

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1316 of 2017

- Kanhaiya Tiwari @ Devendra S/o Dinesh Tiwari, Aged About 30 Years R/o Gandhi Ward, Near Shiv Mandir, Mungeli, District Mungeli Chhattisgarh. Presently Residing At infront Of Citizen School, Bajrang Nagar, Police Station Azad Chowk, Raipur, District Raipur Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Of Police Station Azad Chowk, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Anil Gulati, Advocate.
For Respondent/State	:	Mr. Ravi Maheshwari, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

19/07/2021

1. By the impugned judgment dated 18/05/2017 passed in Special Criminal Case No. 161/2016 by the learned 7th Additional Sessions Judge (FTC) Raipur, District Raipur(C.G.), the Appellant has been convicted for the offence punishable under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 10 years, and to pay fine of Rs. 5,000/-, with default stipulation.
2. In this case, at the relevant time age of prosecutrix (PW-1) was about five years. On 08.05.2016, mother of the prosecutrix Savita Turkar

(PW-2) lodged a report against the Appellant alleging therein that on 07.05.2016, when she went to pond for taking bath, her daughter was alone in her house and when she came back she saw that the Appellant was sitting beside her daughter and on 08.05.2016, the victim revealed that the Appellant has done some obscene acts with her. On the basis of report made by mother of the prosecutrix, offence has been registered against the Appellant. Later on statement of the prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed and the Trial Court has framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 12 witnesses. No defense witness has been examined by the Appellant. 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.

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 would submit that without there being any clinching and reliable evidence available on record the Trial Court has convicted the Appellant. He further submits that there are material contradiction and omissions occurred in the statement of the witnesses, therefore, their statements are not reliable. The Counsel further submits that there was a previous dispute between the Appellant, prosecutrix and her mother, therefore, there is a possibility of false implication of the Appellant in the present case, therefore, conviction of the Appellant is not sustainable.

5. Learned Counsel appearing for the State opposed the appeal and supported the impugned judgment of conviction.
6. I have heard learned Counsel appearing for the parties and perused the record to assess the correctness of the impugned judgment of conviction. I have also gone through the statements of the witnesses.
7. There is no dispute on the point that at the relevant time prosecutrix (PW-1) was aged about five years. In her Court statement, she deposed according to the case of prosecution and she categorically stated that at the time of incident, the Appellant had removed her underwear and inserted his private part into her private part. She further deposed that the Appellant had also inserted his private part into her mouth and when her mother was returned from pond, she narrated the entire incident to her mother. Savita Turkar (PW-2) mother of the prosecutrix duly corroborated the statement of the prosecutrix. Savita Sharma (PW-4) also deposed that immediately after the incident, Savita Turkar (PW-2) came to her along with the prosecutrix and the victim/prosecutrix told her that the Appellant has inserted his private part into her mouth. All the above witnesses, remain firmed during their cross-examination. Immediately after the incident report was lodged by Savita Turkar (PW-2). There is nothing in the statement of father Manish Turkar (PW-3) and mother Savita Turkar (PW-2) of the prosecutrix, which shows that there was any previous enmity between them and the Appellant, therefore, I do not found any substance in this regard.
8. From the evidence available on record and looking to the entire case of prosecution there is sufficient evidence available on record against

the Appellant and the crime has duly proved against him. Thus, the Trial Court has rightly convicted the Appellant.

9. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**

Shubham