

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 929 of 2014**

Fanish Dhruv S/o Loknath, aged about 20 years R/o Village Sahu Para Belar,
Thana Fingeshwar, District Gariyaband (C.G.).

----Appellant

Versus

State of Chhattisgarh, through the District Magistrate, Gariyaband (C.G.)

---- Respondent

For Appellant	:	Mr. Pawan Kumar Kashyap, Advocate on behalf of Mr. Pushpendra Kumar Patel, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

06/01/2021

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 12/09/2014 passed in Sessions Trial No.24/2014 by the Additional Sessions Judge, Gariyaband (C.G.), whereby the Appellant has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Act') and sentenced to undergo RI for 10 years with fine of Rs. 1000/- with default stipulation.
2. In this case, the age of the Prosecutrix (PW8) was about 7 years at the relevant time. According to the prosecution case, on 20/03/2014 at about 12:00 hours, the Prosecutrix went to the house of her friend Ku. Ganga Dhruv for playing. At that time, Ku. Ganga was not present there. Brother of the Ku. Ganga i.e. the present Appellant gave some money to the Prosecutrix for Pepsi and eggs. Thereafter, he took the Prosecutrix inside a room and removed her undergarments. The appellant tried to

penetrate his penis inside the anus of the Prosecutrix. He also put his penis inside the mouth of the Prosecutrix. When the Prosecutrix started to cry, he left her. The Prosecutrix went to her house and narrated the entire incident to her grand parents. When the parents of the Prosecutrix came from field, the incident was told to them. On the next date, FIR (Ex.P-7) has been lodged by Peelaram (PW7), father of the Prosecutrix. The Prosecutrix was medically examined by Smt. Dr. Snehalata Humane (PW3). Her report is Ex.P-1. Statement 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. As many as 12 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. One 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 on record. He further submits that though the Prosecutrix was medically examined by Dr. Smt. Snehalata Humane (PW3) and the appellant was medically examined by Dr. P. Dandheshiya (PW10), according to the statements of doctors and medical reports of the Prosecutrix and the appellant, there was no injury on the anus of the prosecutrix as well as on the penis of the appellant. Even no swelling or any redness was found on the anus of the prosecutrix. He further

submits that looking to the age of the Prosecutrix, if the appellant had penetrated his penis into her anus, there would have been an injury, therefore, the trial Court has wrongly convicted the appellant. He further submits that there are material contradictions and omissions occurred in the statements of the Prosecutrix and other witnesses, but the trial Court has not appreciated them and ignored them. Thus, he prays that the conviction of the appellant is not sustainable.

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 statement of the Prosecutrix minutely.
7. In her Court statement, the Prosecutrix (PW8) has categorically deposed that at the time of the incident, she reached to the house of her friend Ku. Ganga and Ku. Ganga was not present there. At that time, the appellant gave her money for eggs and Pepsi. Thereafter, the appellant took her in a room and entered his penis in her anus. He also put his penis in her mouth. She further deposed that at that time, the appellant had shown some obscene videos on his mobile. She further deposed that immediately after the incident and returning to home, she disclosed the entire incident to her grand parents. This witness has remained firmed during her cross-examination. In para 5 & 6 of her cross-examination, some suggestions were made by the appellant which reveals that it has been admitted by the appellant that at the time of the incident the Prosecutrix came to his house and the appellant had shown her some

obscene videos on his mobile. From the statement of Peelaram (PW7) father of the Prosecutrix and Loksai (PW9), it is also established that immediately after the incident, the prosecutrix disclosed the entire incident to both of them. These witnesses have also remained firm during their cross-examination. There is nothing in their statement on the basis of which their statement can be disbelieved. Though as per medical report of the Prosecutrix and the appellant no injuries were found on anus and mouth of the Prosecutrix as well as on the penis of the appellant, it does not make any adverse effect. To have injuries on anus and penis, it is depended on the fact that how much force has been used for penetration. If penetration has made in her mouth, there is no possibility that the penis must have caused any injury on her mouth. Even, no suggestion has been made before the Prosecutrix that at the time of alleged mouth penetration, the Prosecutrix had bitted his penis. Looking to the above, if no injury is found on the penis, it cannot be said that the alleged act has not been done with the Prosecutrix. Apart from this, there is nothing on the record on the basis of which it can be said that Peela Ram (PW7), Ku. Trivedi (PW8) and Loksai (PW9) were having previous enmity with the appellant and they are falsely implicating the appellant.

8. Looking to the entire evidence led by the prosecution, in my considered view, the trial Court has rightly convicted the appellant.
9. Accordingly, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge