

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 418 of 2015

- Rajuram Sahu, S/o Late Shri Shivkumar Sahu, aged about 25 years, R/o Khairdigi, Police Station Gurur, District Balod, Chhattisgarh.

---- Appellant

Versus

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

---- Respondent

For Appellant	:	Smt. Usha Chandrakar & Shri B.P. Singh, Advocates.
For State/Respondent	:	Shri Priyanshu Gupta, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

01/03/2021

1. This appeal has been preferred against the impugned judgment dated 13/12/2014 passed in S.T. No.68/2013 by the Second Additional Sessions Judge, Balod, District – Balod, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 342 of the I.P.C.	R.I. for two months.
U/s 376/511 of the I.P.C.	R.I. for 7 years and fine amount of

	Rs.200/-
U/s 6 of POCSO Act	R.I. for 10 years and fine amount of Rs.200 with default stipulations.
All sentences to run concurrently.	

2. In the present case, on the date of incident, age of the prosecutrix (PW-2) was about 5 years. According to case of the prosecution, on 13/5/2013 Smt. Keshar Bai (PW-1) i.e. mother of the prosecutrix lodged F.I.R. vide Ex.P-1 wherein it was alleged that on 13/5/2013 at around 9:00 A.M. appellant came to her house, induced the prosecutrix by giving chocolate to her and took her with him. After some time when Keshar Bai (PW-1) came to the house of the appellant, she found that main door was opened and after hearing murmuring and cry of prosecutrix, she entered into the room and saw that underwear of her daughter was lying on the floor. Then prosecutrix told about the wrongful act committed by the appellant with her. After returning from there, Keshar Bai (PW-) told about the incident to her brother-in-law Satyanarayan (PW-3) and other persons. Thereafter, matter was reported. Firstly, on 14/5/2013, prosecutrix was medically examined by Dr. Rashmi Aabha Minz (PW-5). Thereafter, on 15/5/2013, she was again examined by Dr. Pragya Suryawanshi (PW-9). Statement of the 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 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 appellant is innocent and is falsely implicated in the present case. They further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. Referring to the statements of Dr. Rashmi Aabha Minz (PW-5) and Dr. Pragya Suryawanshi (PW-9), it is argued that both the doctors who examined the prosecutrix have given contradictory opinion and this fact was not appreciated by the trial Court. There are material contradictions and omissions occurred in the statement of the prosecutrix and Keshar Bai (PW-1) and ignoring the said, trial Court has wrongly convicted the appellant. Therefore, conviction of the appellant is not sustainable.
5. I have heard learned Counsel appearing for the parties, perused the record and statement of the witnesses minutely.
6. There is no dispute on the point that, at the time of incident, age of the prosecutrix (PW-2) was about five years. With regard to the alleged incident, prosecutrix has deposed that on the said date prosecutrix was playing in verandah of the house, at that time appellant came there and called her, gave her chocolate and took her with him in his house. Thereafter, appellant made her lay on mat and committed alleged act of sexual intercourse. In paragraph 7 of her cross-

examination, she has further deposed that when her mother came at the house of the appellant, at that time she was in a room and from there her mother took her to her house. On being asked by the trial Court, prosecutrix has deposed that appellant took off her clothes and laid over her. Statement of the prosecutrix was duly corroborated by her mother Keshar Bai (PW-1), who also deposed that appellant took her daughter saying that he would give her chocolate. After 10-15 minutes when her daughter did not return, then she herself went to the house of the appellant and when her daughter saw her, she (prosecutrix) started crying. On being asked by her mother, she told about the wrongful act committed by the appellant with her. She further deposed that when she reached to the house of the appellant, she saw that underwear of both appellant and prosecutrix were descended. Both the above witnesses remained firm during cross-examination.

7. On a minute examination of statement of both prosecutrix (PW-2) and her mother Keshar Bai (PW-1), it is well-established that on the date of incident, appellant took the prosecutrix with him saying that he would give her chocolate. Also, when mother of the prosecutrix Keshar Bai (PW-1) had gone to the house of the appellant, she saw that underwear of both appellant and prosecutrix were descended. From the perusal of medical reports of the prosecutrix i.e. Ex.P-9 & Ex.P-22, it is well-established that, at the time of examination of prosecutrix, abrasion in the private part and swelling on labia majora of the prosecutrix was found. Thus, from the medical reports of the prosecutrix, it is established that aggravated penetrative sexual assault has been committed by the appellant with the prosecutrix. Thus, 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