

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1152-DB-2015 (O&M)

Date of decision: 29.01.2016

Deepak Kumar

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. N.S. Swaitch, Advocate
for the appellant.

RAMENDRA JAIN, J.

CRM-24348-2015

Allowed as prayed for.

CRA-D-1152-DB-2015

The appellant-complainant has preferred the present appeal for conviction of respondent No. 2-Jagmeet Singh @ Shaunki, under Section 8 of the Protection of Children from Sexual Offences Act (for short 'the POCSO Act') and also for enhancement of his sentence under Sections 342 and 376 read with Section 511 of the Indian Penal

Code (IPC).

2. In the nutshell, the appellant-complainant got recorded his statement to ASI Randhir Singh to the effect that around 6.30 P.M. on 13.07.2014, he received a telephonic call from his daughter, aged 12 years, and, studying in 8th standard that respondent No. 2 had tried to commit wrong act with her around 5.00 P.M. on her way in the street, when she was going to buy grocery items. Respondent No. 2 caught hold of her from her arm and pulled her inside the shop. He then bolted the door from inside and started doing obscene activities. He tried to commit rape with her. Her raising alarm attracted some people, who broke the window pane of the shop and gave beatings to respondent No. 2. On the basis of aforesaid statement of the appellant-complainant, FIR under Section 376 read with Section 511 IPC and Section 4 of the POCSO Act, was registered. On 16.07.2014, accused was arrested. He was medico-legally examined on 17.07.2014. On 19.07.2014, offences under Sections 323/341 IPC were added. On 22.09.2014, statement of the prosecutrix under Section 164 Cr.P.C. was got recorded. After completion of necessary formalities, final report under Section 173 (2) Cr.P.C. was presented before the learned Area Magistrate.

3. Since the offences under Section 376 IPC and Section 8 of the POCSO Act were exclusively triable by the Court of Session, therefore, after complying with the provisions as envisaged under Section 207 Cr.P.C., the case was committed to the Court of Session for trial by the learned Area Magistrate.

4. On finding a *prima facie* case, respondent No. 2 was charge-

sheeted under Sections 342/376 read with Section 511 IPC and Section 8 of the POCSO Act, to which he pleaded not guilty and claimed trial.

5. After hearing learned counsel for the parties and going through the evidence brought on record, the learned Additional Sessions Judge, SAS Nagar, Mohali, vide impugned judgment dated 13.03.2015, convicted respondent No. 2 under Sections 342 and 376 read with Section 511 IPC, but acquitted him under Section 8 of the POCSO Act and sentenced him as under:-

1. Under Section 376 read with Section 511 IPC

To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 10,000/- and in default to further undergo rigorous imprisonment for five months.

2. Under Section 342 IPC

To undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1,000/- and in default to further undergo rigorous imprisonment for one month.

Both the substantive sentences were ordered to run concurrently.

6. Aggrieved with the same, the appellant-complainant has preferred the instant appeal.

7. Learned counsel for the appellant-complainant argued that the impugned judgment qua acquittal of respondent No. 2 under Section 8 of the POCSO Act and awarding him inadequate sentence under Sections 342 and 376 read with Section 511 IPC is based on surmises and conjectures. There was sufficient evidence on record to convict

respondent No. 2 under Section 8 of the POCSO Act. The learned Additional Sessions Judge, SAS Nagar, Mohali has erred in not appreciating the fact that the prosecutrix was a minor at the time of occurrence. It was well established on record that respondent No. 2 had tried to commit rape upon the minor prosecutrix by touching her body parts and, thus, he was liable to be punished under Section 8 of the POCSO Act. The intention of respondent No. 2 from the very beginning was to commit rape with the minor prosecutrix as he took her in the shop and bolted the door from inside. Thereafter, he touched her private parts.

8. We have given our thoughtful consideration to the submissions made by learned counsel for the appellant-complainant and find that the instant appeal is completely devoid of any merit for the reasons to follow:-

- (i) As per statement of prosecutrix as PW-2, around 5.00 P.M. on 13.07.2014, when she had gone to buy grocery items from the shop, respondent No. 2 standing in the street in front of the shop caught hold of her from her arm and pulled her inside a vacant shop and bolted the door from inside and started molesting her. Respondent No. 2 had also tried to commit rape with her. She further stated that when she raised hue and cry, a number of persons gathered at the spot and they smashed the window pane of the shop. Respondent No. 2 by opening the door of shop also came out and he was beaten up. Thereafter, she

reached her house and told the entire facts to her mother, who called her husband-Deepak Kumar Sharma, PW-1 (appellant herein) to home. In her statement Ex. PW-2/A under Section 164 Cr.P.C., the prosecutrix has narrated the same facts. However, in her cross-examination as PW-2, she admitted that around 5.00 P.M. on 13.07.2014, respondent No. 2 had not caught hold of her from her arm and not pulled her inside the shop at Balongi. The discrepancy pointed out above is a major one which has falsified the complainant's version.

(ii) Section 7 of the POCSO Act, envisages as under:-

“Whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act with sexual intent which involves physical contact without penetration is said commit sexual assault.”

In the light of above definition, we have to scan the evidence led by the prosecution before the trial Court. PW-4 Rajesh Yadav, is the eye-witness, who saw the prosecutrix and respondent No. 2 at the time of alleged occurrence. However, he did not state anywhere that he saw respondent No. 2 touching any body part of the

prosecutrix and, thus, it cannot be said that any offence under Section 7 of the POCSO Act was ever committed by respondent No. 2.

(iii) The deposition of PW-1 Deepak Kumar Sharma (appellant herein) father of the prosecutrix is based on hearsay as he, too, did not see respondent No. 2 touching any body part of the prosecutrix. His statement before the police and deposition before the Court were completely based on narration made by the prosecutrix to him.

(iv) The prosecutrix as PW-2 also did not depose in unambiguous terms before the Court that in what manner respondent No. 2 tried to commit rape with her and whether respondent No. 2 touched her private parts i.e. her vagina, breast etc.

9. Hence, after scanning the prosecution evidence, it is evident on record that the prosecution has miserably failed to prove committing of any offence under Section 8 of the POCSO Act.

10. No other point was urged before us.

11. From the above discussion, we are not inclined to differ with any of the findings recorded by the learned trial Court in acquitting respondent No. 2 under Section 8 of the POCSO Act. Since, no appeal can be filed at the instance of the victim for enhancement of punishment, therefore, no interference is called for in the impugned order of sentence of respondent No. 2. The instant appeal is completely devoid of any

merit and, therefore, dismissed.

12. However, nothing contained in this judgment shall have any bearing on the merits while deciding appeal No. CRA-S-2049-2015 filed by respondent No. 2 against his conviction.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 29, 2016

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