

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1611 of 2016

Judgment Reserved on : 26.8.2021

Judgment Delivered on : 17.9.2021

Aalok Toppo, son of Shri Jorom Toppo, aged about 21 years, by caste Uraon, resident of Basen, P.S. Kansabel, District Jashpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the District Magistrate, Jashpur, District Jashpur, Chhattisgarh

--- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 6.10.2016 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act') and Additional Sessions Judge (FTC), Jashpur in Special Case No.74 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 6 of the Pocso Act	Rigorous Imprisonment for 10 years and fine of Rs.500 with default stipulation

2. According to the prosecution case, the prosecutrix (PW2) was a deaf and dumb girl and was aged about 13 years at the relevant time. According to the entries of her school progress report

(Ex.P6), her date of birth is 28.11.2002. The date of incident is 15.7.2015. According to the ossification test report (Ex.P23), her radiological age was 14-15 years. It is the case of the prosecution that on 15.7.2015 at about 5 p.m., the prosecutrix (PW2) was standing at Basen Chowk. At that time, the Appellant came there on a bicycle. Having seen him, she asked him to give his bicycle for cycling. She cycled his bicycle to some distance. He went behind her and made her sit on the bicycle and took her on the bicycle to a jungle. Allegedly, there he committed forcible sexual intercourse with her. Thereafter, he left her back near her house. Sumitrabai (PW3), mother of the prosecutrix having seen blood stains on the clothes of the prosecutrix asked her then the prosecutrix told her about the incident. The matter was reported by Dilip (PW4), father of the prosecutrix vide Ex.P11. The prosecutrix was medically examined by Dr. Rosa Toppo (PW1). Her report is Ex.P1. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.

3. To bring home the offence, the prosecution examined as many as 14 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment.

Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that the Appellant has been wrongly convicted by the Trial Court without there being sufficient evidence on record. Statement of the prosecutrix (PW2) is suspicious. It was argued that on the basis of her statement and medical evidence, the act committed by the Appellant falls within the ambit of Section 376 of the Indian Penal Code only. There is no conclusive evidence available on record to show that the prosecutrix was below 18 years of age. Therefore, conviction of the Appellant under Section 6 of the Pocso Act is not sustainable. The Appellant is in jail since 17.7.2015. Therefore, it was prayed that his conviction may be altered to Section 376 of the Indian Penal Code and his sentence may be restricted to the period already undergone.
6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment. He submitted that there is sufficient evidence on record to show that at the time of incident the prosecutrix was below 18 years of age and, therefore, conviction of the Appellant under Section 6 of the Pocso Act is in accordance with the evidence available on record.
7. I have heard Learned Counsel appearing for the parties and minutely perused the record of the Trial Court including statements of the witnesses and other material.
8. As regards the incident, the prosecutrix (PW2), in her Court

statement deposed that at the time of incident, the Appellant was cycling a bicycle near her house. She asked him to give her the bicycle and she started cycling. The Appellant took his bicycle back and made her sit on the back of the bicycle. He took her to other side of the river and made her fall down there and committed forcible sexual intercourse with her. She feared and, therefore, did not shout. She further deposed that bleeding started from her private part. Thereafter, the Appellant left her near her house then she told about the incident to her mother.

9. Sumitrabai (PW3), mother of the prosecutrix supported the above statement of the prosecutrix and deposed that she saw blood stains on the clothes of the prosecutrix and the prosecutrix was weeping. On being asked, she narrated her the entire incident. This witness and the prosecutrix remained firm during their cross-examination. On medical examination of the prosecutrix, swelling and redness were found with pain on the labia minora and hymen was ruptured. As opined by Dr. Rosa Toppo (PW1), sexual intercourse was committed with the prosecutrix. Looking to the entire evidence adduced by the prosecution, it appears that forcible sexual intercourse was committed by the Appellant with the prosecutrix.
10. With regard to age of the prosecutrix (PW2), according to the case of the prosecution, the date of birth of the prosecutrix is 28.11.2002. In her Court statement, the prosecutrix (PW2) has not stated anything regarding her age. Sumitrabai (PW3), mother of the prosecutrix and Dilip (PW4), father of the prosecutrix both have deposed that in the year of incident, the prosecutrix had passed the

examination of 8th standard. As deposed by Sumitrabai (PW3), age of the prosecutrix was 15 years and her date of birth is 28.11.2002. There is no rebuttal to this statement in her cross-examination and no contrary suggestion was put to her in this regard. Dilip (PW4), father of the prosecutrix also deposed that the prosecutrix was aged about 14 years. This statement was also not rebutted during his cross-examination and no contrary suggestion was put to him in this regard. According to the ossification test report (Ex.P23), radiological age of the prosecutrix was 14-15 years. On taking margin of 3 years on both sides, age of the prosecutrix comes below 18 years. Looking to the entire evidence, both oral and documentary (Ex.P23/the ossification test report), it is well established that at the time of incident, the prosecutrix was below 18 years of age. Therefore, the finding of the Trial Court in this regard is in accordance with the evidence available on record. I do not find any substance in the argument advanced in this regard by Learned Counsel appearing for the Appellant.

11. Consequently, conviction of the Appellant under Section 6 of the Pocso Act is affirmed and the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
JUDGE