

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 293 of 2017

- T. Y. Jams, S/o Yohann, Aged About 42 Years, R/o Vellure House, Keral, At Present Subhash Nagar, Shiv Singh Colony, Power House Bhilai, Bhilai, District Durg, Chhattisgarh.

---- Appellant

Versus

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

---- Respondent

For Appellant	:	Shri Vineet Kumar Pandey, Advocate.
For State/Respondent	:	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/12/2021

1. This appeal has been preferred against the impugned judgment dated 27.07.2015 passed in Special Sessions Trial No. No.12/2014 by the Additional District and Sessions Judge, (F.T.C.), Durg, District – Durg (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 6 of Protection of Children from Sexual Offences Act, 2012	R.I. for 10 years and fine amount of Rs.5,000/- with default stipulation.

2. In the present case, at the relevant time, age of the prosecutrix (PW-1) was about 11 years. According to the entries made in the birth certificate i.e. Ex.P-6, date of birth of the prosecutrix is 29.11.2001. According to case of the prosecution, mother of the prosecutrix namely Sahida Khatun (PW-7) lodged a report vide Ex.P-9 on 17.02.2014 against the appellant alleging that from the last two years, appellant had developed unnatural sexual relationship with her daughter (prosecutrix), he also committed sexual intercourse with her daughter twice. On the basis of the said report, offence has been registered. Statement of the prosecutrix (PW-1) and other witnesses were recorded under Section 161 of the Cr.P.C. Prosecutrix (PW-1) was medically examined by Dr. Nirmala Yadav (PW-12). Her report is Ex.P12. After completion of the investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the accused/appellant, prosecution has examined as many as 12 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 in the matter.
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 trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. Statements of the prosecutrix (PW-1) and her parents Sadik Hussain (PW-6) and Sahida

Khatun (PW-7) i.e. father and mother of the prosecutrix respectively are not reliable. There are material contradictions and omissions occurred in their statements. Medical report of the prosecutrix does not support the case of the prosecution. Therefore, conviction of the appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses, evidence adduced by the prosecution and other annexed documents available on record minutely.
7. With regard to the age of the prosecutrix, in her Court statement she has deposed that she is aged about 11 years. Parents of the prosecutrix have also deposed that age of her daughter is 11 years. According to the father of the prosecutrix i.e. Sadik Hussain (PW-6), date of birth of her daughter (prosecutrix) is 29.11.2001. The above oral statements of these witnesses were not duly rebutted during their cross-examination. Further, on perusal of birth certificate (Ex.P-6), date of birth of the prosecutrix is mentioned as 29.11.2001. Thus, looking to the oral and documentary evidence, it is well-established that at the time of alleged incident, age of the prosecutrix was about 11 years. Therefore, findings of the trial Court in this regard is in accordance with the evidence available on record.
8. With regard to the alleged incident, prosecutrix (PW-1) in her Court statement has supported the entire case of prosecution. She deposed

that appellant is her neighbour and she used to go to his house for taking tuition from her daughter. She further deposed that for the last two years, appellant has been continuously developing unnatural sex with her in the gap of 8-10 days. She further deposed that appellant used to lick her vagina and asked her to take his penis in her hand. She also deposed that appellant had tried to penetrate his penis in her vagina twice. Statement of the prosecutrix (PW-1) is duly corroborated by the statements of her parents i.e. Sadik Hussain (PW-6) and Sahida Khatun (PW-7) i.e. father and mother of the prosecutrix respectively. Both have deposed that they came to know about the incident, when her daughter told them about the same. Then the matter was reported. Though there are some contradictions and omissions occurred in their statements but they are not material. On the point of commission of unnatural sex, prosecutrix remained firm during her cross-examination. There is nothing on record on the basis of which it can be said that there was previous enmity between the appellant and parents of the prosecutrix or prosecutrix herself. Therefore, it cannot be said that appellant has been falsely implicated in the case.

9. Looking to the entire evidence adduced by the prosecution, in my considered view, the trial Court has rightly convicted the appellant. I do not find any infirmity in the order of the trial Court. Thus, conviction of the appellant is affirmed and appeal is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge