

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1608 of 2016

- Lakheshwar @ Gandhi Netam S/o Phiratram Gond, Aged About 21 Years R/o Village Dongari, Police Station Baloda, District Janjgir Champa Chhattisgarh. **---- Appellant**

Versus

- State of Chhattisgarh, Through- The Police Station Baloda, District- Janjgir Champa, Chhattisgarh. **---- Respondent**

For Appellant : Mr. N. K. Chatterjee, Advocate
For Respondent/State : Mrs. Dipti Shukla, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

22.11.2021

1. The appellant in this appeal under Section 374 (2) of CrPC is challenging the judgment of conviction and order of sentence dated 25.06.2016 passed by Additional Sessions Judge, F.T.C. Janjgir, District- Janjgir-Champa (C.G.) in Special Sessions Case No. 31/2015, convicting the accused/appellant for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "the POCSO Act") and sentencing him to undergo rigorous imprisonment for 10 years with fine of Rs.5,000/-, in default thereafter to undergo rigorous imprisonment for 6 months.
2. Case of the prosecution in brief is that on 10.03.2015 at about 4 pm the appellant enticed away the son of the complainant, a boy aged about 18 years near Khamhan pond and the appellant forcibly inserted his male organ in his mouth.

Subsequently, being informed about the same incident by the victim to his parents, the father of the victim namely Nandkumar Yadav lodged report against the appellant under Section 377 of IPC and Section 4 & 6 of POCSO Act and after completion of investigation charge-sheet was filed against the appellant under Section 377 of IPC and Section 4 & 6 of POCSO Act.

3. Learned trial Court framed charges against the appellant u/s 6 of POCSO Act and accused appellant denied the aforesaid charge and prayed for trial.
4. Learned counsel for the appellant submits that the impugned judgment has been passed by the trial Court overlooking the material contradictions and omissions in the statements of the witnesses. No cogent evidence has been aduced by the prosecution against the appellant and looking to the medical evidence, there is nothing against the appellant. One defence witness has been examined in favour of the appellant as per his version, the appellant's family members were working as labour in the house of the complainant and due to money transaction dispute between the appellant's family and complaint party, false case has been loged against the appellant.
5. On the other hand learned State counsel supports the impugned judgment and submits that trial Court after due

appreciation of the entire oral and documentary evidence on record has rightly convicted and sentenced the appellant by the impugned judgment which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.
7. To establish its case the prosecution examined as many as 17 witnesses. Thereafter, statement of the accused appellant was recorded under Section 313 of CrPC where he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, one witness was examined by the appellant in his defence.
8. Trial Court considering material available on record by the impugned judgment, convicted and sentenced the appellant as mentioned in paragraph one of this judgment.
9. PW/1 who is victim in this case, has deposed that accused took him towards pond of the village and committed aggravated preventative assault upon him by forcibly inserting his penis into his mouth in cross examination this witness/victim denied deference suggestions of the defence. After the incident he narrated entire story to his parents. PW/2, mother of the victim has stated in her deposition that at the time of incident the victim was studying in class two, he

was on the day of incident went for watching cricket match which was being played in the village, at that point of time, the appellant enticed him and took him towards pond, where the appellant forcibly made the victim to masturbate him and also forcibly inserted his penis into the victim's mouth. PW/3 Nandkumar Yadav, father of the victim, has also deposed the same facts. Both these witnesses remained firm in their cross-examination and the defence could not elicit anything from them which could make their evidence untrustworthy or doubtful.

10. PW/4 Dr. U.K. Tiwari medically examined the victim on 11.03.2015 but did not notice any injury on the victim or any sign or sperm/pubic hair in his mouth. PW/5 Dr. S. S. Tomar medically examined the appellant on 13.03.2015 and found him fully capable of sexual intercourse vide Ex.P/6. PW/6 Umashankar Shrivastava is hearsay witness he is witness of spot map Ex.P/7 and arrest memo Ex.P/8 as also the Naksha Panchnama, PW/7 Chandrama Singh Rajput, investigating officer duly supported the prosecution case.

11. DW/1 Manohar Singh has been examined by the defence to establish that the appellant was falsely implicated in this case as some money transaction dispute between the family of the appellant and the victim. However, these witnesses in cross-examination have admitted that prior to the incident the relation between the families of the appellant and the victim

were cordial and that after the said incident there was panchayat meeting in the village.

12. In this case, it is not disputed that victim was minor, about 8 years of the age as has been stated by their parents PW2 & PW/3 which has not been challenged in the cross-examination, thus, considering the unrebutted evidence of the victim which is duly supported by the victim parents and promptly lodged FIR Ex.P/3, in absence of any evidence regarding false implication of the appellant, this Court is of the opinion that the trial Court was fully justified in upholding the guilt of the appellant under Section 6 of POCSO Act for committed aggravated penetrative sexual assault on the minor/victim. Being so, the impugned judgment is hereby affirmed. In the result the appeal being without any substance is liable to be and is accordingly, dismissed.

13. The appellant is reportedly to be in jail therefore, no need to pass orders regarding his arrest/surrender etc.

Nadim

**Sd/-
Gautam Chourdiya
Judge**