. Kurre (PW4) conducted medical examination of the Appellant and submitted his report (Ex.P7) in which he reported that no injury was found in the private part of the Appellant. Dr. S.K. Sinha (PW10) medically examined the victim boy and submitted his report (Ex.P10) in which he reported that no injury was found in any part of the body of the victim.
13. Head Constable Sher Singh (PW9) is the witness who registered the FIR (Ex.P4) on the basis of the written complaint (Ex.P3). Inspector Vinodini Tandi (PW8) and Deputy Superintendent of Police N.L. Dhritlahre (PW14) are the witnesses who conducted investigation in this case. Amrit Pali (PW12) is the teacher who

provided the Dakhil-Kharij Panji relating to age of the victim boy.

14. On a minute examination of the above evidence, it is clear that though Vishnu (PW6) and Akriti (PW13) have not supported the case of the prosecution and turned hostile, the victim boy (PW1) and Suresh (PW5) both child witnesses have supported the entire case of the prosecution. During their detailed cross-examination also they remained firm. There is nothing in their cross-examination on the basis of which it can be said that they would have been tutored. Though some contradictions and omissions have occurred in their statements, they are not material. It is true that the victim boy did not shout on the spot and immediately after the incident he did not disclose about the same at his house, there was a threat to him given by the Appellant of his life on disclosing about the incident and age of the victim boy at that time was only 8 years. Therefore, the judgment delivered in **Bhagwan Singh case (supra)** is not applicable to this case. In **Bhagwan Singh case (supra)**, the eyewitness of the case was a major woman and wife of the deceased. She had got ample opportunities to disclose about the incident but she did not disclose and therefore her statement was not found to be trustworthy. In the case in hand, the victim boy was aged about 8 years only and he was threatened of his life on disclosing the incident and therefore he did not shout on the spot and did not disclose about the incident immediately thereafter at his house, appears to be natural.
15. With regard to delay in lodging the written complaint (Ex.P3), in his Court statement, Virendra (PW3), elder brother of the victim boy

deposed that on the date of incident he was at Village Sipat at the house of his maternal uncle. Next day, when he returned his village then he came to know about the incident. Thereafter, he again went to Village Sipat at the house of his maternal uncle to get suggestion. Next day, he returned his village and made the written report (Ex.P3). The victim boy was aged about 8 years only and therefore looking to his age and the nature of the offence if the report was lodged belatedly after discussions between the family members, it is natural.

16. With regard to the land dispute between both the families, no document has been placed before the Trial Court by the Appellant. During pendency of this appeal, the Appellant has submitted a copy of the notice (Annexure A4) which shows that Revenue Case No.38A/14-15 (Mahabali v. Harprasad) is pending in the Court of Nayab Tahsildar, Sipat. Even if it is considered to be true it cannot be said to be natural that for this reason only the Appellant would be falsely implicated in this case. Therefore, in this regard also, I do not find any substance in the argument advanced by Learned Counsel for the Appellant.
17. In the result, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
JUDGE