

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1439 of 2017

Judgment Reserved on : 06/04/2021

Judgment Delivered on : 10/05/2021

1. Raja Netam S/o Late Jyotin Netam, Aged About 45 Years, R/o Gouri Nagar, In front to Hafizkhan, Gali No. 3, Ward No. 14, Rajnandgaon, District Rajnandgaon (C.G.).

---- Appellant

Versus

1. State Of Chhattisgarh, Through The Police Chowki Chikhali, Police Station Kotwali, District Rajnandgaon (C.G.).

---- Respondent

For Appellant : Mr. N.S. Dhurandhar with Mr. Praveen K. Dhurandhar, Advocates.
For Respondent/State : Mr. Vaibhav Singh, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya

CAV Judgment

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 04/07/2017 passed by Additional Sessions Judge (FTC) Rajnandgaon (C.G.) in Special S.T. No. 67/2015; whereby the appellant Raja Netam stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 354(B) of Indian Penal Code (in short "IPC")	R.I. for 4 years and fine of Rs. 3,000/- in default of fine additional S.I. for 6 months.
U/s. 354(A)(1) of IPC	R.I. for 2 years and fine of Rs. 1,000/- in default of fine additional S.I. for 3 months.
(Both the sentences were directed to run concurrently)	

- 2) Case of the prosecution, in brief, is that on the date of incident on 28/08/2015 at Gourinagar Rajnandangaon at about 6 AM morning when prosecutrix aged about 16 years was sleeping in her room, appellant/ accused, who is husband of PW-02 Arti Netam, with intent to outrage her modesty caught hold of her hand and arm, removed her clothes and touched her breast. When she raised alarm for help, her paternal aunty (**Bua**) Aarti Netam (PW-02), her sisters Pooja (PW-04), Kajal (PW-05) and brother Vicky reached to her rescue. The appellant assaulted upon her paternal aunty (Bua) and brother Vicky and also threatened them of life. On the same day Zero FIR is lodged vide Ex. P-1 at Outpost Chikhali by prosecutrix on the basis of which numbered FIR is lodged vide Ex. P-13 at Police Station Kotwali, Rajnandgaon (C.G.) under Sections 354B, 323, 506 of IPC and Section 8 of Protection of Children from Sexual Offences Act. Accused was arrested vide Ex. P-2. Spot map is prepared vide Ex. P-5. For the purpose of age of the prosecutrix, her Aadhar Card was seized vide Ex. P-6 and Patwari prepared spot map vide Ex. P-19. Aarti Netam and Vicky Netam were medically examined by PW-07 Sukumari Sahu vide Ex. P-10 and P-11 respectively and she found bruise on right arm of Arti Netam and abrasion over chest as also on right arm of Vicky Netam. The doctor opined that these injuries were simple in nature. Statements of the witnesses were recorded and after completion of the investigation charge sheet was filed against the appellant/accused for offence under Section 354(B), 323, 506 of IPC and under Section 8 the Protection of Children from Sexual Offences (POCSO) Act.
- 3) The Trial Court framed charges against the accused/appellant under Sections 354(B), 354(A)(i), 323(twice) & 506(Part-II) (twice) of I.P.C. and under Sections 8 the Protection of Children from Sexual Offences (POCSO) Act. The accused/appellant denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Ramnarayan Singh Dhruv (Sub Inspector), PW-02 Arti Netam (Bua), PW-03 Prosecutrix, PW-04

Pooja Netam, PW-05 Kajal Netam, PW-06 Mahalaxmi Kuldeep (Inspector), PW-07 Sukumari Sahu (Medical Officer), PW-08 Jitendra Vijaywar (Sub-Inspector), PW-09 Rupak Sharma (Inspector) and PW-10 Biruram Netam (Revenue Inspector). The 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 and pleaded innocence and false implication. He stated the character of his wife Arti Netam is not good, she wants divorce from him, she has engaged his daughters and niece (prosecutrix) in prostitution and due to objection being raised by him, she has falsely implicated him in this case. One defence witness DW-01 Purushottam Manikpuri was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused 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. He submits that the appellant has been falsely implicated in this case and no any independent witness supported the prosecution case. There are certain contradictions and omissions in the statements of the prosecution witnesses. Therefore, the appellant deserves to be acquitted of the charge leveled against him.
- 7) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) PW-03 prosecutrix stated in her deposition that on the date of incident when she was sleeping in the house of Arti Netam (Bua), the appellant, who is her uncle (Fufa) in relation, came to her room,

overturned her top, tried to remove her leggings and started touching her breast. When she raised alarm, her aunt Arti Netam, sisters Kajal and Pooja and her brother woke up and protected her from the appellant. The appellant then committed *Maarpet* with her aunt Arti Netam and brother. She states that prior to this incident, the appellant has also tried to molest her twice. She has proved the FIR lodged by her.

- 10) PW-02 Arti Netam (Bua), wife of the appellant, has also supported the version of the prosecutrix. PW-04 Pooja Netam & PW-05 Kajal Netam, daughters of the present appellant, have also supported the case of the prosecution. These witnesses also remained firm in their cross-examination. There is no reason to disbelieve the evidence of PW-03 prosecutrix, PW-02 Arti Netam, PW-04 Pooja Netam and PW-05 Kajal Netam. Prompt FIR was lodged by the prosecutrix vide Ex. P-1 on the same day of incident and no any contradiction or omission shown in the Ex. P-1 nor any major contradiction or omission shown in the statements of the witnesses.
- 11) Evidence of the prosecutrix is also corroborated by PW-07 Dr. Sukumari Sahu who examined PW-02 Arti Netam medically and found 3 cm x 2 cm bruise on her right arm vide Ex. P-10. Doctor opined that the injury was simple in nature and caused by hard & blunt object.
- 12) PW-07 Dr. Sukumari Sahu also examined Vicky Netam medically and found 3 cm x 2 cm abrasion over his chest & 4 cm x 3 cm abrasion over his right arm vide Ex. P-11. Doctor opined that these injuries were simple in nature and caused by hard & rough object.
- 13) Police witnesses were also examined and supported the prosecution case.
- 14) So far as the evidence of DW-01 Purushottam Manikpuri is concerned, he has no knowledge about the incident, he was living in another place and also admitted that he never went to the house of the appellant where his family was residing. He states that there was dispute between DW-01 Purushottam Manikpuri and PW-02

Arti Netam over payment of electricity bill while they were residing in his house as tenants. He has no knowledge about the incident happened on 28/08/2015 at 6 AM at morning. Therefore, the evidence of the defence witness is of no help to the appellant.

- 15) Accused/appellant has taken a defence that character of his wife Arti Netam PW-02 was not good, she wanted to have divorce from him, she had engaged his daughters PW-04 Pooja Netam & PW-05 Kajal Netam and PW-03 prosecutrix in prostitution and as he was raising objection to it, he has been falsely implicated in this case. However, no any evidence has been adduced by him to substantiate the said plea.
- 16) Looking to the entire evidence of prosecutrix (PW-03), PW-02 Arti Netam, PW-04 Pooja Netam & PW-05 Kajal Netam and prompt FIR (Ex. P/1) lodged by the prosecutrix, there is no major contradiction and omission in the evidence of these witnesses, spot map (Ex.P/5) is proved, this Court is of the opinion that the prosecution has successfully proved the guilt of the appellant of outraging the modesty of the prosecutrix. Therefore, in the given facts and circumstances of the case and the nature and quality of evidence adduced by the prosecution, the finding of guilt recorded by the trial Court being just and proper needs no interference by this Court.
- 17) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly **dismissed**. As per report dated 29/06/2020 submitted by Jail Superintendent, Central Jail, Durg, the appellant having completed the entire jail sentence has been released from jail on 16/03/2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge