

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S No.237-SB of 2016
Decided on: 03.03.2017

Ram Niwas
.....Appellant
Versus
State of Haryana
....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vivek Khatri, Advocate
for the appellant.

Mr. Vikas Malik, DAG, Haryana.

REKHA MITTAL, J.

The present appeal directs challenge against the judgment of conviction dated 08.01.2016 and order of sentence dated 12.01.2016 whereby the appellant has been convicted and sentenced for offence punishable under Sections 354A (2) for violation of Section 354A (1) (i), 354A (2) for violation of Section 354A (1) (iii) of the Indian Penal Code (in short 'IPC') and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the Act'), extracted hereinbelow:-

Under Section 354A(2) for violation of Section 354A(1)(i) IPC	Rigorous imprisonment for a period of Three years and to pay a fine of Rs.10,000/- only. In default of payment of fine or a part thereof further rigorous imprisonment for a period of one year.
Under Section 354A(2) for violation of Section 354A(1)(iii) IPC	Rigorous imprisonment for a period of Three years and to pay a fine of Rs.10,000/- only. In default of payment of fine or a part thereof further rigorous imprisonment for a period of one year.

Under Section 8 of the POCSO Act	Rigorous imprisonment for a period of Three years and to pay a fine of Rs.5,000/- only. In default of payment of fine or a part thereof further rigorous imprisonment for a period of six months.
Under Section 12 of the POCSO Act	Rigorous imprisonment for a period of Two years and to pay a fine of Rs.5,000/- only. In default of payment of fine or a part thereof further rigorous imprisonment for a period of six months.

Briefly stated, Anita wife of Rajender along with her 07 years old daughter came to Police Station City Hisar and got recorded her statement in presence of legal aid counsel alleging that on 24.07.2015 around 03:00/04:00 pm, her daughter was playing on the ground floor of their house along with Abhijeet, her brother. Ram Niwas son of Chandu Ram came to their house with her husband for doing electrical work. When her husband went upstairs to take food, on finding an opportunity, accused started doing obscene acts with her daughter. The child went inside the room and Ram Niwas was going towards that room. The child came out of the room and she was again caught by Ram Niwas. Her daughter came upstairs, started weeping and disclosed that Ram Niwas had asked her to show her private parts after removing her pajami. Ram Niwas had also shown her obscene photographs from his mobile. He started doing obscene acts by uplifting his clothes.

On the basis of statement of the complainant, FIR for commission of offence punishable under Section 12 of the Act was registered. The prosecutrix was produced before the Illaqa Magistrate and her statement under Section 164 of the Code of Criminal Procedure (in short 'Cr.P.C.') was recorded. Offences under Sections 354A and 452

IPC were added. Ram Niwas was arrested on 25.07.2015 and his mobile was taken into possession.

The case was committed to the Court of Sessions as offence punishable under Section 12 of the Act being exclusively triable by the said Court. On finding a *prima facie* case, the accused was charged for committing offence punishable under Sections 354A (1) (i), 354A (1) (iii) IPC and Sections 8 and 12 of the Act to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as 05 witnesses namely the prosecutrix PW1, Anita, complainant PW2, Inspector Kavita PW3, Vijay Kumar, Clerk from Municipal Corporation, Hisar PW4 and Head Constable Sulekha PW5.

On evidence of the prosecution being closed, statement of accused under Section 313 Cr.P.C. was recorded wherein he denied the incriminating circumstances appearing in evidence against him and pleaded that as Rajender, father of the prosecutrix had borrowed Rs.1,00,000/- from him and in order to avoid payment of that money he has been falsely implicated. On the day of incident, all the family members of Rajender including his father were present in the house and no such incident ever happened. Father of the prosecutrix is a man of vices; had eye on his money and tutored his daughter to implicate him falsely. He examined Rajender Sharma DW1 in defence.

Having heard counsel for the parties in the light of materials on record, the learned trial Court held the appellant guilty of committing offence charged against him and accordingly he was convicted and sentenced, noticed hereinbefore.

Feeling aggrieved by the judgment passed by the learned trial Court, the present appeal has been preferred by the accused/convict Ram Niwas.

Counsel for the appellant has assailed the judgment of conviction primarily on two counts. The first submission made by counsel is that the appellant has been falsely implicated in the case as Rajender, father of the prosecutrix had borrowed an amount of Rs.1,00,000/- and he wanted to avoid his liability to return that amount when otherwise Rajender is a man of bad habits being an addict. The second submission made by counsel is that even if the allegations raised against the accused are taken to be correct on its face value, the same, at best, would constitute an offence under Section 11 of the Act punishable under Section 12 thereof, thus, conviction and sentence of the appellant for committing offence of sexual assault punishable under Section 8 of the Act is liable to be set-aside. In addition, it is argued that there are serious contradictions in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and the one when she was examined by the trial Court.

In the alternative, counsel would submit that in case conviction of the appellant for the charged offences is sustained, sentence may be reduced to the period already undergone as he is in custody since 25.07.2015 and is an aged person.

Counsel for the State of Haryana has supported the judgment of the learned trial Court with the submission that the prosecutrix and her mother have duly supported case of the prosecution and corroborated each other with regard to heinous and shameful act

committed by the accused with a child aged about 7 years. It has further been argued that no such plea of giving money to Rajender, father of the prosecutrix was raised during cross-examination of the prosecutrix and her mother and there is no material on record to substantiate plea of the accused that father of the prosecutrix had taken an amount of Rs.1,00,000/- from the accused. Even it is not clear as to what is the financial status of the accused though it has come on record that he came to the house of the prosecutrix for doing some electrical job. The last submission made by counsel is that it is difficult to accept to reason that the family would bring forward a child aged 07 years to level such allegations at the cost of serious damage to self-respect of the child and exposing her to Court proceedings that may be traumatic for the child for many years to come.

I have heard counsel for the parties, perused the paperbook and the original records of the trial Court.

The plea of the appellant that a false case has been registered against him is unfound and liable to be rejected. There is no material on record to prove financial status of the accused or that of the family of the complainant. This apart, no such plea was raised by the accused at the first available opportunity when the prosecutrix and her mother were examined in the case. Nothing has been mentioned by the accused as to when Rajender, father of the prosecutrix had taken an amount of Rs.1,00,000/-. On the contrary, Rajender was examined as a witness in defence and he has nowhere stated that he had taken any money from the accused. Rajender tried to help the accused by stating that his wife and he were under some misconception and his daughter

had stated wrongly out of fear. However, in his cross-examination he was safely caught by the Public Prosecutor and it was extracted from his mouth that due to compromise with the accused, he is intentionally deposing in his favour. In this view of the matter, the appellant can neither derive any advantage to his contention from a vague plea raised for the first time in his statement recorded under Section 313 Cr.P.C. nor from the testimony of Rajender Sharma, examined in defence.

This brings the Court to a vital aspect as to whether in the given circumstances, it can be held that only an offence of sexual harassment and not of sexual assault is proved against the accused.

The prosecutrix was examined and she has fully supported case of the prosecution and explained about illegality committed by the accused. A relevant extract from her testimony by way of examination-in-chief reads as follows:-

“...in the afternoon time at my house then Ram Niwas @ Fakkar came there and had touched on my lower part (the child has pointed towards her vagina). Thereafter, he had lifted his dhoti and show his bad part (male organ) to me. He has also shown to me bad photographs of naked women from his mobile phone. He tried to catch hold me then I ran towards store of the house and had hidden myself on the slab. Ram Niwas also came there and asked me to remove my pajami and to show him my lower part but I refused and ran away from there and went upstairs to my parents. Thereafter, I had apprised my mother of all this.....”

She was subject to cross-examination by counsel for the accused but there is hardly any challenge to her testimony explaining material ingredients of the offence charged against the appellant. As a matter of fact, there is virtually no cross-examination to assail her version recorded before the Court. Though the prosecutrix was not confronted with her statement recorded under Section 164 Cr.P.C. in order to draw any contradiction in her version before the Court viz-a-viz her previous statement before the Judicial Magistrate but even otherwise the facts recorded in testimony of the prosecutrix during trial duly gets corroborated from her statement recorded under Section 164 Cr.P.C. The prosecutrix, immediately after the occurrence, narrated her tale-woe to her mother Anita and she has also supported the prosecution version and corroborated testimony of the prosecutrix. Taking into consideration extracted portion of testimony of the prosecutrix duly corroborated by her mother, it is difficult to accept contention of the appellant that the present is not a case of sexual assault or the facts elicited in testimony of the prosecutrix and her mother only proves sexual harassment punishable under Section 12 of the Act.

I have given my anxious consideration to the submissions made by counsel with regard to reduction in sentence either to the period already undergone or otherwise. Contention of counsel that the accused is an old man gets falsified and belied from the fact that in statement of the accused recorded on 26.11.2015, his age has been recorded to be 35 years. Keeping in view gravity of allegations against the accused who is guilty of committing sexual assault upon a child aged 07 years, I do not think it to be a fit case wherein intervention in

order of sentence passed by the trial Court is warranted.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

03.03.2017
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No