

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 187 of 2016**

- Preamlal Markaam, S/o Ramnath Markaam, Aged About 35 Years, R/o Village Aamgaon (Aamanara), P.S. - Boraee, District – Dhamtari, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Boraee, Civil And Revenue District – Dhamtari, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Brijesh Kumar Singh, Advocate.
For State/Respondent	:	Shri Ravi Maheshwari, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board**17/08/2021**

1. This appeal has been preferred against the impugned judgment dated 17/12/2015 passed in Special Criminal Case No.34/2015 by the Additional Sessions Judge (F.T.C.), Dhamtari, District Dhamtari, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 363 of the I.P.C.	R.I. for 3 years & fine amount of Rs.500/- with default stipulations.
U/s 6 of POCSO Act,	R.I. for 10 years & fine of Rs.2,000/- with default stipulation.
Both sentences to run concurrently.	

2. In the present case, at the relevant time age of the prosecutrix (PW-1) was about 10 years and at that time she was studying in class 3. According to case of the prosecution, appellant mixed something in food item and gave it to the prosecutrix to eat. Thereafter, appellant took the prosecutrix to his house and committed sexual intercourse with her due to which there was bleeding in the private part of the prosecutrix. Then prosecutrix came to her house and told about the incident to her brother-in-law namely Laxman Singh (PW-2). Thereafter, matter was reported by Laxman Singh in the police station. On the basis of said, offence has been registered. Statement of 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 9 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. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. He further submits that victim/prosecutrix herself has admitted that she got

hurt on falling down while playing. It is also admitted by the doctor namely Dr. Asma Farheen Khan (PW-9) that injury caused to the prosecutrix could occur on falling down while playing. This fact cannot be denied that prosecutrix got hurt while she was playing. Thus, 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 record, statement of the witnesses and other annexed documents minutely.
7. Prosecutrix/victim (PW-1) in her Court statement has categorically deposed that on the date of incident, she was playing in the street. At that time appellant took her inside his house and committed forcible sexual intercourse with her, due to which her private part was bleeding. She further deposed that after the incident she came to her house and told about the incident to her brother-in-law Laxman Singh (PW-2) and her sister. On the next day, her brother-in-law lodged report in the police station. Her statement is duly corroborated by Laxman Singh (PW-2). He also deposed that when he came to the house alongwith his wife, then on seeing them, prosecutrix (PW-1) started crying. On being asked, prosecutrix told that appellant had committed forcible sexual intercourse with her. At that time, when he saw the private part of the prosecutrix, he found that her private part was bleeding. Ramjivan Markam (PW-3) has also deposed that when he reached the house of Laxman Singh, then he also saw that private part of the

prosecutrix was bleeding. Firstly, prosecutrix/victim was medically examined by Dr. Smt. Madhuri Wankhede (PW-4). According to her examination report, there was four abrasion found in the back of the prosecutrix. Later on, prosecutrix was examined by Dr. Asma Farheen Khan (PW-9). According to her report i.e. Ex.P-22, hymen of the prosecutrix was found ruptured, there was swelling and redness in vulva and it was painful on touching. According to her, there was possibility of commission of rape with the prosecutrix. Tameshwari Markam (PW-8), friend of the prosecutrix has also supported the statement of the prosecutrix and deposed that when they were playing, appellant took the prosecutrix to his house. Statement of this witness is also not rebutted during her cross-examination. Though prosecutrix has admitted the fact that she got hurt while playing, but no such suggestion was given to her which may establish that bleeding in her private part occurred due to falling while playing. Thus, there is no substance available in the argument that bleeding of private part occurred while playing. From the statement of prosecutrix/victim, which is duly corroborated by medical report as well as other evidence, it is well-established that appellant had committed forcible sexual intercourse with the prosecutrix.

8. With regard to the age of the prosecutrix, on the date of examination, she herself has stated that her age is about 10 years. Laxman Singh (PW-2) has also deposed that at the time of alleged incident, prosecutrix was studying in class 3 and she was about 10 years old. Statement of above two witnesses were not rebutted. According to the entries of *Dakhil Kharij Panji* (Ex.P-10C) also, date of birth of the prosecutrix is 10.07.2006. Looking to the entire evidence adduced by

the prosecution, documentary as well as oral, it is well-established that at the time of alleged incident, age of the prosecutrix was below 12 years. Therefore, in my considered view, the trial Court has rightly convicted the appellant.

9. Consequently, the appeal has no merit and is, therefore, dismissed.
10. 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