

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1043 of 2015**

Rakesh Chauhan S/o Vishwanath Chauhan, Aged about 32 years R/o Near Aakash Takij, Turkapara, Akaltra, P.S. Akaltra, District Janjgir-Champa (C.G.).

----Appellant

Versus

State of Chhattisgarh through Police Station Kotwali, Civil and Revenue District Korba (C.G.)

---- Respondent

For Appellant	:	Mr. Brijesh Kumar Singh, Advocate
For Respondent	:	Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/02/2021

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 30/03/2013 passed in Sessions Trial No. 69/2012 by the Additional Sessions Judge, Korba, District Korba (C.G.), whereby the Appellant has been convicted under Sections 363, 366 (A) and 376 of the IPC and sentenced to undergo RI for 5 years with fine of Rs. 3000/-, RI for 10 years with fine of Rs. 5000/- and RI for 10 years with fine of Rs. 5000/-, respectively with default stipulations.
2. In this case the victim girl is aged about 5 years. According to the case of the prosecution, the victim girl was playing nearby her house and her mother was cooking food inside the house. After some time, when her mother searched the girl, she was not found. Later on, one Ganpat Das told her that he had seen the appellant taking the girl with him in his lap. Thereafter, the appellant was searched and at around 1:30 in the night he was found. The appellant was taken to the Police station. After

interrogation, the appellant told that he left the victim girl at Railway Station. On search, the victim girl was found at railway station in naked condition sustaining injuries over her body. The victim girl told that the appellant had committed rape with her. The matter was reported. The victim girl was medically examined. Statement of witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 10 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence on record. He further submits that the victim girl has not been examined before the trial Court and the conviction of the appellant is only based on hear-say witnesses, therefore, the conviction is not sustainable. He further submits that there are material contradictions and omissions occurred in the statements of the witnesses, therefore, their statements are also not reliable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statement of the witnesses minutely.
7. Though in this case the victim girl has not been examined, looking to the age of the victim girl, mere non-examination of the victim girl is not fatal for the case of the prosecution.
8. Durga Yadav (PW2), mother of the victim girl has deposed that she was cooking food inside the house and the victim girl was playing in front of her house. After some time, she saw that the girl was not there. On search, Ganpat told her that the appellant was taking the victim girl with him in his lap. At around 1:30 in the night the appellant was found and they took him to the police station. During interrogation, the appellant told that he had left the victim girl at railway station. Thereafter, all the persons went there and found the victim girl in naked condition. The victim girl has sustained injuries over her body. She told that the appellant, on the pretext of giving chocolate, took her and committed rape with her.
9. Ganpat Das (PW3) has also supported the above statement of this witness. He has categorically stated that he had seen the appellant taking the victim girl with him in his lap. The above statement of this witness is not duly rebutted during his cross-examination. Thus, it is clear that the appellant had taken the victim girl with him. From the evidence it is also clear that at around 1:30 in the night when the appellant was found and taken to the police station, then on the disclosure of the appellant himself the victim girl was recovered from the Railway station in the injured condition. Mohan (PW7) has also supported

the case of the prosecution and has deposed that the appellant had admitted the fact that he had taken the victim girl with him and committed rape with her, and thereafter left the victim girl at railway station. The above statement of this witness is not duly rebutted during his cross examination. Apart from this, from the medical report of the victim girl (Ex.P-12) it is also established that the victim girl had sustained various injuries. Her hymen was ruptured and forcible sexual intercourse was committed with her.

10. On minute examination of above evidence, it is clear that the appellant had taken the victim girl with him and committed rape with her, and on the disclosure of the appellant himself, the victim girl was found. From the evidence it is also clear that in front of Mohan (PW7), the appellant had admitted the fact that he had committed rape with the victim girl. From the medical report also, it is clear that the rape was committed with the victim girl.
11. Looking to the entire evidence led by the prosecution, in my considered view, the trial Court has rightly convicted the appellant.
12. Accordingly, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge