

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 24.02.2021****Judgment Delivered on 09.03.2021****CRA No. 1604 of 2016**

- Deepak Dhruv, S/o Gariba Dhruv, aged about 23 Years, R/o Village- Tikuliya, Police Station- Bhatapara (Gramin), District- Bhatapara-Baloda Bazar, Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through- Police Station- Bhatapara (Gramin), District- Bhatapara-Baloda Bazar, Chhattisgarh.

---- Respondent

For Appellant	Shri A.K. Yadav, Advocate alongwith Shri Vikash Pandey, Advocate.
For State	Shri Vimlesh Bajpai, Government Advocate.

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 28.11.2015 passed by the 2nd Additional Sessions Judge, Baloda Bazar, C.G. in Special Sessions Trial No.28/2015, whereby and whereunder the appellant stands convicted under Section 354 of Indian Penal Code and Section 8 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 8 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for three years and fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

2. Case of the prosecution, in brief, is that on the date of incident i.e. 15.06.2015 at about 3:00 pm, prosecutrix, aged about 17 years, was returning from school by cycle, on the way accused/appellant met her with an intent to outrage her modesty and to humiliate her, caught hold of her hands and snatched her purse. On this, she raised hue and cry, somehow came out of his clutches and ran away from there. After reaching her home, she narrated the said incident to her parents and village Sarpanch. Thereafter, she went to the police station and lodged the prompt FIR Ex.P-3 against the appellant.
3. During investigation, mark-sheet of prosecutrix Ex.P-1 was seized. Spot Map was prepared vide Ex.P-4. Accused/appellant was arrested on 16.06.2015 vide Ex.P-5. 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 Section 8 of the Protection of Children from Sexual Offences Act, 2012. The trial Court framed the charges under Sections 354 of Indian Penal Code and Section 8 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 6 witnesses i.e. PW-1 Meena Bai, PW-2 Prosecutrix, PW-3 Ghanshyam Verma, PW-4 Om Das, PW-5 Khileshwar Nishad and PW-6 Deen Dayal Dhruv. 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 due to previous enmity with the brother of the prosecutrix, 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 there is nothing on record to show that the prosecutrix was minor at the time of incident. He also submits that due to previous enmity between the appellant and brother of the prosecutrix, he has been falsely implicated in this case. 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 also 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-2 Prosecutrix stated in her deposition that on 15.06.2015 at about 3:00 pm when she was returning from school, on the way accused/appellant met her with an intent to outrage her modesty and to humiliate her, caught hold of her hands, snatched her purse and also used criminal force against her. When appellant tried to pull her hands, she abused him filthily. Thereafter, she came to her house and narrated the said incident to her parents and village Sarpanch. Then, she went to the police station and lodged the prompt FIR Ex.P-3 against the appellant. After the report, police went to the spot and prepared the spot map Ex.P-4.
10. PW-1 Meena Bai and PW-3 Ghanshyam Verma are the parents of the prosecutrix. They have stated the same facts as stated by PW-2 Prosecutrix and supported the prosecution case.
11. PW-4 Om Das has turned hostile and not supported the prosecution case.

12. PW-5 Khileshwar Nishad is the village Sarpanch. He stated that mother of the prosecutrix (PW-1 Meena Bai) told him about the incident on the same day. Thereafter, he alongwith the prosecutrix and her parents went to the police station and lodged the FIR against the appellant.
13. PW-6 Deen Dayal Dhruv, Head Constable, who investigated the case, has supported the prosecution case.
14. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 15.06.2015, the appellant had caught the prosecutrix with an intent to outrage her modesty, caught her hands and sexually assaulted her. The prosecutrix has remained firm during her cross-examination and her statement is also supported by the witnesses i.e. PW-1 Meena Bai, PW-3 Ghanshyam Verma and PW-5 Khileshwar Nishad.
15. 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.
16. In this case, as per the seized high school mark-sheet (Article-A) of prosecutrix her date of birth is mentioned as 23.12.1997 and her mother PW-1 Meena Bai also stated in her deposition that at the time of incident her daughter was of 17 ½ 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.

17. 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-1 Meena Bai, PW-3 Ghanshyam Verma and PW-5 Khileshwar Nishad 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 statements of other supporting witnesses affecting the creditability of her version, no any evidence was adduced by the defence to substantiate the plea of previous enmity between the appellant and prosecutrix's brother or for 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. 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.

18. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 07.07.2020 submitted by Jail Superintendent Central Jail, Raipur, C.G., the appellant having completed the jail sentence has been released from jail on 27.06.2018. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

