

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRA-S-1746-SB of 2016
Date of Order:13.01.2018

Ravi

..Appellant

Versus

U.T.Chandigarh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Aggarwal, Advocate
for the appellant.

Mr. Anil Kumar Landharia, Addl. P.P., UT, Chd.

ANIL KSHETARPAL, J (Oral)

This is an appeal, filed by the appellant, challenging his conviction, vide order dated 29.01.2016, passed by the Additional Sessions Judge, Chandigarh, under Sections, 363, 367, 506 of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act), in the following terms:-

<i>Sections</i>	<i>Sentence</i>
Section 363 IPC	Undergo rigorous imprisonment for a period of 7 years and also to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo 3 months simple imprisonment.
Section 367 IPC	Undergo rigorous imprisonment for a period of 7 years and also to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo 3 months simple imprisonment.
Section 506 IPC	Undergo rigorous imprisonment for a period of 1 year and also to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo 1 month simple imprisonment.
Section 4 of POSCO Act	Undergo rigorous imprisonment for a period of 10 years and also to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo 6 months simple imprisonment.

<i>Sections</i>	<i>Sentence</i>
Section 6 of POSCO Act	Undergo rigorous imprisonment for a period of 10 years and also to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo 6 months simple imprisonment.

It is the case of the prosecution that an information was received on the wireless from the police station that a quarrel is taking place in House No.229-A, Sector 29, Chandigarh. Police officials reached there in a government vehicle and verified the facts. The complainant Jaswinder Singh got recorded his statement to the effect that he along with his family is residing in House No.245, Sector 29-A, Chandigarh. He further informed that at about 12.00 when he was about to go to sleep, he heard cries of children from the neighbourhood, on which he came out and he saw one boy crying and the boy was scared. On enquiry from the said boy, the boy told that he and his friend were brought by one person. The boy further informed the complainant that they have been brought by foot from Sai Baba Mandir by the accused and he took them to the roof top of a house, where he asked to unbutton his pants and committed unnatural sex with them.

According to the prosecution, after doing unnatural act with one child, the accused started doing the same thing with other child, on which the first child ran downstairs and on hearing cries, the complainant came out and came to know of this fact. The complainant further disclosed the incident to other neighbours and they all went with the child to the roof of House No.229-A, Sector 29-A, Chandigarh and saw another child crying there. On seeing them, their neighbour Ravi tried to escape, who was apprehended. The other child also told the complainant that Ravi had a

unnatural sex with him. The children were 8 years and 13 years, residents of Sanjay Labour Colony, Industrial Area, Chandigarh.

After recording formal statement, FIR was registered and further investigations were carried out. The accused was arrested, statement of witnesses were recorded and on completion of investigation, challan was presented against the accused.

The prosecution with a view to prove its case, examined both the victims as PW1 and PW3, complainant Jaswinder Singh as PW2, Dr. Ajay Kumar as PW4, Sub Inspector Gurcharan Singh, as PW5, Head Constable Ishwar Singh as PW6, Head Constable Jaimal Singh as PW7, Constable Sandeep Kumar as PW8, Dr. Punit Rai as PW9 and Investigating Officer SI Kashmir Singh as PW10.

The accused was examined under Section 313 Cr.P.C. and all incriminating evidence was put to him but the accused-appellant denied the same and pleaded false implication and innocence. He also claimed that he had heard noise of crying of a child from the roof top of House No.229-A, Sector 29-A, Chandigarh and when he reached there to check, the persons of locality who had gathered there mistook the appellant to be accused and apprehended him.

Learned trial Court after appreciating the evidence available on the file particularly of the child victim, who was examined as PW3, evidence of Dr. Ajay Kumar, PW4 and evidence of Dr. Punit Rai, who has been examined as PW9, returned a finding that the offence against the appellant stands proved. That's why the appellant is in appeal before this Court.

Learned counsel for the appellant has vehemently argued that although it is the case of the prosecution that the complainant along with other neighbours had gone to the roof top, however, no other witness has been examined and no reason is forthcoming why other neighbours were not examined. He has further submitted that when complainant and other persons reached roof top of the house, where alleged incident took place, it is proved that the child and the appellant were wearing clothes and no one had seen unnatural offence as alleged.

On the other hand, counsel for the State supported the judgment passed by the learned trial Court and referring to various statements of witnesses noticed above. Counsel for the State further submits that the prosecution has also established on file that the appellant is capable of performing unnatural act as prosecution has got the appellant examined from the doctor, who has verified this fact.

This Court has carefully considered the submission of learned counsel for the appellant, however, does not find any substance therein.

The most important witnesses in the present case are PW1 and PW3, the child victims. They have supported the case of the prosecution. They have identified the accused-appellant. The evidence of the child victims are supported by medical evidence i.e. Ex.P31 and Ex.P32 and PW9 Dr. Punit Rai has proved that unnatural offence was committed with both the children.

Once the child victims have identified the accused-appellant, and has specifically stated that unnatural offence was committed with them, non-examination of other neighbours apart from the complainant does not

create any dent in the case set up by the prosecution.

Second argument of learned counsel for the appellant is at the time when the complainant and other neighbours went to the roof top, the appellant and the other child were found fully dressed. Hence, no one has seen the occurrence.

This Court has carefully considered the submission. However, in view of the overwhelming evidence available on the file, as discussed by the learned trial Court in detail and noticed by this Court, in the previous paragraphs, counsel for the appellant could not create any dent in the case of prosecution.

Learned counsel for the accused-appellant has further submitted that taking into consideration the young age of the appellant, the sentence awarded to him be reduced.

I have considered the submission of learned counsel for the appellant. However, the offences under Sections 4 and 6 of the POCSO Act, 2012, are heinous crime. The appellant has been found guilty of the same. In these circumstances, the appellant does not deserve any sympathy.

Hence the criminal appeal is dismissed.

January 13, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No