

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

Criminal Appeal No. 3033 SB of 2014 (O&M)
Date of Decision: September 13, 2018

Sadhu Ram

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Sahu, Advocate,
for the appellant.

Ms. Priyanka Sadar, AAG, Haryana.

JAISHREE THAKUR, J.

1. The appellant/accused—Sadhu Ram has preferred the present appeal against the judgment dated 9.7.2014 and order of sentence dated 11.7.2014 passed by the Additional Sessions Judge, Jind, vide which he was convicted for the offence under Section 21 (2) of the Protection of Children From Sexual Offences Act (**the POCSO Act**, for short) and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/-, in default of payment to further undergo rigorous imprisonment for one month.

2. The prosecution story, in brief, is that on 16.5.2013 ASI Prem Kumari was called in Government High School Frain Kalan, where the prosecutrix made her statement Ex. PA, wherein she stated that she was a student of the Government High School, Village Frain Kalan. She has four

brothers and one sister. She is the eldest among the brothers and sister. On 20.4.2013 at about 9.15 a.m., she was present in her class, when Rajinder Master/Teacher of the school called her in the science room. She accordingly went there. Rajinder caught her by hand. On this, she raised alarm, whereupon accused put his hand on her mouth and pointed a pistol at her. In the meantime, school peon reached there and the accused left her and she returned to her class room.

3. On 24.4.2013, at about 9.15 a.m., when she was going to her home, co-accused—Rajinder stopped his vehicle and forcibly made her sit in it and took her to a poultry farm in the field, which was owned by him. There Rajender gave her sweet and after eating that she became unconscious. When she regained consciousness at about 1.30 p.m. she found blood on her clothes. Rajinder threatened her with dire consequences in case she disclosed anything about this at home and at about 2.15 p.m. he dropped her to her village.

Further on 30.4.2013 at about 9.30 a.m. co-accused—Rajinder called the prosecutrix and asked her to accompany him in case she cares for her life. He again took her to the same poultry farm and committed rape upon her. During that period, Manoj, a friend of accused Rajinder, was also present there but he did not do any wrong act with her. It was stated that Manoj had no knowledge that she was inside. Thereafter, Rajinder dropped her in back at the village around 2.15 p.m.

The prosecutrix further disclosed that on 13.5.2013, accused—Rajinder again took her to the poultry farm, after intimidating her, where he tried to outrage her modesty but in the meantime, he received a telephonic

call from the appellant—Sadhu Ram, Head Master, who asked him to come to School as all the children had come to know about the incident. During that period, the accused Rajender had also received call from Mahabir, who also told the same thing to him. On this accused Rajender gave her beatings and asked her to leave for her village.

Thereafter on 16.5.2013, the prosecutrix went to the school, when some school students indulged in beating her and also levelled filthy allegations against her parents. Accused Rajender called the prosecutrix in his office and threatened to kill her in case she disclosed the matter to anyone. When she returned to her house, she disclosed the entire matter to her mother, who accompanied her to the school, where statement Ex. PA., as was got recorded.

On the basis of the statement, a formal FIR Ex. PV was recorded. The prosecutrix was got medico-legally examined and her statement was recorded under Section 164 of the Code of Criminal Procedure. During investigation, the statements of the witnesses were recorded and the spot was inspected and site plan prepared. One bed sheet, blanket and one *banian* were seized from the spot on demarcation of the prosecutrix.

4. On 16.5.2013 itself, accused—Rajender was arrested who was also got medico-legally examined. Section 21 of the POCSO Act was invoked on 18.5.2013 on the basis of which the present appellant—Sadhu Ram was arrested, whereas Section 25 of the Arms Act was deleted. Further, on 25.5.2013, Section 376-A IPC was deleted and Section 376-F IPC as well as Sections 6 and 10 of the POCSO Act were added.

5. After completion of investigation, challan was presented and charges under Section 21 (2) of the POCSO Act were framed against the appellant, to which he pleaded not guilty and claimed trial.

6. To prove the guilt of the accused, the prosecution examined the prosecutrix (PW-1), Roshni (PW-2), Ajit Singh EHC (PW-3), EHC Shyam Lal (PW-4), EHC Paramjeet Singh (PW-5), Mahabir (PW-6), Dalbir (PW-7), Sonu (PW-8), Pawan Kumar, Photographer (PW-9), EHC Ram Singh (PW-10), Kuldeep Gupta, Draftsman (PW-11), ASI Prem Kumari (PW-12), Dr. Swati Jain (PW-13) Dr. Himanshu Bansal (PW-14) Rajpal, Science Master (PW-15), Veena Bhatia, Head Teacher (PW-16), SHO Gurdial Singh (PW-17) and also tendered documents Ex. PA to Ex. PZ and Ex. PAA to Ex. PII.

7. After the close of the prosecution evidence, the accused was examined by the trial court and his statement was recorded under Section 313 of the Code. All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his false implication. He stated that he did not ring up to Rajender (accused) on 13.5.2013. It was claimed that neither the prosecutrix, nor her mother or any relative or any staff member of the school brought to his notice any wrongful act committed by co-accused Rajender. It was claimed that his school was a topper school in academic results in District Jind continuously for the last three years on account of his hard work.

8. After going through the evidence, so produced and hearing PP for the State and the learned defence counsel for the accused, the learned

Additional Sessions Judge convicted and sentenced the accused, as aforesaid.

9. Learned counsel for the appellant submits that the appellant has nothing to do with the offence committed by co-accused Rajender. He has been falsely implicated in the present case. As per the prosecution case, on 13.5.2013, when the co-accused Rajender was trying to forcibly assault the prosecutrix, a telephonic call was received from the appellant who asked Rajender to immediately return to school as the entire school had become aware of his activities. It is submitted that the prosecution failed to prove that the appellant had made any call to co-accused Rajender on the date and time as alleged. Reliance is placed on the statement of the the prosecutrix herself who had admitted that *“I am unable to give the time when accused Rajinder received telephonic call from accused Sadhu Ram on 13.5.2013. Accused Rajinder had answered the call of accused Sandhu Ram, while he was present near me. I had not heard the voice of the caller to the telephone of accused Rajinder, self stated accused Rajinder had named Sadhu Ram Principal in his reply.”* Learned counsel further submits that there is material discrepancies in the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure and while appearing as PW-1 in the Court. In her statement recorded under Section 164 Cr.P.C. she stated that *“On 20.4.13, Rajender who is our English teacher, forcibly took me away in the vehicle. He took me to his poultry farm (Murgi Khana). Upon reaching there he gave me water to drink after drinking the same I became unconscious. After that when I became unconscious, blood was present on my clothes. My whole body was aching. I was not understanding*

that what has happened with me. In the meantime, Rajender (teacher) came. On my asking, he made me to drink water and forcibly made me sit in the vehicle. He threatened me if I told this matter to anyone, then he will my parents”, whereas, while appearing as PW-1 in the Court, she stated on oath that *“On 20.4.2013 at about 9.15 a.m. I was present in my class. Rajinder Master/Teacher of the school called me in science room of the said school. I accordingly went to science room. Rajinder caught me by my hand. Rajinder accused is present in the Court and witness has correctly pointed out towards him....”* Thus, the testimony of the prosecutrix is absolutely not reliable at all as she has given two different versions of one incident.

10. Per contra, learned counsel for the respondent—State submits that since the appellant failed to report the incident to the police, being head of the Institution, despite the information so given by the prosecutrix, therefore, he has rightly been convicted by the trial court under Section 21 (2) of the POCSO Act, after appreciating the evidence brought on record.

11. I have heard learned counsel for both the sides and with their able assistance have carefully perused the record.

12. As per prosecution case, the main allegation against the appellant is that he had the knowledge of the misdeeds of co-accused Rajender, as on 13.5.2013 when co-accused (Rajender) tried to sexually assault the prosecutrix forcibly, he received a telephonic call from the present appellant asking him to come back to the school immediately with the girl as every student of the school had become aware of this fact. However, since the petitioner, being head of the School, failed to report the matter to the police, therefore, the provisions of Section 21 (2) of the

POCSO Act are attracted and was convicted accordingly.

13. In support of his defence, the appellant examined HC Navdeep Kumar (DW1), who proved on record the call details of Mobile Phone of the appellant Exs. D1 and Ex. D.2 of Mobile Number 9466240671 and 9896848822 and that of co-accused Rajender as Exs. D3 and D4 of Mobile 9416664690 and 8295628800 dated 13.5.2013 and deposed that *"I have brought the call details of Mobile No. 9466240671, 9896848822, 9416664690 and 8295628800 dated 13.5.2013 on that day i.e. 13.5.2013 which is Ex. D1, Ex. D2, Ex. D3 and Ex. D4 respectively. I have gone through the call details the above mentioned mobile numbers. There is no call in between these numbers inter-se on 13.5.2013"*. His testimony could not be rebutted. Thus, it is established that there was no call either coming or outgoing in between these numbers interse on 13.5.2013. Therefore, the prosecution version that the appellant phoned up at the mobile number of co-accused Rajender stand falsified. However, the Additional Sessions Judge, Jind, perused call details Ex. D2 of the appellant and found that on 13.5.2013 from 9.15 am to 10.30 p.m., he had made four calls to one Bhateri wife of late Raj Kumar and as per call details Ex. D4 of mobile of co-accused Rajender at 9.15 a.m. he received a call from Bhateri. Thereafter, at 9.54 a.m, 9.56 am and 10 am outgoing call from the aforesaid mobile number of Rajender had been made to Bhateri. Based on these details the trial court came to the conclusion that it is quite possible that the appellant had contacted co-accused Rajender through Bhateri. Based on this presumption knowledge has been imputed to him. What is not disputed is that Bhateri is the tower location and not a person . There is nothing on the

record as to who is Smt Bharti wife of Raj Kumar and how she is connected with the appellant . Therefore, as there is no link to establish that accused Rajender received any phone call from the appellant—Sadhu Ram, the finding of the trial court is not sustainable. The trial court has misread the evidence entirely pertaining to the call details .

14. The prosecution story that the appellant had become aware of the conduct of co-accused Rajender on 13.5.2013, when he phoned up to Rajender also stand falsified from the statement of Rajpal (PW-15), who stated *“In the same way, I handed over photocopy of attendance register of students for the month of May 2013 Ex. PT of class 9th A in which Grima victim was a student. As per Ex. PT Garima was present in the shcoool. As per record, there are two students in the name of Garima mentioned at serial No.2 and 13 and both were present in the school on that day. The student mentioned at serial No.2 namely Garima was absent after lunch break on 13.5.2013. The student mentioned at serial No.13 with identical name was present in the school throughout...”*

15. In fact, the prosecution has not been able to prove that the appellant had any knowledge about the involvement of the co-accused Rajender in the commission of offence either on 20.4.2013, when the victim is stated to have been physically assaulted for the first time or any other time subsequent thereto. Moreover, there was no reason for the appellant to protect co-accused Rajender in case the matter had been brought to his notice. A perusal of the statement of the prosecutrix that has been recorded under Section 164 of the Code of Criminal Procedure would reflect that in the initial statement there is mention of the appellant's presence in the

Science room on the next day when the prosecutrix is alleged to have informed him of the incidence, which took place on 20.4.2013. She has further stated that she had been raped on subsequent occasions on 24.4.2013 and 30.4.2013. However, in the statement that has been recorded under oath in the trial court (in camera proceedings) there is no mention of Sadhu Ram, present appellant, being present in the Science room on “the next day”, when she purportedly informed the Principal (the present appellant) about the wrong act of the co-accused Rajender. It is interesting to note that if the prosecutrix could have informed about the wrong done to her by co accused Rajender to the present appellant, then why did not she inform her parents also ? The parents were only informed much later i.e in May 2014 when the instant FIR came to be registered.

16. Consequently, the conviction of the appellant on the ground that he was aware of the prosecutrix being subjected to the offence of rape and as a Principal he failed to report the matter, not borne out from the evidence. There is no direct evidence available to convict him under Section 21 of the POCSO Act. The appeal is allowed. The appellant is hereby acquitted of the charge. If the appellant is in custody he shall be released forthwith, unless wanted in some other case. If he is on bail, his bail bond shall stand discharged.

September 13, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No.