

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 647 of 2016**

- Mahesh Basod S/o Shri Krishna Basod Aged About 19 Years, R/o Village Soyada, Police Station Lakhanpur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Lakhanpur, District Surguja, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Rishi Rahul Soni, Advocate.
For Respondent/State	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

21/09/2021

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 26/11/2015 passed in Sessions Trial No. 88/2014 by learned Additional Sessions Judge(FTC), Special Judge under the POCSO Act 2012, Surguja (Ambikapur) C.G., whereby the Appellant has been convicted under Sections 450 & 376 of the IPC and Section 4 of the POCSO Act 2012 and sentenced to undergo RI for 10 years and to pay fine of Rs. 1,000/-, RI for 10 years and to pay fine of Rs. 1,000/- & RI for 10 years and to pay fine of Rs. 1,000/- respectively, with default stipulations. All the jail sentences to be run concurrently.

2. In this case, at the relevant time age of the prosecutrix (PW-2) was below 18 years. According to the entries of *Dakhil Kharij Panji* her date of birth is 06.02.1999. According to the case of prosecution on 12.06.2014 at around 12 PM, the prosecutrix went to visit the house of her friend namely Sanju Uraon (PW-4), allegedly at about 3 PM, when they were sleeping, the Appellant entered into the house of Sanju Uraon and committed forcible sexual intercourse with the prosecutrix and when she shouted, her friend awakened and she also started shouting and thereupon the Appellant fled away from the spot. Thereafter, the matter was reported by the prosecutrix vide Ex. P-4. The prosecutrix was medically examined by Dr. JP Sahu (PW-7), his report is Ex. P-12-A. Later on, statements of the prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. The prosecution has examined as many as 7 prosecution witnesses. One defence witness has 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.
3. After trial, the Trial Court 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 Appellant has been wrongly convicted by the Trial Court without there being any reliable evidence available on record. He further submits that there are material contradictions occurred in the statements of prosecutrix and other prosecution witnesses. Prosecutrix (PW-2) and

her father Shiv Prasad (PW-1) have developed their statements in the Court, therefore, their statements are not reliable. He further submits that MLC report of the prosecutrix also not supported the case of the prosecution. Material witness Sanju Uraon (PW-4) also not supported the case of the prosecution and turned hostile, therefore, conviction of the Appellant is not sustainable.

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 available record minutely. I have also gone through the statements of the prosecutrix and other witnesses minutely.
7. In her Court statement prosecutrix (PW-2) deposed that on the date of incident, she went to the house of her friend Sanju Uraon (PW-4) and their they were sleeping at that time, the Appellant came there in intoxication condition and assaulted the prosecutrix through mobile phone and also assaulted her with his legs, her friend objected the same. She further deposed that thereafter, the Appellant caught hold her hairs and dragged her to his aunt's house namely Lodhri then Aunt of the Appellant left the house and thereafter the Appellant closed door of the house, he again assaulted the prosecutrix and committed forcible sexual intercourse with her. This witness further deposed that her sister Bindiya came there and heard her voice, thereupon she called her father Shiv Prasad. Shiv Prasad (PW-2) also deposed as stated by the prosecutrix. According to this witness, when he reached the house of Lodhri along with her wife, he saw that the door was

locked, he called one Reku (not examined) who broke the lock. They found the prosecutrix and the Appellant inside the house of Lodhri. The prosecutrix told him that the Appellant has committed forcible sexual intercourse with her. Sanju Uraon (PW-4) soul eye-witness of the case has not supported the case of the prosecution and turned hostile.

8. Dr. J.P. Sahu (PW-7) who examined the prosecutrix on 13.06.2014, has deposed that at the time of examination of the prosecutrix, it was found that her hymen was old ruptured and at present it can not be determined whether sexual intercourse has been committed with her. Bhavesh Goutam (PW-6) is the investigating officer who investigated the entire case.
9. On minute examination of above evidence, it makes clear that the statement of prosecutrix (PW-2) and her father Shiv Prasad (PW-1) is suspicious because according to the case of prosecution, the alleged incident was occurred inside the house of Sanju Uraon (PW-4) and Sanju Uraon not supported the case of prosecution in any manner. In their Court statements prosecutrix (PW-2) and her father Shiv Prasad (PW-1) have stated that the incident was occurred in the house of aunt of the Appellant namely Lodhri. According to the prosecution, Lodhri was also present on spot but Lodhri has not been examined by the prosecution. According to the statement of Shiv Prasad (PW-1), the incident was firstly informed by Bindiya thereafter he reached the house of Lodhri to rescue the prosecutrix but, Bindiya is also not examined by the prosecution. As stated by this witness, the lock was broken by one Reku but, Reku is also not examined by the prosecution. Spot map Ex. P-6 is prepared by Sub-Inspector Bhavesh

Goutam (PW-6) as stated by prosecutrix (PW-2), the spot map also shows the place of incident as Sanju's house not Lodhri's house. Thus, it appears that there are material contradictions occurred in the statements of prosecution witnesses regarding the place of incident. The medical report of the prosecutrix also not supported case of the prosecution. In these circumstances, the Appellant is entitled to get benefit of doubt. Therefore, the conviction of the Appellant is not sustainable. Thus, the impugned order dated 26/11/2015 passed in Sessions Trial No. 88/2014 passed by learned Additional Sessions Judge, (FTC), Special Judge (POCSO Act, 2012) Surguja (Ambikapur), C.G. is set-aside.

10. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him on the basis of benefit of doubt.
11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge