

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-S-2786-SB-2017 (O&M)
Reserved on: 25th October, 2017
Pronounced on 3rd November, 2017

Dinesh

..Appellant

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Sushil Sheoran, Advocate, for the appellant.

Mr. Vikas Chopra, DAG, Haryana.

RAMENDRA JAIN, J.

1. The appellant, being aggrieved against the judgment of conviction dated 3.6.2017 holding him guilty under sections 367/377, 506 IPC and section 6 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as “the POCSO Act”) and order of sentence dated 05.06.2017 by the learned court below:-

Under section 377 IPC To undergo RI for seven years and pay a fine of Rs.2,000/-. In default thereof, further undergo RI for six months.

Under section 367 IPC To undergo RI for five years and pay a fine of Rs.1,000/-. In default thereof, further undergo RI for three months.

Under section 506 IPC Simple imprisonment for one year and pay a fine of Rs.500/-. In default thereof, further undergo Simple imprisonment for one month

Under section 6 POCSO To undergo RI for ten years and pay a fine Act. of Rs.3000/-. In default thereof, further undergo RI for six months.

All the substantive sentences were ordered to run concurrently.

2. Briefly stated, on 21.6.2016 on receipt of a telephonic message at Police Station Badhra regarding admission of a minor victim for treatment being a sexually assaulted, from Community Health Centre (for short "CHC) at village Gopi, ASI Jeet Ram along with his team reached there, where maternal uncle and maternal grand father of the victim, namely, Kuldeep and Ram Chander, respectively, met him and handed over a medical ruqa, medico-legal report along with a written complaint of the victim with the allegations that he was aged 14 years, studying in 10th standard in Government School village Bhagina. Around 12.30/1.00 A.M on the intervening night of 20/21.6.2016, when in the marriage function of his maternal uncle, they were dancing on Disk Jockey (for short "DJ"), the appellant-accused Dinesh asked to accompany him on his motorcycle and to bring the motorcycle back after dropping him at his house and hand over the same to his maternal uncle. Whereupon, the victim accompanied the appellant-accused on his motorcycle, who took him to the fields near Loharu canal situated at some distance from village Badhra. The accused-appellant removed the cloth of the victim and committed carnal intercourse with him. Thereafter the accused threatening him with dire consequences, in case, he disclosed the incident to anyone, brought the victim back on his motor cycle and left him near the house of his maternal uncle. On the basis of the aforesaid complaint, criminal law was set into motion. During investigation, the accused-appellant was arrested and after completion of

necessary investigation, a report under section 173 of the Code of Criminal Procedure was submitted against the accused-appellant under sections 367/377/506 IPC and sections 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 6 of the POCSO Act.

3. The trial court, after conclusion of the trial, recorded conviction and sentence of the appellant in the manner as narrated in the opening paragraph of the judgment.

4. Learned counsel for the appellant inter alia contended that the alleged carnal intercourse with the victim is not proved from the medical evidence. The victim, in his initial written complaint Ex.PW-1/A specifically named the accused-appellant, but in his statement under section 164, Code of Criminal Procedure, after two days on 23.6.2016 Ex.PW1/B upon application of the police Ex.PW-11/A before the learned Magistrate, he did not name the appellant, rather testified that a young man telling him that he was a friend of his maternal uncle, took him away on the pretext of leaving him at his house and then to bring back the motorcycle. However, instead of going home, the appellant-accused took him to the fields, where he removed his clothes at pistol point and did carnal intercourse with him. During the intercourse and thereafter, the accused-appellant had threatened him not to disclose anything to anybody, would, otherwise, kill him. Thereafter, the said young man left him near the house of his maternal uncle with repeated threats to him with dire consequences. The victim further testified that later on, he came to know about the name of the accused-appellant, i.e., Dinesh through his maternal uncle. Therefore, the identity of the accused was doubtful and resultantly, both the courts below have wrongly convicted and sentenced the accused-appellant. Even otherwise,

PW5 Dr. Rakesh Kumar Dhayal, while medico-legally examined the victim on 21.6.2016 found no external injury/nail or bite mark on upper/lower body of the victim. On perianal area examination, he found no history of defecation, sexual assault and no sign of visible injury was seen in annal, perianal or genital area in the medico-legal report, Ex.PW5/B. Even in the FSL report, no semen was detected on the underwear or clothes of the victim, therefore, the alleged intercourse by the accused-appellant with the victim was also not proved by the prosecution beyond any shadow of doubt. Thus, from this angle also, the conviction and sentence of the appellant is wrong and illegal. The maternal grand father and maternal uncle, namely, Ram Chander and Kuldeep PW3 and PW4, respectively, have given contradictory depositions, detrimental to the prosecution story. PW-3 Ram Chander, the maternal grandfather of the victim, deposed that they tried to chase the accused-appellant after he left the victim, whereas PW4 Kuldeep, the maternal uncle, deposed that the victim, after entering the house, disclosed the incident and then he told the name of the accused to the victim. Therefore, the above contradictory version in the statements of the prosecution witnesses, entitles the accused for acquittal by giving him the benefit of doubt. The appellant-accused is in custody since 25.6.2016 and had already suffered a lot.

5. On the other hand, learned State counsel strongly refuted the above submissions made by learned counsel for the petitioner contending that both the learned courts below on appreciation of ocular as well as documentary evidence on the record have rightly convicted and sentenced the accused-appellant.

6. Having given thoughtful consideration to the submissions made

by learned counsel for the accused-appellant, being without any merit, is liable to be dismissed for the reasons to follow:-

7. The entire case of the prosecution hinges on the statements of the victim and his family members, who have been examined before the trial court as PW1 victim, PW3 Ram Chander, the maternal grand father of the victim and PW4 Kuldeep, the maternal uncle of the victim. PW1, the victim, a minor boy of 14 years, deposed before the trial court, narrated the entire version in the manner in which it had occurred and as such corroborated the prosecution case in its entirety. This witness, in an unequivocal term, testified before the trial court that the accused-appellant committed carnal intercourse with him forcibly during the night time and when he cried, accused-appellant gagged his mouth. His testimony could not be shattered during lengthy cross-examination conducted by the learned defence counsel. PW3 Ram Chander and PW4 Kuldeep also corroborated the version of the prosecution. That apart, PW1, the victim has also proved his statement recorded under section 164 of the Code of Criminal Procedure before the magistrate. PW11 Shri Ramesh Kumar, the learned Judicial Magistrate 1st Class, Charkhi Dadri, proved the statement of the victim under section 164 Cr.P.C. Ex.PW1/B recorded on 23.06.2016 on the application moved by the police Ex.PW11/A and his certificate appended at the end of the statement.

8 So far as the identity of the accused-appellant that it was doubtful on account of discrepancies coming out in the statements of PW1, PW3 Ram Chander, the maternal grand father and PW4 Kuldeep, the maternal uncle of the victim, as pointed out by the learned counsel during the course of arguments, is concerned, the accused-appellant was identified

by the victim in the open court. In addition to this, it does not lend credence to the argument of the defence that the victim was not aware of the name of the accused-appellant. It hardly makes any difference if the victim came to know the name of the accused-appellant only after he entered the house of his maternal uncle before whom he narrated the entire episode of carnal intercourse committed with him and he told him the name of the accused-appellant as Dinesh, inasmuch as the appellant had told the victim that he was the friend of his maternal uncle, which fact was sufficient to find out the identity of the appellant and to connect him with the commission of crime. Moreso, no suggestion was put to the victim during his examination that he was a tutored witness or that he had given his statement before the court under the pressure of his maternal grand father or his maternal uncle on account of the fact that there was a political rivalry between both the sides, though the accused-appellant had taken up a plea in defence that the case was registered on account of party faction in the election of panchayat. He did not lead any evidence to the above stated effect in defence and closed the same without leading any evidence.

9 The question that posed for consideration is, can honour of a child of 14 years be put at stake for all future prospects by the members of his family by foisting a false case of carnal intercourse upon the accused-appellant merely for the reason that there was a petty political rivalry in between the parties in the panchayat elections. It is not believable that the family members of the victim for their axe to grind, would ruin the career of a minor child by getting a case of sodomy registered against the accused-appellant against whom, they had no personal enmity by involving him in a false case. Such a drastic step cannot be taken by a child of tender age

without rhyme or reason, unless a serious crime, in reality, is committed.

10 The next question that arises in the mind of the court - can a child of tender age forget the face of a person, who had committed such a heinous crime? Even if for the sake of arguments, it be presumed for a short while that the victim was not aware of the name of the accused-appellant, a friend of his maternal uncle, but at the same time, he identified him at the very first glance in the open court. If in the opinion of the accused party that offence had not been committed by the accused-appellant, they must have moved an application before the higher authorities of the police or even before the court for conducting test identification parade, but no such step was taken by the accused-appellant. It has been established on the record on the strength of the testimony of the prosecution witnesses that after the shameful act was committed by the accused-appellant, immediately, medical examination of the victim was got conducted by the family members of the victim from the Community Health Centre, village Gopi on the intervening night of 20/21.6.2016 at 12.30/1.00 A.M. As per the testimony of PW9 ASI Jeet Ram, on 21.6.2016, he received complaint Ex.PW1/A from the victim, whereupon he made his endorsement Ex.PW9/A and sent it to the police station for registration of the case. In my considered opinion, there was no delay on the part of the complainant in reporting the matter to the police. Therefore, the contention of the learned counsel that there was unexplained delay in registering the FIR, cannot at all be accepted.

11 The contention of the learned counsel that identity of the accused-appellant has not been established can not at all be accepted, especially when the victim, in clear cut terms, lodged a report by submitting his complaint to him Ex. PW1/A at around 5.45 P.M. against the accused-

appellant with the police on 21.6.2016, who on 23.6.2017, informed PW7 DSP Kuldeep Singh in the morning that the complainant party were present at their house, whereupon, he visited Badhra. He along with DSP Kuldeep Singh reached the house of Ram Chander, maternal grandfather of the victim, where many neighbourers were present. The statements of the concerned witnesses were recorded. On 24.6.2016 the victim was produced before the Magistrate for recording his statement under section 164 of the Code of Criminal Procedure. On 25.6.2016 the accused-appellant was arrested by DSP Kuldeep Singh, who produced the motor-cycle in question along with its registration certificate. The sequence of events clearly shows that there was promptness not only in registering the FIR against the accused-appellant, but even in completion of the investigation by the prosecution as well.

12 The ocular testimony of PW1, the victim, PW3 Ram Chander, the maternal grand father and PW4 Kuldeep, the maternal uncle of the victim, are corroborated by the medical evidence. PW5 Dr. Rakesh Kumar Dhyal, deposed that on 21.6.2016 he medico-legally examined the victim who was 14 years old, was brought before him with alleged history of sexual assault. On examination, he observed that the patient complained of pain in right cheek and there was an abrasion of approximately 04x0.2 cm with surrounding edema on right cheek. He further deposed that from perusal of MLR Ex. PW5/B, he was of the view that possibility of carnal intercourse upon the person of victim could not be ruled out. PW6 Dr. Ravi Sehrawat deposed that on 25.6.2016, he medico-legally examined the accused-appellant aged 24 years who was brought by ASI Jeet Ram with alleged history of sexual assault on 21.6.2016 at 12.30 A.M. at Badhra. On

examination, he observed that patient was conscious, cooperative and well oriented to time, place and person. Blood Pressure was 110/70 mm of Hg and pulse was 78/min. On examination of the whole body, it transpired that patient was moderately built young male with well developed sexual secondary character. No scars or fresh injury was seen. Smegma was absent. Penile shape was normal. According to this witness, there was nothing to suggest that patient was unable to do sexual intercourse. It is no doubt true that according to the report of FSL, semen has not been detected on the clothes/swab/pubic hair of the victim, whereas semen has been detected only on the underwear of the accused, but even then this fact is not sufficient to rule out the possibility of carnal intercourse. In the considered opinion of this court, the mere absence of spermatozoa by itself cannot put a question mark on the veracity of the prosecution case. As per the testimony of PW6 Dr. Ravi Sehrawat, the accused-appellant was found to be capable of performing sexual intercourse. Even otherwise, penetration is sufficient to constitute the carnal intercourse to prove the offence under section 377 IPC.

13 From the testimony of PW1, the victim, corroborated by the medical evidence, as discussed above, it can easily be inferred that the victim was subjected to unnatural intercourse by the accused-appellant. Arguments raised by the learned counsel before the trial court that there was delay in lodging the FIR; the testimony of the prosecution witnesses are discrepant against each other in material particulars and that according to the report of the FSL, no semen was detected on the underwear of the accused, all have been discussed and dealt with by the court below elaborately giving sound reasoning therein. Thus, in my considered view,

the carnal intercourse, on the strength of testimony of ocular as well as medical evidence is established on the record beyond shadow of reasonable doubt. The contention of the learned counsel that the statement of a child of the tender age, who is a tutored witness, cannot be believed as by that time, he must have been prepared for recording his statement before the Magistrate, has no legs to stand, especially when the victim had already submitted his application on the intervening of night of 20/21.6.2016 at around 12.30/1.00 A.M. to the police narrating therein the entire incident that took place with him. That apart, the statement of the child witness has been closely scrutinised and on the basis of some minor discrepancies in his deposition, if not in material particulars, would lend credence to the testimony of the child. Therefore, the findings recorded by the learned court below with respect to reliability of the statement of the child do not call for interference. From the testimony of the ocular as well as medical evidence on record, this court has no hesitation in holding that the prosecution has been able to prove beyond doubt that the accused-appellant was capable of committing rape and as such, he did carnal intercourse with the victim.

14 In view of the reasons recorded hereinabove, this court does not find any illegality or perversity in the impugned judgment of conviction and order of sentence recorded by the court below and as such, the findings recorded therein are affirmed. Consequently, the appeal, being without any merit, fails and is dismissed.

3rd November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable; | Yes/No |