

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 46 of 2017

- Kapoorchand @ Chhotu Chandraker S/o Shri Sodhiram Aged About 45 Years R/o Durga Nagar, Pandari Tarai, Police Station Pandari, Tahsil And District Raipur, Civil And Revenue District Raipur, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Mahila Thana, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Manoj Kumar Sinha, Advocate.
For Respondent/State	:	Mr. Akash Pandey, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

12/07/2021

1. By the impugned judgment dated 07/12/2016 passed in Special S.T. No. 726/2015 by the learned Special Judge under POCSO Act, Raipur, District Raipur(C.G.), the Appellant has been convicted for the offence punishable under Section 376, R/w Section 511 of the IPC and sentenced to undergo rigorous imprisonment for 10 years, and to pay fine of Rs. 2,000/-, under Section 294, under Section 506 Part-II & 323 of the IPC and sentenced to undergo rigorous imprisonment for 3 months, and to pay fine of Rs. 500/- and under Section 7/8 R/w Section 18 of the POCSO Act and sentenced to undergo rigorous imprisonment for 3 years, and to pay fine of Rs. 1,000/- respectively, with default stipulations.

2. In this case, the Appellant is father of the prosecutrix. According to the case of prosecution on 10.02.2015 at around 10 PM, when mother of the prosecutrix was not in her home, the Appellant commit sexual harassment with the prosecutrix and also commit attempt to rape and when she objected, the Appellant assaulted her due to which she sustained injuries on her body. She narrated the entire incident to her mother Meera (PW-2). Thereafter, a written report was submitted by the prosecutrix. On the basis of said report, offence has been registered against the Appellant. Later on statement of the prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed and the Trial Court has framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 8 witnesses. No defense 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 his innocence and false implication in the matter.
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 would submit that without being any clinching and reliable evidence available on record the Trial Court has convicted the Appellant. He further submits that there are material contradiction and omissions occurred in the statement of the witnesses, therefore, their statements are not reliable. From the evidence available on record, it is well established that there was a previous dispute between the Appellant, prosecutrix and her mother, therefore, there is a possibility of false implication of Appellant in the

present case. The Counsel lastly submits that from the medical report also, there was no injury found on private part of the prosecutrix, therefore, conviction of the Appellant is not sustainable.

5. Learned Counsel appearing for the State opposed the appeal and supported the impugned judgment of conviction.
6. I have heard learned Counsel appearing for the parties and perused the record to assess the correctness of the impugned judgment of conviction. I have also gone through the statements of the witnesses.
7. There is no dispute on the point that prosecutrix (PW-1) is a real daughter of the Appellant and Meera (PW-2) is a wife of the Appellant. There is also no dispute on the point that at the time of alleged incident, the prosecutrix was aged about 15 years. With regard to the incident, in her Court statement prosecutrix (PW-1) supported the entire case of prosecution and categorically stated that at the time of incident, the Appellant in drunken condition abused her and tried to commit rape upon her, she further stated that the Appellant had also torn her clothes and took off her undergarments too. This witness remain firmed during her cross-examination. Her statement is duly corroborated by her mother Meera (PW-2), she also deposed that on the date of incident when she reached her home, she saw that the prosecutrix was fell down in unconscious condition and when she became conscious, she narrated the incident to her. This witness is also remain firmed during her cross-examination though there are some material contradiction and omissions occurred in her statement, but they are not material.

8. From the evidence available on record and looking to the entire case of prosecution there is sufficient evidence available on record against the Appellant and the crime has duly proved against him. Thus, the Trial Court has rightly convicted the Appellant.
9. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge