

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 03-02-2021

Judgment delivered on : 12-02-2021

CRA No. 1313 of 2016

- Ganpat Kumar Baghel S/o Mantam Baghel Aged About 19 Years
R/o Village- Junwani, Police Station- Palari, District-
Balodabazar- Bhatapara, Chhattisgarh.,

Appellant

Versus

- State Of Chhattisgarh Through Station House Office, Police
Station- Palari, District- Balodabazar- Bhatapara, Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Smriti Shrivastava, Advocate.
For Respondent/State	:	Mr. Dinesh Ku. Tiwari, Dy. G.A.

Hon’ble Shri Gautam Chourdiya, J

C A V Judgment

1. Challenge in this appeal under Section 374(2) of CrPC is to the judgment of conviction and order of sentence dated 29/07/2016 passed by the Additional District & Sessions Judge (FTC), Balodabazar in Special Sessions Case No.15/2015 whereby the appellant stands convicted under Sections 451, 354 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and considering the provisions of Section 42 of the, he was sentenced as under:

Conviction	Sentence
Section 451 of Indian Penal Code.	R.I. for 6 months.

Section 8 of POCSO Act.	R.I. for 3 years, pay a fine of Rs.1,000/-, in default thereof to undergo additional R.I. for 3 months.
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Both the sentences were directed to run concurrently.

2. Case of the prosecution in brief is that on 25.1.2015, the prosecutrix, aged about 12 years, lodged a written report at Police Station-Palari to the effect that on the said date at about 5 pm while she was at her home and playing with her Padasai Madhu, Khileshwari, Tukeshwar, at that time the appellant entered her home, with intention to outrage her modesty caught hold of her hands and forced her to run away with him on the allurements of giving her golden leaf (loket). The said incident was witnessed by her neighbour Lagnibai. During investigation, spot map Ex.P/2 was prepared, statement of the prosecutrix was recorded under Section 164 of CrPC and case diary statements of other witnesses were also recorded. After completing the formalities of investigation, charge sheet under Sections 452, 354 of IPC and Section 8 of POCSO Act was filed against the appellant. The trial Court framed charges under Sections 451, 354 of IPC and Section 8 of POCSO Act against the appellant, which were denied by him and he prayed for trial.
3. So as to hold the accused/appellant guilty, the prosecution examined 04 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness in defence was examined by the accused/appellant.

4. 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.
5. Learned counsel for the appellant submits that the trial Court has not properly appreciated the overall evidence available on record. In fact, the appellant had lodged a report against the parents of the prosecutrix as he was assaulted by them and due to that enmity, he has been falsely implicated in this case. No independent witness has supported the prosecution case. She submits that the appellant was aged about 19 years at the time of incident but the trial Court has not given the benefit of Probation of Offenders Act to him. Therefore, the impugned judgment being bad in law is liable to be set aside.
6. On the other hand, learned counsel for the State supporting the impugned judgment submits that trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant which calls for no interference by this Court.
7. Heard learned counsel for the respective parties and perused the material available on record.
8. PW-1 prosecutrix, aged 12 years, has stated in her deposition that on the date of incident at about 12-1 in the noon she along with Madhu was going to the public tap for fetching water, on the way the appellant was standing who shot her picture through mobile. After taking water she returned to her home and closed the door. However, after some time the appellant came to her

home, opened the door by pushing it, entered her home, caught hold of her arms and told her that he would elope with her after one year and give her a locket tomorrow, to which she objected. At that time, her sister Khileshwari (PW-4) reached there, who called her mother and then her mother ousted the appellant from the home. Thereafter, she narrated the incident to her mother and then she lodged the FIR (Ex.P/1) against the appellant. In cross-examination, she remained firm and reiterated that the appellant tried to outrage her modesty by using criminal force.

9. PW-4 Khileshwari Nishad, sister of the prosecutrix, while supporting the evidence of the prosecutrix, has also stated that the appellant forcibly caught hold of hands of the prosecutrix and was dragging her and was saying her that he would give her a golden leaf. At that time, her mother came there and ousted the appellant from the home. She also remained firm in her cross-examination and there is no reason to disbelieve the evidence of this witness.
10. PW-3 Lagni Bai, independent witness, has also stated that on the date of incident while she was fetching water from the borewell she saw the appellant entering the home of the prosecutrix and thereafter, she returned to her home after taking water.
11. Thus, considering the un rebutted evidence of the prosecutrix (PW-1), which finds due corroboration from the evidence of her sister Khileshwari Nishad (PW-4) and the independent witness Lagni Bai (PW-3) as also from the promptly lodged FIR (Ex.P/1) wherein she has clearly stated about the act of the appellant and

the manner in which he committed the offence, complicity of the appellant in the crime in question stands proved beyond all reasonable doubt. Though the appellant has raised a defence that he has been falsely implicated in this case as he had lodged a report against the parents of the prosecutrix for assaulting him and the prosecutrix has also admitted the fact that a criminal case against her parents is pending on the report of the appellant, but there is nothing on record to show whether the said assault was made by her parents on the appellant prior to the present incident or thereafter. Therefore, considering the overall facts and circumstances of the case and the evidence available on record, this Court is of the opinion that the impugned judgment of the trial Court does not suffer from any illegality or perversity warranting interference by this Court.

12. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 7.7.2020 received from the Jail Superintendent, Central Jail, Raipur, the appellant having completed the entire sentence has been released from jail on 3.10.2018 and as such, there is no need to pass any order regarding his arrest, surrender etc.

Sd/

(Gautam Chourdiya)

Judge