

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 408 of 2015**

Deenbandhu Netam S/o Motiram Gada, aged about 27 years R/o Village Badejungera, Police Station Daundilohara, Civil and Revenue District Balod (C.G.).

----Appellant

Versus

State of Chhattisgarh, through the Police Station, Daundilohara, Civil and Revenue District Balod (C.G.)

---- Respondent

For Appellant	:	Mr. Sunil Sahu, Advocate
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

12/01/2021

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 06/02/2015 passed in Sessions Trial No. 54/2014 by the Second Additional Sessions Judge, Balod, District Balod (C.G.), whereby the Appellant has been convicted under Section 376 read with Section 511 of the IPC, and Sections 6 & 8 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Act') and sentenced to undergo RI for 10 years with fine of Rs. 200/- and RI for 10 year with fine of Rs. 200/-, respectively, with default stipulations.
2. In this case, the victim girl was aged about 3 years at the time of alleged incident. According to the case of the prosecution, on 04/06/2014 at about 7:30 am when she was roaming on bicycle with her elder brother near her house, suddenly chain of bicycle got-off and for such Harshit, brother of the victim girl went to the appellant. After repairing the bicycle,

Harshit returned to the house leaving her sister playing there. The appellant, thereafter, took the victim girl inside his house and removed her undergarment. He tried to commit sexual intercourse with her. At about 8:15 am, the victim girl came back to her house holding her undergarment and complained about some pain in her private part. Then, her mother Hemlata examined the victim girl and found some liquid on her thighs. She intimated the incident to the neighbours and her husband. The matter was reported. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet was filed. As many as 12 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 by the trial Court and due to some previous dispute her parents have falsely implicated the appellant in this case. He further submits that the appellant has already undergone about 6 ½ years in this case, therefore, he prays that affirming the conviction of the appellant, he may be sentenced to the period already undergone by him.
5. Per contra, learned Counsel appearing for the State supported the

impugned judgment and submits that the victim girl was aged about 3 years in this case at the relevant time and from the statement of the parents of the victim girl as well as medical report of the victim girl, offence under Section 6 of the Act is duly proved against the appellant and for which the minimum sentence is 10 years, therefore, the appeal may be rejected.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statements of the witnesses minutely.
7. Though in this case the victim girl who is aged about 3 years has not been examined, her mother Hemlata (PW2) and Father (PW1) have categorically stated that on the date of incident their both children were playing in front of their house and when the cycle of Harshit got some mechanical issue then he went to the appellant for repairing the same and returned to the house alone. The Prosecutrix was playing there alone. After some time, the Prosecutrix came in weeping condition. She was holding her undergarment and complained about some pain in her private part. Then, they saw that there was swelling in her private part. On being asked, she told that the appellant did some wrong thing with her. They further deposed that when they inquired the appellant about this fact then firstly he denied but later on he admitted the fact that he had committed bad thing with the victim girl. Thereafter, the matter was reported by them vide Ex.P-1. The victim girl was medically examined by Dr. Geeta Mishra (PW1). She deposed that at the time of examination of the victim girl, there was swelling and redness in her private part. She opined that an attempt of intercourse was done with the victim girl.

8. On minute examination of above evidence, it is clear that though victim girl has not been examined before the trial Court, both her father and mother have duly supported the entire case of the prosecution and have categorically stated that after the incident, the victim girl came to the house in weeping condition and complained about pain in her private part. On being asked, she told that the appellant have done something wrong with her. Both these witnesses have remained firm during their cross-examination on this point. From the medical report also, it is established that an attempt to rape was made on the victim girl and there was swelling and redness in her private part. Moreover, from the statement of Shashikant (PW1) and Hemlata (PW2), it appears that the appellant had made his extra-judicial confession before them.
9. Looking to the entire evidence available on record, in my considered view, the trial Court has rightly convicted the appellant.
10. Accordingly, I do not find any merit in this case, the appeal is dismissed.

Sd/-

(Arvind Singh Chandel)
Judge