

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A. No. 1648 of 2017

- Narayan Nishad, S/o Shri Govind Nishad, Aged About 30 Years, R/o Village Gureda, P.S. Gundardehi, District Balod, Civil And Revenue District Balod, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Gunderdehi, District Balod, Chhattisgarh.

---- Respondent

For Appellant : Shri Manoj Kumar Sinha, Advocate.

For State/Respondent : Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13/07/2021

1. This appeal has been preferred against the impugned judgment dated 18/09/2017 passed in Special Criminal Case POCSO No.78/2016 by the Sessions Judge (In-charge F.T.C.), Balod, District - Balod, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 376(2)(i) of the I.P.C. read with Section 5(M)/6 of the POCSO Act	R.I. for 10 years and fine of Rs.5,000/- with default stipulations.

2. In the present case, prosecutrix (PW-1) is a minor girl aged about 5 years. On the date of incident i.e. 29.11.2016 at about 11:20 am, prosecutrix went to Anganbadi with her friend. During recess period, when she was playing with her friend, appellant called her saying that he would give her jam and took her to his house. Thereafter, appellant committed sexual intercourse with the victim girl/prosecutrix in his house. At that time, prosecutrix was shouting due to pain. It is further alleged that, thereafter, appellant left her out and warned her not to disclose the said facts to anyone and told her to go back to Anganbadi. The matter was reported by mother of the prosecutrix namely Bedbai (PW-2) vide Ex.P-4. Victim girl/prosecutrix was medically examined by Dr. Smt. Prabha Burman (PW-6). Her report is Ex.P-10. Statement of prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 10 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded his innocence and false implication in the matter.
3. After completion of trial, the trial Court framed the charges and convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him.

There are material contradictions and omissions occurred in the statement of the prosecutrix (PW-1) and Bedbai (PW-2) and trial Court has failed to appreciate this fact. Thus, conviction of the appellant is not sustainable.

5. I have heard learned Counsel appearing for the parties, perused the record and gone through the statements of the witnesses and other material available on record minutely.
6. There is no dispute on the point that at the time of alleged incident, age of the victim girl/prosecutrix (PW-1) was about 5 years. With regard to the alleged incident, prosecutrix in her Court statement has deposed that at the time of incident, appellant called her saying that he would give her jam, then she went to the house of the appellant where appellant removed her underwear and inserted his penis in her vagina. According to this witness, she was bearing pain and was shouting. Later on, prosecutrix narrated the incident to her father also. Statement of prosecutrix was duly corroborated by her mother Bedbai (PW-2). Both the above witnesses remained firm during cross-examination. There is nothing on there statement on the basis of which it can be said that there was any dispute between both the parties. Thus, in the present case, there is no possibility of falsely implicating the appellant. Apart from this, from the medical report of the victim girl/prosecutrix, it is well-established that sexual intercourse has been committed with the prosecutrix.
7. On a minute examination of the evidence on record, and looking to the statements of the above witnesses, it is clear that there is sufficient evidence against the appellant to hold him guilty. In my considered

view, the trial Court has rightly convicted the appellant.

8. Consequently, the appeal has no merit and is, therefore, dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**

Prakash