

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1315 of 2017**

- Jitu @ Jitendra Sarthi S/o Shankar Sarthi, Aged About 27 Years R/o Village Turkari Para, Police Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, police of Police Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Anil Gulati, Advocate.
For State/Respondent	:	Shri Akash Pandey, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****24/09/2021**

1. This appeal has been preferred against the impugned judgment dated 14/06/2017 passed in Special Case No.06/2016 by the learned Additional Sessions Judge, Khairagarh, District – Rajnandgaon, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 377 of the I.P.C.	R.I. for 7 years
U/s 506 of the I.P.C.	R.I. for 2 years
U/s 3(A), 4 of the Protection of	R.I. for 7 years

Children from Sexual Offences Act, 2012	
All sentences are directed to run concurrently	

2. Brief facts of the prosecution case are that victim (PW-11) is a boy aged about 7 years. According to the case of prosecution on 31.03.2016, the victim boy went towards the river bridge to answer the call of nature and when he did not come back in his house, the family members of the victim searched him and they called him by his name and thereafter the victim came towards them and when the victim was taking bath, he revealed that he is feeling pain in his buttock and when the family members asked him about the same, he revealed that the appellant has committed unnatural sexual intercourse with him. On the basis of above, the matter was reported vide Ex. P-1 by mother of the victim namely Hazra Khatun (PW-6). The victim boy (PW-11) was medically examined by Dr. P.S Parihar (PW-8) and his medical report is Ex. P-9. Later on statements of the victim and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed by the Police. To prove the guilt of the accused/appellant, prosecution has examined as many as 13 witnesses. No defence witness has been examined by the appellant. Statement of the appellant under Section 313 of the Cr.P.C. was recorded, wherein he has pleaded innocence and false implication.
3. After completion of trial, the trial Court has 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 the appellant is innocent and is falsely implicated in the present case. The trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. He further submits that in this case none of the prosecution witnesses including complainant and his family members have supported case of the prosecution despite of that trial Court has convicted the appellant only on the basis of medical report of the victim boy. It is further argued by the Counsel that though according to the medical report and opinion given by Dr. P.S. Parihar (PW-8), unnatural sexual intercourse was done with the appellant but the Doctor himself has admitted the fact that this injury may be caused accidentally while attending call of nature. There is no evidence available on record which shows that the appellant has committed the alleged unnatural sexual intercourse with the victim boy. Therefore, the conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the record available, statement of the witnesses and other annexed documents minutely.
7. There is no dispute on the point that at the time of alleged incident, the victim boy (PW-11) was aged about 7 years. With regard to the alleged incident, the victim boy in his Court statement has not supported the case of the prosecution and turned hostile. He categorically deposed that nothing had happened to him. His mother Hazra Khatun (PW-6)

who lodged the FIR has also not supported case of the prosecution. Father of the victim boy namely Mukhtar Aalam (PW-2), neighbours Mohd. Ayub (PW-10) & Yahiya Yazı (PW-12) have also not supported case of the prosecution. Hazra Khatun (PW-6) mother of the victim has categorically deposed that on the date of incident, a dispute took place between victim boy and the appellant and she lodged a report for the same. She further deposed that no unnatural sexual intercourse was done with the victim boy.

8. Dr. P.S. Parihar (PW-8) who examined the victim boy deposed that at the time of medical examination, it was found that there was swelling and redness in the anus of the victim boy and it was also ruptured. According to the opinion given by Dr. P.S. Parihar (PW-8), unnatural sexual intercourse was committed with the appellant but, the Doctor has categorically admitted the fact that at the time of attending call of nature if a person seats in any pointed object such injury may cause.
9. On minute examination of the available evidence, it makes clear that neither the victim boy nor any other witnesses including his parents has supported case of the prosecution. The conviction of the appellant is based upon the statement of Doctor P.S. Parihar (PW-8) and his medical report Ex. P-9. Since, the Doctor has admitted the fact that the said injury of the victim boy may be caused by seating on any pointed object, therefore, without the support of the victim boy or any other corroborative evidence it can not be concluded that unnatural sexual intercourse has been done with the victim boy. For the sake of argument, if it is assumed that unnatural sexual intercourse has been done with the victim boy, even though, there is no evidence available

on record which shows that the appellant has committed the alleged act. Therefore, the conviction of the appellant is not in accordance with the evidence available on record and is not sustainable.

10. Consequently, the appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him.
11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge