

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1216 of 2021**

- Heera Singh Kashyap S/o Late Rajendra Singh, Aged About 49 Years, R/o Barbaspur, Atal Chowk, Police Station Podi, District Koriya, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Of Police Station Podi, District Koriya, Chhattisgarh.

---- Respondent

For Appellant : Shri Anil Gulati, Advocate.

For State/Respondent : Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****29/11/2021**

1. This appeal has been preferred against the impugned judgment dated 30.09.2021 passed in Special Criminal Case No. No.40/2020 by the Additional Sessions Judge, (F.T.S.C.), Manendragarh, District – Koriya, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 354 of the I.P.C.	R.I. for 2 years and fine of Rs.500/- with default stipulations.
U/s 8 of Protection of Children from Sexual Offences Act.	R.I. for 3 years and fine amount of Rs.500/- with default stipulation.

Both sentences to run concurrently. (Fine amount has already been deposited.)

2. In the present case, age of the prosecutrix (PW-1) was about 14 years at the time of incident. According to the entries made in the Dakhil Kharij Panji, date of birth of the prosecutrix is 06.09.2007. Case of the prosecution is that on 17.06.2020 at about 10:00 AM, when prosecutrix was doing household work, at that time appellant came there and offer her to join a company. When she refused to do so, appellant caught hold her hands and pressed her breast. Thereafter, a written complaint i.e. Ex.P-1 was lodged by the prosecutrix and on the basis of the said, F.I.R. was registered vide Ex.P-2. Statement of the prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. 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 7 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. Statement of the prosecutrix (PW-1) is suspicious. There are material contradictions and

omissions occurred in the statement of the prosecutrix (PW-1) and trial Court has ignored this fact. There was enmity between the parents of the prosecutrix and the appellant and for this reason also, appellant has been falsely implicated in the case. 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 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, according to the entries made in the Dakhil Kharij Panji and as stated by the Headmaster of the school, date of birth of the prosecutrix (PW-1) is 06.09.2007, which is not rebutted during cross-examination of the witnesses. Further, during the final hearing of the case, no dispute was raised by the learned counsel for the appellant regarding age of the prosecutrix. Therefore, with regard to the age of the prosecutrix, findings of the trial Court is based upon the evidence adduced by the prosecution. Thus, it is well-established that at the time of the alleged incident, age of the prosecutrix was about 13 years.
8. With regard to the alleged incident, prosecutrix (PW-1) in her Court statement has deposed that on the date of incident, appellant came to her and demanded some money from her, and when she refused to give money, then appellant pressed her breast. Then, she rushed to

her mother and told her about the incident, then her mother came and slapped the appellant. Then appellant ran away from the spot. Mother (PW-4) of the prosecutrix has also supported the case of the prosecution and deposed that when her daughter (prosecutrix) told her about the incident, she came to the appellant and slapped him. Then appellant admitted his fault and apologized and ran away from the spot. Both the above witnesses remained firm during their cross-examination and their statements were not duly rebutted during cross-examination. There is no reason to disbelieve the statements of these above witnesses.

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