

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 584 of 2015

- Suresh Jhariya S/o Gajanand Jhariya Aged About 30 Years R/o Village- Chartola, Police Station- Gadhi, District- Balaghat M.P. At Present Resident of Village- Bazar Para, Chilphi, Police Station- Chilphi, District- Kabirdham, Chhattisgarh.

---- Appellant

Versus

- The State of Chhattisgarh, through Station House Officer, Police Station- Chilphi, District- Kabirdham, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. C.R. Sahu, Advocate.
For State/Respondent	:	Mr. Devesh Chandra Verma, Government Advocate.

Hon'ble Shri Justice Arvind Singh Chandel
Hon'ble Shri Justice Deepak Kumar Tiwari

Judgment on Board

Per Arvind Singh Chandel, J.

06.12.2021

1. This appeal has been preferred against the judgment dated 08.08.2014 passed in Special Sessions Case No.61/2014 by Fast Track Court of learned Additional Sessions Judge and Special Judge under Protection of Children from Sexual Offences Act, 2012, Kabirdham (Kawardha) (C.G.) wherein, the Appellant has been convicted for the offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and sentenced to undergo RI for 14 years and to pay fine of Rs. 1,000/- and RI for 10 years and to pay fine of Rs. 1,000/- respectively, with default

stipulations.

2. In this case, at the relevant time, age of the prosecutrix was about 10 years. According to the entries of *Dakhil Kharij Panji* Ex. P-16, her date of birth was registered as 06.07.2004. According to the case of prosecution, on 08.05.2014 at around 10 AM, near gurdwara (a Sikh shrine) of village Chilphi, the prosecutrix went for collecting jackfruits, allegedly, the Appellant came there caught hold her hands and dragged her to shambles thereafter, he removed her clothes and committed forcible sexual intercourse with her. The incident was witnessed by Sundar Bai (PW-4). On the same day, the matter was reported by the prosecutrix vide Ex. P-3. On the basis of said report, offence has been registered against the Appellant. The prosecutrix was medically examined by Dr. S. Ahluwalia (PW-9). Her report is Ex. P-11-A. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges against the Appellant. To robe the Appellant in the crime-in-question, the prosecution has examined as many as 9 witnesses. In the statement of the Appellant recorded under Section 313 of Cr.P.C, he has pleaded his innocence and false implication in the matter, however, no defence witness was examined by the Appellant.
3. After completion of trial, Trial Court convicted and sentenced the Appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

4. Learned Counsel appearing for the Appellant submits that the Appellant has wrongly convicted by the Trial Court without there being any clinching and reliable evidence available on record. On perusal of statement of Sundar Bai (PW-4), it appears that due to some previous enmity, the Appellant has falsely been implicated by Sundar Bai (PW-4) through prosecutrix (PW-3), therefore, the conviction of the Appellant is not sustainable.
5. On the contrary, learned State Counsel opposed the arguments advanced by learned Counsel for the Appellant and supported the impugned judgment of the Trial Court.
6. We have heard learned counsel appearing on behalf of the parties and perused the record minutely. We have also gone through the statements of the witnesses and other material available on record.
7. There is no dispute on the point that at the time of alleged incident, the prosecutrix was aged about 10 years. According to the entries of *Dakhil Kharij Panji* Ex. P-16, her date of birth was registered as 06.07.2004 which has not been disputed by learned Counsel for the Appellant during course of argument.
8. With regard to the incident, in her Court statement prosecutrix (PW-3), deposed that at the time of incident when she went for collecting jackfruits near gurdwara at that time the Appellant came there caught hold her hands and dragged her to shambles thereafter, he removed her clothes and committed forcible sexual intercourse with her. She further

deposed that at that time, one Taylor aunt (Sundar Bai PW-4) came there and by seen her, the Appellant fled away from the spot. Immediately after, she went to her house and narrated the entire incident to her elder father and thereafter the matter was reported. The above statement of this witness has duly corroborated by Sundar Bai (PW-4). Sundar Bai (PW-4) has deposed that at the time of incident, she saw that inside the dilapidated gurdwara, the Appellant was committing forcible sexual intercourse with the prosecutrix and having seen her, the Appellant fled from the spot. The above statement of prosecutrix (PW-3) & Sundar Bai (PW-4) have not been duly rebutted during their cross-examinations.

9. Medical report of the prosecutrix i.e. Ex. P-11-A also shows that at the time of examination there was a redness on labia minora of the victim and also there was a cut injury and as opined by Dr. S. Ahluwalia, the prosecutrix was sexually assaulted.

10. On a minute examination of the above evidence, particularly, statements of Sundar Bai (PW-4) and the prosecutrix, which are duly supported by medical evidence (Ex. P-11-A), we are of the view that the Trial Court has rightly convicted the Appellant. Hence, we affirm the conviction of the Appellant under Section 376(2)(i) of the IPC and Section 4 of the POCSO Act.

11. As regards the sentence, it has been argued by learned Counsel for the Appellant that the Trial Court has convicted the Appellant for the offence punishable under Section 376(2)

(i) of the IPC and Section 4 of the POCSO Act and sentenced him as mentioned in paragraph 1 of this judgment. Looking to the provision contained in Section 42 of the POCSO Act, the Appellant is liable to suffer the punishment under the POCSO Act or under the IPC whichever is greater in degree and, therefore, in the instant case, since the sentence imposed upon him under the IPC is greater in degree, he shall suffer the sentence imposed upon him under the IPC.

12. However, considering the fact that the Appellant is in jail since 09.05.2014, he is aged about 30 years, he has no criminal antecedent, he is facing the *lis* since 2014 and as submitted by learned Counsel for the Appellant, the Appellant is a poor person and is a resident of a village, namely, Bazar Para, Chilphi, (C.G.), we are of the view that the ends of justice would be met if while upholding the conviction of the Appellant, his sentence is reduced from rigorous imprisonment of 14 years to rigorous imprisonment of 10 years. Ordered accordingly. Thus, he shall complete the rigorous imprisonment of 10 years only. The sentence of fine of Rs. 1,000/- imposed for the offence under the IPC is upheld.

13. Consequently, the appeal is allowed in part to the extent shown above.

Sd/-
(Arvind Singh Chandel)
Judge

Sd/-
(Deepak Kumar Tiwari)
Judge