

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-5023-SB of 2014 (O&M)

Date of decision: 07.10.2017

Vinod

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Jalal, Advocate for the appellant(s).

Ms. Mahima Yashpal, AAG, Haryana.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction dated 06.08.2014 and order of sentence dated 07.08.2014, passed by learned Additional Sessions Judge, Gurgaon. The appellant was convicted under Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to undergo rigorous imprisonment for 03 years with fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for five months. He was further sentenced to undergo rigorous imprisonment for a period of one year and ordered to pay fine of ₹5000/- and in default of payment of fine, to further undergo imprisonment for five months under Section 506 of the Indian Penal Code (for brevity 'IPC').

Both the sentences were ordered to run concurrently.

The brief facts of the case have been noticed by the trial Court in para 2 of the judgment. The same reads as under:-

“On 4th of March, 2014, Smt. Gayatri Devi wife of Vinod got recorded her statement to police wherein she disclosed that about twenty two years back, she was married to Ram Lakhan son of Ram Dass, resident of Pandit Purwa, P.S. Soram, District Allahabad (UP) and is having two daughters from that marriage. Her first husband died on account of illness and thereafter, as per asking of society, she got married to Vinod son of Lalta Parshad, in the year 2008. She is having a son from Vinod who is four years of age and now she is living with Vinod along with her two daughters aged thirteen years and seven years of age and one son aged four years. She and her husband both are working as labours and are living in rented room in village Manesar. She further informed that her husband Vinod had been touching body parts of her elder daughter with bad intention and had been kissing her. She has tried to persuade him several times but to no avail. In fact, he had been teasing her daughter when she (complainant) goes to sleep and had been threatening her that if she would reveal this fact to anybody, he would kill her as well as her mother. A case for alleged commission of the offences punishable under Sections 354-A, 506 of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012 was lodged. The investigation was carried out by Lady Sub Inspector Smt. Kailash, In-charge Women Cell (South), Gurgaon. Statement of prosecutrix was got recorded under Section 164 of Cr.P.C., on 4th of March, 2017

wherein she revealed that for last six months, her step father had been teasing her by putting his hands on her private parts. She also disclosed that in the night time, daily he would come to her and after removing her payjama, he would touch her body parts with his hands as well as with his mouth and whenever, she would refuse, he would grasp her and would not permit her to speak and had been threatening to kill her and her mother. Further investigation was carried out by Assistant Sub Inspector Attar Singh who recorded statement of witnesses and inspected the place of occurrence. Accused was arrested on 4th of March, 2014. The documents qua date of birth of prosecutrix were obtained from her school on 7th of March, 2014 and on completion of investigation, accused was challaned and was sent up to face trial for the alleged commission of crime.”

On presentation of challan, the trial Court finding prima facie evidence against accused-appellant, framed charge for the offences punishable under Sections 354-A, 506 of IPC and Section 12 of POCSO Act. The charge sheet was amended vide order dated 05.08.2014 and Section 8 of POCSO Act was inserted instead of Section 12 of POCSO Act. The accused pleaded 'not guilty' to the above mentioned charge and claimed trial.

In support of its case, the prosecution examined the following witnesses:-

PW-1 Prosecutrix herself stepped into the witness box and testified the whole prosecution story.

PW-2 Gayatri Devi (complainant) mother of the prosecutrix has also corroborated the version of prosecution.

PW-3 Rajnder Kumar, Principal, DIET Malab, Mewat had proved the factum of prosecutrix being minor by producing on record Ex.PE photocopy of her admission form wherein her date of birth was mentioned as 20.08.2001.

PW-4 Sub Inspector Kailash Devi, the Investigating Officer has deposed regarding the conduct of the manner of investigation to the effect that on 04.03.2014, she was posted as Incharge Women Cell, South Gurgaon and on that day, she received a telephonic information from PS Manesar about molestation with a little girl. Thereafter, she reached PS Manesar where prosecutrix and her mother were found sitting in the police station. She further stated that she recorded the statement of Gyatri Devi, mother of the prosecutrix. Thereafter, the prosecutrix was produced before the Judicial Magistrate for getting her statement recorded.

PW-5 ASI Attar Singh has also deposed regarding the part of investigation being carried out by him after it was handed over to him by PW-4 SI Kailash Devi.

PW-6 Constable Krishan Kumar has deposed regarding handing over the special report to Illaqa Magistrate and Commissioner of Police, DCP Crime and ACP Manesar.

The statement of the accused under Section 313 Cr.P.C.

was recorded. He pleaded innocence and alleged false implication. However, the accused did not lead any evidence in his defence.

After hearing the learned counsel for the parties and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved, against the impugned judgment of conviction and sentence delivered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 23.01.2015.

Learned counsel for the appellant/accused contends that the appellant/accused has been falsely implicated in the present case. The incident was reported on 04.03.2014. There is a considerable delay in lodging the matter to the police especially when the prosecutrix was alleged to be physically molested for the last six months.

The next argument raised by learned counsel for the appellant is that the version of prosecutrix is not corroborated by way of medical evidence which creates a dent in the prosecution story. The physical or sexual assault on the prosecutrix could have been proved only through the examination of the prosecutrix. No substantial documentary evidence was brought on record to prove the factum of prosecutrix being minor. The testimony of PW-3 Rajender Kumar, Principal does not establish the age of prosecutrix as there is no certificate or any other document qua proof of date of birth. Mere

proving the admission form on record in the absence of supporting evidence is not sufficient to hold that the prosecutrix was a minor.

The learned counsel for the appellant refers to the testimony of PW-4 SI Kailash Devi whereby she has stated that after receiving the information qua the incident, she reached the police station with the prosecutrix. After post counselling, the prosecutrix and her mother got the statement of the complainant recorded and thereafter, the prosecutrix was produced before the magistrate, to contend that the prosecutrix was tutored by her mother before registration of FIR, however, the trial Court has failed to go into this aspect of the matter. He has further submitted that the testimony of prosecutrix cannot be relied upon as she was a tutored witness and except the prosecutrix and her mother, there is no other independent witness to corroborate the prosecution story.

On the other hand, the learned State counsel has submitted that from the evidence, it is fully proved that the prosecutrix was minor and was sexually assaulted by the accused/appellant who is step father of the prosecutrix. The prosecutrix has duly supported her version which has been duly corroborated by her mother, complainant in the present case. The link evidence is complete. Therefore, she has submitted that the prosecution has duly proved the guilt of the accused.

I have heard learned counsel for the parties.

The argument raised by counsel for the appellant that there

is a delay in reporting the matter is of no consequence as the prosecutrix has duly supported the case of the prosecution throughout. It is not the case of the appellant that she has taken different stand before the trial Court and in her statement made before the Magistrate. The prosecutrix in her statement recorded under Section 164 Cr.P.C., has duly stated that the accused who is her step father had been teasing her for the last six months by putting his hands on her private parts. She had also stated that during night time, he would come to her and used to remove her clothes and touched her body parts as well as his mouth and whenever, she resisted to the act of the appellant, he would not permit her to speak and had been threatening to kill her and her mother. No doubt, the prosecutrix had narrated the incident to her mother after six months of the act of the appellant, however, it is no ground to disbelieve the sole testimony of victim who is a minor. The victim of sexual assault is not treated as accomplice and therefore, her evidence does not require corroboration from any other witness including the evidence of a doctor. In normal course or in villages, a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has the tendency to conceal such offence because it involves her prestige as well as the prestige of her family. Only in a few cases does the victim girl or the family members have the courage to report the matter to the police. In the instant case, the

suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appear to be justified. The appellant being step father had sexually assaulted his daughter who is young minor girl. There is no reason to believe that the appellant has been falsely implicated by her wife who is complainant in the instant case. No doubt, it was the second marriage of the complainant which took place in the year 2008 after death of her first husband. The complainant/wife would not have come forward to ruin her life by implicating her own husband by levelling such allegations for any trivial issue. Moreover, the prosecutrix and the complainant (mother of prosecutrix) were not cross examined despite availing sufficient opportunities to establish the falsification of prosecution story, therefore, the argument of learned counsel that case of the prosecution only rests upon the testimonies of the prosecutrix and her mother, the complainant and there is no other independent witness, is hereby repelled.

The next argument raised by learned counsel for the appellant that prosecutrix was not subjected to medico-legal examination to prove the allegations and her age, lacks merit as the allegations levelled were duly proved by the prosecutrix. The factum of victim being minor had been duly proved PW-3, Rajender Kumar, Principal who had brought the school record and had also brought on record the photocopy of her admission form and admission and

withdrawal register wherein the date of birth of prosecutrix was mentioned as 20.08.2001.

Taking into consideration, the above facts and circumstances of the case, this Court is of the opinion that the star witnesses i.e. prosecutrix and her mother, the complainant have duly corroborated the prosecution version. The prosecution has fully proved its case beyond reasonable doubt against the accused/appellant.

There is, thus, no illegality or impropriety in the impugned judgment of conviction dated 06.08.2014 and order of sentence dated 07.08.2014, passed by learned Additional Sessions Judge, Gurgaon and the same, is, hereby upheld and affirmed. There is no merit in the appeal which is hereby dismissed.

It is pertinent to mention here that as per custody certificate dated 06.10.2017, filed by learned State counsel in the Court today, the appellant had been released on expiry of sentence on 04.06.2016 after giving benefit of under-trial period, conviction period and earned remissions. In the circumstances, no orders for re-arresting the appellant are required to be passed in this case.

07.10.2017

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No