

UKHC010024052019

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.58 of 2019

Sona alias Tarandeep Appellant

Versus

State of Uttarakhand Respondent

Present:- Mr. Vikas Anand and Ms. Gyanmati Kushwaha, Advocates for the
appellant.
Mr. Pankaj Joshi, AGA for the State.

JUDGMENT

Coram : **Hon’ble Ravindra Maithani. J.**
 Hon’ble Siddhartha Sah, J.

Hon’ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to the judgment and order dated 24.01.2019, passed in Special Sessions Trial No.108 of 2017, State Vs. Sona alias Tarandeep Singh, by the court of FTC/Additional Sessions Judge/Special Judge POCSO, Udham Singh Nagar. By it, the appellant has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (“the POCSO Act”) and Sections 363, 367 IPC and sentenced as hereunder:-

- (i) Under Section 6 of the POCSO Act: to undergo rigorous imprisonment for a period of twenty years with a fine of Rs.50,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year.

- (ii) Under Section 363 IPC: to undergo rigorous imprisonment for a period of three years with a fine of Rs.20,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of three months.
- (iii) Under Section 367 IPC: to undergo rigorous imprisonment for a period of seven years with a fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months.

2. The prosecution case, as unfolded in the FIR, is as follows. On 13.02.2017, at 07:00 pm, the victim a young boy of nine years of age was playing in front of his house, when the appellant induced him to ride on his motorcycle. Thereafter, the appellant took the victim at an isolated place, muffled his mouth and committed sexual intercourse against the order of nature with him. When the victim did not reach home on time, his mother PW3 reached in that direction in search of the victim. The appellant, sensing fear, left the victim and ran away. A report of the incident was lodged by PW2, the father of the victim, on the same day at 10:35 pm, at Police Station Bajpur, District Udham Singh Nagar. Based on which, Case Crime No.69 of 2017 was lodged at the police station. The FIR Ex. A-2, Chik FIR Ex.A-7 and extracts of General Diary entry Ex.A-8. In the intervening night of 13/14.02.2017, at 01:30 a.m., the victim was medically examined by PW4 Dr. Shantanu Sarashwat at Government Hospital, Kashipur. He noted the following injuries:-

- “Peri anal abrasion (0.5 x 0.5 cm) over the superior aspect of anal opening present, that appear to be fresh in duration.
- Anal opening allows passage of one finger with pain.
- No other external injuries over the penis, scrotum and other parts of the body found.”

3. According to the doctor, possibilities of active anal penetration and sexual offence cannot be denied. The victim was examined under Section 164 of the Code of Criminal Procedure, 1973 (“the Code”) on 20.02.2017 Ex.A-1. The investigation proceeded in the matter. The Investigating Officer prepared the site plan Ex. A-4. He has also taken into custody the documents pertaining to the educational qualification, date of birth of the victim, the School Card Ex. A-9, the date of birth certificate provided by the Principal Ex. A-10, the School Admission Form Ex. A-11, the date of birth certificate issued by the school Ex. A-12 and the extracts of Transfer Certificate Ex. A-13. In all these documents, the date of birth of the victim is written as 03.05.2008. Certain articles were also sent for forensic examination, but they are not of much help to the prosecution. After investigation, charge sheet Ex. A-6 has been filed against the appellant for the offences under Sections 363, 377 IPC and Section 5(m)/6 of the POCSO Act, which is basis of the case. On 12.05.2017, charge under Sections 363, 367, 377 IPC and Sections 5(m) and 6 of the POCSO Act were framed against the appellant.

4. In order to prove its case, the prosecution has examined six witnesses, namely, PW1 the victim, PW2 the father of the victim, PW3 the mother of the victim, PW4 Dr. Shantanu Sarashwat, PW5 SI Trilok Chandra Joshi and PW6 Kharak Singh Mehra.

5. The appellant was examined under Section 313 of the Code. He has denied the prosecution case. In his defence the appellant has examined DW1 Sordool Singh. After hearing the parties, the court passed the impugned judgment and order 24.01.2019.

6. Learned counsel for the appellant did not argue on merits. According to him, the sentence of the appellant is disproportionate. Learned counsel submits that the date of incident is 13.02.2017, on the date of incident, Section 6 of the POCSO Act was as follows:-

“6. *Punishment for aggravated penetrative sexual assault.* – Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

7. It is argued that on the date of incident the minimum sentence for the offence was ten years, which could have extended to life imprisonment. It is argued that it appears that the court took note of the amended provisions of Section 6 of the POCSO Act, which would now provide for minimum sentence of twenty years post 16.08.2019 and imposed twenty years sentence. It is argued that the sentence is disproportionate; the appellant was a young boy of 19 years of age on the date of incident; his conduct in the jail is outstanding; he has no criminal record; most of his youth, he has spent in the jail; now if, he is allowed to remain in jail for twenty years, he will have no second chance to enter into the main stream of the society. Hence, the sentence may be reduced.

8. In support of his contention, learned counsel for the appellant has placed reliance on the principle of law, as laid down in the case of Kalamuddin Mohammad Isteyar Ansari alias Koail Vs. State of Maharashtra and another, 2026 SCC OnLine Bom 983. In that case, the date of incident was 09.12.2016. It was a case under Section 6 of the POCSO Act. The judgment of the trial court was of 07.12.2020, when the accused in that case was convicted and sentenced to imprisonment for life. Having considered the entirety of facts the sentence was reduced to 12 years rigorous imprisonment.

9. In fact, on 20.07.2026, when the matter was heard, learned counsel for the appellant had submitted that he has to argue on the disproportionate sentence. On that date, learned State Counsel sought time to get instructions on this aspect.

10. Today, learned State Counsel submits that the prosecution has been able to prove its case beyond reasonable doubt. The victim was a young boy of 19 years. He would submit that the appellant has no criminal history; the appellant has given physical and psychological trauma to the victim.

11. This is a criminal appeal. The facts need to be seen, though on merits no argument has been raised.

12. PW1 is the victim. He has categorically stated that on the date of incident, when he was playing out of his house, the appellant took him in the motorcycle and at an isolated place, he inserted his penis into his anus, due to which, he felt a lot of pain.

His parents came in search of him, in the meanwhile, the appellant ran away. Thereafter, according to the victim, his parents took him to the Police Station and to the doctor. His statement was recorded before a Judge. He proved his statement Ex. A-1.

13. PW2 is the father and PW3 is the mother of the victim. They both have corroborated the statement of PW1 the victim. PW2 the father of the victim tells that he has lodged the FIR Ex. A-2.

14. PW4 Dr. Shantanu Sarashwat had examined the victim on 14.02.2017 at 01:30 am. The injuries noted by the doctor have already been quoted hereinabove. This witness has proved the medical examination report Ex. A-3.

15. PW5 SI, Trilok Chandra Joshi, Investigating Officer has conducted the investigation and prepared a site plan Ex. A-4. He also arrested the appellant and took him into custody, collected the documents for educational qualification, date of birth certificate, so as to confirm the date of birth of the victim and submitted charge sheet Ex. A-6. This witness has also proved the Chik FIR Ex. A-7 and extracts of the General Diary entry Ex. A-8.

16. As per the Forensic Science Laboratory Report, the human semen was detected on the underwear of the victim.

17. PW6 Kharak Singh Mehra is the Principal of the school, where the victim had studied. He has proved various documents, including the Card of the School Ex. A-9, the date of birth certificate Ex. A-10, the birth certificate issued by the School Ex. A-11, the Admission Form Ex. A-12 and Transfer Certificate Ex. A-13.

18. DW1 Sordool Singh has stated that he did not see the appellant taking the victim on his motorcycle.

19. The victim has stated about the act that has been committed by the appellant on him. He stated that the appellant took him on a motorcycle and did sexual intercourse against the order of nature. His statement has been corroborated by PW2 his father and PW3 his mother. In fact, in the instant case, the medical examination report which has proved by PW4 Dr. Shantanu Sarashwat fully supported the prosecution case. There are injuries on the anus of the victim. Therefore, this Court is of the view that the prosecution, in fact, has been able to prove its case beyond reasonable doubt and the court below has rightly convicted the appellant for the offences under Section 363, 367 IPC and Section 6 of the POCSO Act.

20. The question of sentence gains importance. In the case of State of Madhya Pradesh Vs. Udam and others, (2019)10 SCC 300, the Hon'ble Supreme Court has discussed the aspect of sentence and has held that the sentence has to be balanced on three tests i.e. crime test, criminal test and comparative test and in paras 12 and 13 of the judgment observed as follows:-

“12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of

reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.”

21. Admittedly, in the instant case, as per prosecution case itself, the appellant was 21 years of age, when he was examined under Section 313 of the Code on 05.01.2018. He was a young boy. He has no criminal antecedents. Both, the appellant and the victim were known to each other. It has not been stated that it was a planned act.

22. Having considered the entirety of the facts, we are of the view that the interest of justice would be served if the appellant is sentenced 12 years rigorous imprisonment under Section 6 of the POCSO Act.

23. The conviction of the appellant under Section 6 of the POCSO Act is upheld. The appellant is sentenced to twelve years rigorous imprisonment and a fine of Rs.50,000/- under Section 6 of the POCSO Act. In default of payment of fine, he shall undergo further imprisonment for six months.

24. The conviction and sentence of the appellant under Sections 363 and 367 IPC shall remain unaltered.

25. The impugned judgment and order dated 24.01.2019, passed in Special Sessions Trial No.108 of 2017, State Vs. Sona alias Tarandeep Singh, by the court of FTC/Additional Sessions

Judge/Special Judge POCSO, Udham Singh Nagar is modified to the extent as aforesaid.

26. The appeal is partly allowed accordingly.

(Siddhartha Sah, J.) (Ravindra Maithani, J.)
22.07.2026

Sanjay

SANJAY KANOJIA
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