

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 09.03.2021****Judgment Delivered on 24.03.2021****CRA No. 514 of 2016**

- A. Chin Babu, S/o A. Kanhaiya, aged about 35 Years, R/o Sector 11, Street No. 8, M.P.A. Road, Behind of Dena Bank, Police Station Chhawani, District Durg, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh, Through Police Station Chhawani, District Durg, Chhattisgarh.

---- Respondent

For Appellant	Shri Roop Naik, Advocate.
For State	Shri Dinesh Tiwari, Deputy G.A.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 21.01.2016 passed by the Sessions Judge constituted under Protection of Children from Sexual Offences Act, 2012 and Additional Sessions Judge (FTC), Durg, District Durg, C.G. in Special Case No.112/2015, whereby and whereunder the appellant stands convicted under Section 354(A) of Indian Penal Code and Section 10 of Protection of Children from Sexual Offences Act, 2012, and considering the provisions of Section 42 of the POCSO Act, he

has been sentenced as under:-

Conviction	Sentence
Under Section 10 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for five years and fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

2. Case of the prosecution, in brief, is that on the date of incident i.e. 05.08.2015 at about 23:00 hours, prosecutrix, aged about 12 years, was sleeping in the room along with her grand mother, at that time accused/appellant (father of the prosecutrix) came there with an intent to outrage her modesty and to humiliate her, upturned her clothes and pressed her breasts. On this, when she objected to it, the appellant fled from there. Thereafter, she immediately informed the incident to her grand-mother and next day in the morning she informed the incident to her mother. Then, she along with her mother went to the police station and lodged the prompt FIR Ex.P-1 against the accused/appellant.
3. During investigation, Spot Map was prepared vide Ex.P-2. Dakhil Kharij Register was seized vide Ex.P-8(C). Accused/appellant was arrested on 06.08.2015 vide Ex.P-12. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Sections 354 of Indian Penal Code and Sections 7 & 8 of the Protection of Children from Sexual Offences Act, 2012. The trial Court framed the charges under Section 354(A) of Indian Penal Code and

Section 10 of the Protection of Children from Sexual Offences Act, 2012 against the appellant which were denied by him and he prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses i.e. PW-1 Prosecutrix, PW-2 A. Hema, PW-3 A. Juhi Amma, PW-4 Vijay Pratap Singh, PW-5 Shri L.R. Raje, PW-6 Mohd. Jilaluddin and PW-7 V. Prabha Rao. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he states that on the behest of his wife, he has been falsely implicated in this case by the prosecutrix. However, no witness was examined by him in his defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
6. Learned counsel for the appellant submits that the trial Court has not properly appreciated the overall evidence available on record for holding the appellant guilty. He submits that due to some dispute between the appellant and his wife, he has been falsely implicated in this case by his wife by using his daughter(prosecutrix). He also submits that no injury was found

on the body of the prosecutrix nor she told the incident to her grand-mother who was also sleeping with her. There are material contradictions and omissions in the statements of the prosecutrix and other witnesses. No cogent evidence is available on record against the appellant. He further submits that no sexual assault was made by the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard learned counsel for the parties and perused the material available on record.
9. PW-1 Prosecutrix stated in her deposition that on 05.08.2015 at about 23:00 hours, when she was sleeping in the room along with her grand mother, at that time accused/appellant (father of the prosecutrix) came there in drunken condition with an intent to outrage her modesty and to humiliate her, upturned her clothes. Thereafter, she immediately informed about the same to her grand-mother and next day in the morning she informed about the incident to her mother. Then, she along with her mother went to the police station and lodged the prompt FIR Ex.P-1 against

the accused/appellant. After the report, police went to the spot and prepared the spot map Ex.P-2. She also admitted in para 4 of her deposition that her mother was living separately from her father/appellant about 7-8 years prior to the incident and she also denied this fact that at the instance of her mother she lodged the FIR against the accused/appellant.

10. PW-1 A. Hema is the mother of the prosecutrix. She has stated the same facts as stated by PW-1 Prosecutrix and supported the prosecution case.
11. PW-3 A. Juhi Amma has turned hostile and not supported the prosecution case.
12. PW-4 Vijay Pratap Singh, Head Constable, seized the Dakhil Kharij Register vide Ex.P-9 wherein the date of birth of the prosecutrix is mentioned as 20.05.2002.
13. PW-6 Mohd. Jilaluddin, Sub-Inspector, who investigated the case, has supported the prosecution case.
14. PW-5 Shri L.R. Raje, Assistant Sub-Inspector, lodged the FIR Ex.P-1 and duly proved the same.
15. PW-7 V. Prabha Rao, Inspector, recorded the statement of the prosecutrix.
16. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 05.08.2015, the appellant had caught the prosecutrix with an intent to outrage her modesty, upturned her

clothes, pressed her breasts and thus sexually assaulted her. The prosecutrix has remained firm during her cross-examination and her statement is also supported by her mother PW-2 A. Hema.

17. The next question which arises for consideration by this Court is whether the finding recorded by the trial Court holding the prosecutrix to be minor on the date of incident is correct or not.

18. In this case, as per the seized copy of Dakhil Kharij Register of prosecutrix her date of birth is mentioned as 20.05.2002 and her mother PW-2 A. Hema also stated in her deposition that at the time of incident her daughter was of 12-13 years. Thus, from the material collected by the prosecution, I am of the view that the prosecution has succeeded in proving that the prosecutrix was minor on the date of incident.

19. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which is duly corroborated by the evidence of PW-2 A. Hema and the prompt FIR, the age of the prosecutrix and further considering the fact that there is no major contradiction or omission in her statement as well as in the statement of PW-2 A. Hema affecting the creditability of her version, no any evidence was adduced by the defence to prove false implication of the appellant, this Court finds no reason to disbelieve prosecutrix's statement or to arrive at a conclusion that she has falsely implicated the appellant at the behest of her mother. The trial Court in paras 40, 41 and 42 has elaborately discussed Section 29

which deals with presumption as to certain offences and Section 30 which deals with presumption of culpable mental state and arrived at the finding that no evidence in rebuttal of the presumption as to culpable mental state of the appellant has been adduced by the defence whereas the evidence on record clearly shows the culpable mental state of the appellant where he being the father of the prosecutrix in a position of trust, committed sexual assault on his minor daughter. The said act of the appellant amounts to aggravated sexual assault as defined under Section 9(P) of the POCSO Act. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

20. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 05.07.2020 submitted by Jail Superintendent Central Jail, Durg, C.G., the appellant having completed the jail sentence has been released from jail on 12.10.2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge