

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 889 of 2015**

Ghanshyam Yadav S/o Hriday Yadav, aged about 21 years R/o Village Semariya, P.S. Palari, District Balodabazar-Bhatapara (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through: The Police Station, Palari, District Balodabazar (C.G.).

---- Respondent

For Appellant	:	Ms. Pushpalata Khalkho, Advocate
For Respondent	:	Mr. Priyanshu Gupta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

05/02/2021

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 30/06/2015 passed in Special Sessions Trial No. 16/2015 by the Second Additional Sessions Judge, Balodabazar, whereby the Appellant has been convicted under Section 376 (2) (J) of the IPC and Section 4 of the Protection of Children from Sexual Offences (henceforth 'the Act') and sentenced to undergo RI for about 10 years with fine of Rs. 5000/- with default stipulation.
2. In this case, the age of the victim girl (PW2) is about 6 years. Leela Bai (PW1) has lodged the FIR. According to the case of the prosecution on 31/01/2015 in the evening, mother of the victim girl had gone somewhere to collect cow dung (Gobar). Her daughter was present at her house. After returning from there, she called her daughter and

saw that her daughter was coming out from the house of one Pappu in weeping condition. She asked her why she is weeping, then the victim girl told that Lalit and she was watching T.V. in the house of Pappu and Pappu took her inside another room. There, he removed her clothes and lied upon her. Leela Bai, thereafter removed her underwear and saw that bleeding was coming out from the private part of the victim girl. The matter was reported and on that basis offence has been registered. The victim girl was medically examined by Dr. Smt. N. Bajpai (PW9). Statements of witnesses and the victim girl were recorded under Section 161 of the Cr.P.C. After investigation, a charge-sheet has been filed. Trial Court framed the charges. Statement of the appellant was recorded under Section 313 of the Cr.P.C, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial court has wrongly convicted the appellant without there being any clinching and sufficient evidence available on record. He further submits that from the statement of the victim girl and medical report of the victim girl, it is well established that no penetration was done by the appellant to any extent, therefore, the conviction of the appellant is not sustainable. He further submits that if the entire case of the prosecution is taken as it is, yet the act committed by the appellant would fall within the ambit of Section 9 (m) aggravated Sexual assault of the Act, which is punishable under Section 10 of the Protection of

Children from Sexual Offence Act, and the maximum punishment for that is 7 years. In the present case, the appellant is in jail since 02/02/2015. Meaning thereby, he has already undergone about 6 years and 6 months, therefore, he prays that treating the offence under Section 9 (m) of the Act, the sentenced awarded to the appellant may be reduced to the period already undergone by him.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely as well as the statement of the witnesses.
7. In her Court statement, the victim girl (PW2) has deposed that on the date of incident, the appellant had taken her to his house for watching TV. The appellant thereafter removed her underwear and lie down upon her. She has categorically stated that the appellant had neither removed his pant at that time. Contrary to this, Leela Bai (PW2), mother of the victim girl has deposed that the victim girl told her that the appellant inserted his penis inside her private part, and when she saw the private part of the victim girl, bleeding was coming out. Immediately after the incident, the victim girl was medically examined by Dr. Smt. N. Bajpai (PW9). Her report is Ex.P-1. At the time of examination, it was found that hymen was intact and there was no injury in the vagina. There was slight redness beside the vagina. This witness has admitted the fact that this redness may be caused due to infection or itching.

8. On minute examination of above evidence, it makes clear that as stated by the victim girl, the appellant only removed her underwear and lie down upon her. At that time, the appellant had not removed his pant. Though mother of the victim girl had stated that bleeding was coming out from the private part of the victim girl, it is not supported by the doctor or medical report of the victim girl. According to the medical report, slight redness was found beside the vagina and the doctor has opined that the same may be caused due to infection or itching.
9. Looking to the above, it is well established that no penetration, to any extent was done with the victim girl. Therefore, the act of the appellant under Section 376 (2) (J) of the IPC and Section 4 of the Act is not sustainable and the act of the appellant would fall within the ambit of Section 9 (m) of the Act which is punishable under Section 10 of the Act for which the minimum sentence is 5 years and maximum sentence is 7 years.
10. In the present case, the appellant has already undergone about 6 years. He is of tender age and there is no previous antecedent against him. Looking to the above I am of the view that converting the conviction of the appellant to Section 9 (m) of the Act, the jail sentenced awarded to him is reduced to the period already undergone by him.
11. Consequently, the appeal is partly allowed. The conviction of the Appellant is converted to Section 9 (m) of the Protection of Children from Sexual Offence, Act 2012 and he is sentenced to the period already undergone by him. The fine sentence is affirmed.

12. It is reported that the Appellant is in jail. He be released forthwith, if not required in any other case.
13. 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

Rahul