

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 736 of 2019**

- Rakesh, S/o Siyaram Harijan, aged about 35 Years, R/o Hamlohara, Police Station Bada, Tahsil Baberu, District- Aarang, Uttar Pradesh.

----Appellant**Versus**

- State of Chhattisgarh, Through Police Station Khursipar, District- Durg, Chhattisgarh.

---- Respondent

For Appellant	Shri Mirza Kaiser Baeg, Advocate. '
For State	Shri Afroz Khan, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

10/11/2021

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 09.04.2018 passed by the Additional Sessions Judge, FTC, Durg, District Durg, C.G. in Special Criminal Case No.167/2016, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 363 of Indian Penal Code	Rigorous Imprisonment for four years and fine of Rs.100/-, in default of payment of fine amount to undergo additional imprisonment for two months
Under Section 366 of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.100/-, in default of payment of fine amount to undergo additional imprisonment for two months

Under Section 10 of Prevention of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for five years and fine of Rs.100/-, in default of payment of fine amount to undergo additional rigorous imprisonment for two months
---	--

(All sentences were directed to run concurrently)

2. Case of the prosecution, in brief, is that on 27.11.2016 the prosecutrix, 7 years old studying in Class-I, returned to her house from school crying and on being enquired by her mother, she informed that while she was returning from school, one person forcibly took her on bicycle to Stadium at Khursipar, forced her to remove her underwear, and then he took out his male organ on which she started crying. Thereafter, he threw her on the floor, kissed her, slapped her and then took her on bicycle near IMI Hospital behind Sahu Sadan where he left her alone for attending the call of nature and thereafter, having left his tiffin in IMI Hospital, he dropped her on the way to her house. On report being lodged to the above effect offence under Sections 363, 366A and 354 of IPC was registered against unknown person. However, next day the accused/appellant was seen near the house of the prosecutrix, who was identified by her. During investigation, on 28.10.2016 the prosecutrix identified the appellant in the test identification parade vide Ex.P/4, medical examination of the prosecutrix was conducted vide Ex.P/10A, Dakhil-Kharij register of the primary school was seized from Head Mistress Ku. Shahnaz Begam vide Ex.P/14, the prosecutrix was examined by the radiologist vide Ex.P/16, spot map Ex.P/9 was prepared and statements of the witnesses were recorded. After completing investigation, charge sheet was filed under Sections 363, 354(A)(1) and Sections 11(1) & 12 of

Protection of Children From Sexual Offences Act against the appellant.

3. The trial Court framed charges under Sections 363, 366A, 354 of IPC and Section 10 of the POCSO Act against the appellant, which were abjured by him and he prayed for trial. The prosecution examined 10 witnesses in support of its case i.e. PW-1 Smt. Rukhmani Mahanand, PW-2 Prosecutrix, PW-3 Smt. Sarita Singh, PW-4 Jyoti Yadav, PW-5 Vivek Chandravanshi, PW-6 Sehnaz Begam, PW-7 Dr. Rachna Dave, PW-8 I.A. Kherani, PW-9 S.L. Manjhi and PW-10 Dr. Pushpanju Klimis. Statement of accused was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.
4. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
5. Learned counsel for the appellant submits that the impugned judgment has been passed by the trial Court ignoring the contradictions and omissions in the statements of the witnesses. The story put forth by the prosecution is highly improbable as despite having opportunity, the prosecutrix did not raise any hue and cry to attract the attention of the passers-by. From the cross-examination of the prosecutrix, it is clear that she is a tutored witness. It is submitted that even the identification of the accused has not been properly done by the prosecution. Therefore, the impugned judgment is liable to be

set aside and the appellant be acquitted of the charges levelled against him.

6. On the other hand, learned State counsel supporting the impugned judgment submits that the trial Court after due appreciation of the entire evidence available on record has rightly convicted and sentenced the appellant which calls for no interference by this Court.
7. Heard learned counsel for the parties and perused the material available on record.
8. So far as age of the prosecutrix is concerned, as per Dakhil-Kharij register of the primary school seized by the police vide Ex.P/14, the age of the prosecutrix is mentioned as 22.4.2010. Head Mistress of the said school Ku. Shahnaz Begam (PW-6) has proved the entry made in the said register and her evidence to the above effect remained uncontroverted in the cross-examination.

The prosecutrix (PW-2) has stated herself to be 08 years old in her deposition. Her mother Rukhmani (PW-1) states that date of birth of the prosecutrix is 22.4.2010 and this fact remains unchallenged in the cross-examination.

Further, the investigating officer Vivek Chandravanshi (PW-5) got the prosecutrix examined by a radiologist for ascertaining her age and as per x-ray report of the prosecutrix vide Ex.P/16, her age has been opined to be between 08 & 09 years by the radiologist. The above evidence also remains unchallenged in his cross-examination.

Thus, from the aforesaid unrebutted oral and documentary evidence available on record, this Court is of the opinion that the trial Court was fully justified in holding that on the date of incident the

prosecutrix was below 12 years of age.

9. The prosecutrix (PW-2) has categorically stated in her deposition that on the date of incident she was forcibly taken by the appellant on bicycle, she was forced by him to remove her underwear which was refused by her and she started crying. Thereafter, the appellant kissed her and also slapped her and then took her on his bicycle and dropped her on the way to her house. She has further stated that the appellant showed her his male organ. In cross-examination, she has denied the suggestion that she is stating at the instance of her mother or the neighbourers.
10. PW-1 Smt. Rukhmani Mahanand, mother of the prosecutrix, supporting the deposition of the prosecutrix has stated that she was informed by the prosecutrix that it is the accused/appellant who forcibly took her on bicycle and tried to outrage her modesty. In cross-examination, she remained firm and the defence could not elicit anything which could render her evidence untrustworthy and doubtful. Though, the defence has raised a plea of false implication due to old enmity between the families of the appellant and the prosecutrix but no such evidence has been adduced by the defence either by way of cross-examination of the prosecution witnesses or the defence witnesses.
11. So far as identification of the accused is concerned, as per Ex.P-4, the test identification parade proceedings, the prosecutrix has duly identified by the appellant as perpetrator of the crime. Independent witness PW-3 Sarita Singh has also stated that on the next date of the incident when the appellant came in front of their house, the prosecutrix identified him as the person who tried to outrage her modesty. Even in

the Court, the prosecutrix identified the appellant as the person who committed the crime. Thus, identification of the appellant has duly been proved by the prosecution.

12. On the basis of aforesaid discussions, in view of the unrebutted evidence of the prosecutrix which finds due corroboration from the promptly lodged FIR Ex.P-1, the evidence of her mother PW-1 Smt. Rukhmani, the independent witness Sarita Singh and the Investigating Officer PW-5 Vivek Chandravanshi, it stands proved beyond all reasonable doubt that it is the appellant who abducted the minor prosecutrix from the lawful guardianship of her parents and by using criminal force, outraged her modesty. Being so, conviction of the appellant under Sections 363, 366 of IPC and 10 of POCSO Act and the sentence imposed thereunder by the trial Court are based on just and proper appreciation of the evidence warranting no interference by this Court.

13. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-
Gautam Chourdiya
Judge