

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1089 of 2015**

Rekhram Jangde S/o Feruram jangde, aged 40 years R/o Village Cheecha,
Police Station Mandir hasaud Civil & Revenue District- Raipur (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through Police Station Mandirhasaud, District Raipur
(C.G.)

---- Respondent

For Appellant	:	Mr. Mirza Kaiser Baeg, Advocate
For Respondent	:	Mr. Priyanshu Gupta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****02/03/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 23/05/2015 passed in Sessions Trial No. 752/2014 by the Additional Sessions Judge (Fast Track Court), Raipur (C.G.), whereby the Appellant has been convicted under Sections 376 & 506 of the IPC and Section 6 of the Prevention of Children from Sexual Offence, Act 2012 and sentenced to undergo RI for 10 years with fine of Rs. 2000/-, RI for 2 years with fine of Rs. 200/- and RI for 10 years with fine of Rs. 2000/-, respectively, with default stipulations.
2. In this case the age of the Prosecutrix was about 14 years 10 months at the time of the incident. The appellant is father of the Prosecutrix. According to the case of the prosecution, the appellant is second husband of the mother of the Prosecutrix. After birth of the Prosecutrix, her mother had gone to her first husband. When mother of the Prosecutrix had left the Prosecutrix, then the appellant also performed

second marriage and he is having four children from her second wife. Thereafter, grand-father of the Prosecutrix was taking care of the Prosecutrix. When she became younger, the appellant brought her with him 2 years before the incident. On 16/06/2014, a report was lodged by the Prosecutrix against the appellant alleging therein that on 12/06/2014 at about 10;00 pm, the appellant came in the house and committed forcible sexual intercourse with her. The appellant also threatened her not to disclose this fact to anyone. It was also alleged that before the incident also, the appellant had committed sexual intercourse with her 3-4 times. On 16/06/2014, when grand-father of the Prosecutrix came then she narrated the incident to him and thereafter the report was made. The Prosecutrix was medically examined by Dr. Smt. P. Chouhan (PW1). Her report is Ex.P-1. Statements of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 9 prosecution witnesses have been examined. 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. 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 sufficient and clinching evidence. Referring to the statement of the Prosecutrix (PW3), particularly paragraphs 9, 10 & 16, it has been argued that the

Prosecutrix herself had admitted that nothing as alleged was done with her. There was some dispute going on between her grand-father and the appellant. On the date of incident also, a dispute took place between them, and therefore on the behest of her grand-father she had made the said report, but ignoring these facts the trial Court, without there being any other evidence, has wrongly convicted the appellant. Further, referring to the statement of Sanjay Banjare (PW7), Sarpanch, it has been argued that at the time of village meeting, the appellant had consumed heavy liquor and he was not able to understand properly, and when the questions were put to him he was only replying yes, therefore, in that condition if any confession was made by the appellant, it cannot be called free mind confession, and on this fact conviction cannot be sustained.

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 as well as statements of the Prosecutrix and witnesses minutely.
7. In her Court statement, the Prosecutrix (PW3) has deposed that the appellant had committed forcible sexual intercourse with her 10 times. He also threatened her to kill, if she discloses this fact to anyone. Later on, the appellant himself was disclosing in the village that he had performed Chudi marriage with the Prosecutrix and had committed sexual intercourse with her. When grand-father of the Prosecutrix came to know

this fact, then she made the report in the police station. During cross-examination, this witness has admitted that from her birth, she was living with her grand-father. Before two years of the incident, the appellant came to her grand-father for taking the prosecutrix. At that time, some dispute took place between the appellant and her grand-father, then her grand-father told the appellant that he has been taking care of the Prosecutrix since her birth, therefore, he will not let go the Prosecutrix with the appellant. But, the appellant was saying that the Prosecutrix is his daughter and he will take her. She further admitted that at that time, she was not willing to go with the appellant, but the appellant had forcibly taken her with him. She further admitted that her grand-father used to come village and was insisting to take the prosecutrix with him. On the date of incident also, her grand-father came there and a dispute took place between the appellant and her grand-father. In para 8 of her cross-examination, she further admitted that her grand-father had told her that her father (appellant) always quarreled and she should told this to village Sarpanch then the villagers will permit her to go with him. In para 9 of her cross-examination, this witness has further admitted that she was taught to say in the above manner by her grand-father. Before the village meeting also, she narrated the above story as told by her grand-father to the villagers. In para 10 of her cross-examination, she further admitted that the appellant had consumed heavy liquor in the village meeting and whatever questions were put to him, he was replying only yes. In para 16, she has categorically admitted that no such type incident as alleged above, was done with her and she had made report on the behest of her grand-father. She further admitted the fact that from beginning she was

willing to reside with her grand-father and presently she is living with her grand-father. Though Heeraman (PW4), grand-father of the Prosecutrix has not supported the above statement of the Prosecutrix, Sanjay Banjare (PW7), Sarpanch in paras 9 & 10 of his statements has admitted that when Heeraman (PW4) called the village meeting, at that time the appellant had consumed heavy liquor and whatever questions were put to him, he was replying only yes. He further admitted that at that time the appellant was not able to understand what is right or wrong.

8. On minute examination of the above evidence, it makes clear that though in her examination-in-chief the Prosecutrix has deposed according to the case of the prosecution, during her cross-examination, particularly in paragraphs 9, 10 & 16, she admitted that nothing as alleged was done with her and on the behest of her grand-father, she made the report and also complained to the villagers. From beginning, she was willing to reside with her grand-father and presently she is residing with her grand-father. From the admission of the Prosecutrix (PW3) and Sanjay (PW7), it also appears that though in the village meeting the appellant has made confession about the alleged act, at that time the appellant had consumed heavy liquor and his condition was not normal to understand what is right or wrong, therefore, in that condition, if any confession has been made by him, cannot be accepted as free mind confession. Thus, the conviction of the appellant is not sustainable.
9. Looking to the evidence adduced by the prosecution, in my considered view, the trial Court has wrongly convicted the appellant.
10. Consequently, the appeal is allowed. The judgment dated 23/05/2015

passed in Sessions Trial No. 752/2014 is set-aside. The appellant is acquitted from the charge framed against him. It is reported that the accused/appellant is in jail. He be released forthwith, if not required in any other case.

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