

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

Criminal Appeal-S No. 3330-SB of 2014(O&M)

Date of Decision: March 10 , 2018.

Raj Nath APPELLANT (s)

Versus

Union Territory, Chandigarh RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Deepak Bhardwaj, Advocate
for the appellant.

Mr. Sukant Gupta, Addl.PP, U.T.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant has been convicted for the offences punishable under Sections 363/366/376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh vide judgment dated 25.04.2014. By a separate order dated 28.04.2014, the applicant/appellant has been sentenced as under:-

Offence u/s	Sentence
363 IPC	Rigorous imprisonment for three years, besides, pay a fine of ₹5,000/- and in default thereof, undergo further simple imprisonment for two months

366 IPC	Rigorous imprisonment for five years, besides, pay a fine of ₹5,000/- and in default thereof, undergo further simple imprisonment for two months
376(i) IPC	Rigorous imprisonment for ten years, besides, pay a fine of ₹25,000/- and in default thereof, undergo further simple imprisonment for four months

All the sentences are ordered to run concurrently. No separate sentence has been awarded by the learned trial court to the appellant for the offence punishable under Section 6 of the POCSO Act.

Brief facts necessary for adjudication of the appeal are that, on 12.05.2013 ASI Sher Singh (PW7) alongwith other police officials were on patrol and crime detection duty in the area of Police Post Dariya. At about 12.20 p.m., they received an information from a godown near Makhan Majra Dharamkanta that a problem was being faced by a lady. PW7 ASI Sher Singh on receipt of this information reached the spot where the complainant (PW3) alongwith her daughter (victim) PW4, were found present.

Statement of the complainant (Ex.P1) was recorded. The complainant stated that she was a resident of village Sayra, Police Station Abhvan, District Chainpur, Bihar. Presently, she was residing in village Makhan Majra, Union Territory, Chandigarh. The complainant revealed herself to be employed at the Hariom Godown near Dharamkanta, Makhan Majra as a worker managing polythene. The complainant stated that she has two children, a daughter (victim) aged about seven years and a son aged four years. It was stated that on 12.05.2013 she alongwith her children went to Hariom Godown, Makhan Majra in connection with her work. While she was doing her work, her children were playing around. At about 12.00 noon she heard screams of her daughter coming

from behind the polythene sack lying in the godown. She reached behind the sack and saw the appellant, who runs a house-cart, in the godown. The appellant was forcing himself on her daughter, who was crying bitterly out of pain. Her daughter's private parts were bleeding. The complainant raised an alarm. The appellant was apprehended at the spot. The complainant's daughter was stated to be in a critical condition due to the bleeding. On inquiry, the appellant revealed his name and address. Legal action was prayed for against the appellant.

On the basis of the abovesaid statement, formal FIR No.112 dated 12.05.2013 (Ex.P8) under Sections 376/377 IPC and Section 6 of the POCSO Act was registered. Appellant was found present at the spot and arrested by PW7 ASI Sher Singh. Rough site plan (Ex.P10) was prepared. The personal search memo of the appellant is Ex.P11. The victim was taken for medical examination by lady Constable Sushma. The victim was examined by PW1 Dr. Navneet, Gynaecologist at the Government Medical College and Hospital, Sector 32, Chandigarh. Medical report of the victim is on record as Ex.P1. Sealed parcels containing clothes of the victim, blood samples, urine sample, nail clipping, swabs of perennial rectum (anal) etc. alongwith sample seal were handed over to lady Constable Sushma, who further handed it over to PW7 Sher Singh, which were taken in possession vide Ex.P12.

The appellant was also medically examined at the Govt. Medical College and Hospital, Sector 32, Chandigarh by PW2 Dr. Eishan Aryan, EMO. Medico-legal report of the appellant is on record as Ex.P3. Similarly, blood samples etc. of the appellant in sealed parcels were handed over to the accompanying Constable Surinder Singh, which were taken in possession vide

Ex.P13.

On completion of investigation, final report under Section 173 Cr.P.C. was presented. Charges for the offences punishable under Sections 363/366/376 IPC and Section 6 of the POCSO Act were framed against the appellant. The appellant pleaded not guilty and claimed trial.

Prosecution examined seven witnesses to prove its case. PW1 Dr. Navneet who examined the victim on 12.05.2013, detected a tear on the anal sphincter 1.5cm x 3cm at 12 O'clock position. Bleeding was found present. Injury was also detected on the private part of the appellant by PW2 Dr. Eishan Aryan. PW7 ASI Sher Singh verified the date of birth of the victim to be 25.07.2006 from the Registrar, Birth and Death, Municipal Corporation, Chandigarh. The birth certificate is on record as Ex.P6. The chemical examiner report as well as DNA report (Ex.P15) were tendered in evidence. The appellant in his statement under Section 313 Cr.P.C. denied all the incriminating evidence put to him. He pleaded innocence and false implication. No evidence was led in defence.

The learned trial court on considering the facts and circumstances of the case concluded that the prosecution has proved its case against the appellant beyond the shadow of reasonable doubt, thereby convicted the appellant for the offences punishable under Sections 363/366/376 IPC and Section 6 of the POCSO Act and sentenced him as detailed above. Aggrieved therefrom, the present appeal has been filed by the appellant.

Learned counsel for the appellant vehemently argues that the evidence on record is riddled with discrepancies and is insufficient to sustain the

conviction of the appellant. The prosecution case, it is submitted, is extremely doubtful. No reliance can be placed on the testimony of the complainant as well as the child witness. It is contended that the appellant has been falsely implicated in this case due to enmity of the parents of the victim with the appellant. In fact, parents of the victim had borrowed money from the appellant. There was a scuffle between the husband of the complainant and the appellant on the date of the incident and it is due to this reason that the appellant has been falsely involved in this case. The evidence on record does not prove that the victim was kidnapped by the appellant from the lawful guardianship of her mother with an intention to seduce her or that he committed rape upon her. It is thus prayed that the impugned judgment and order be set aside, this appeal be allowed and the appellant be acquitted of the charges against him.

Per contra, learned counsel for Union Territory, Chandigarh submits that there is clear cut and cogent evidence on record to prove the guilt of the appellant beyond the shadow of reasonable doubt. The impugned judgment is based on sound appreciation of the evidence on record. There is no ground whatsoever for setting it aside. Therefore, this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

PW3 the complainant, who is the mother of the victim clearly narrated that on the date of the incident, she had taken both her children i.e., the victim aged six years as well as the son aged four years to the godown where she was working. She used to collect the polythene in village Makhanmajra and was working at Hariom Godown near Dharamkanta. It is further stated by the

complainant that she went to answer the call of nature, leaving her children behind in the godown. When she returned, she heard cries of her daughter who was in the godown. It transpired that the appellant had committed a wrong act with the complainant's daughter. Undergarment of her daughter was found to be blood-stained. In response to a court question, the complainant who is admittedly an illiterate lady doing a menial job, specifically stated that when she reached the spot of occurrence, the appellant was found present behind the bags of polythene and she witnessed the appellant committing rape upon her daughter. The appellant allegedly told the complainant that the victim had fallen down from the bags of polythene. She specifically denied that there was any enmity between the appellant and her husband or that they owed a sum of ₹1,00,000/- to the appellant. The complainant explained that the complainant's husband, who also works at Hari Om Godown, had gone for taking medicine for his stomach problem on the date of incident, due to which he was not present at the time of the incident.

PW4, the victim aged nearly seven years deposed before the learned trial court. Satisfaction was recorded by the learned trial court regarding the competence of this child witness to depose. PW4, the victim stated that on the date of occurrence she was playing near the polythene bags. The appellant, whom she addressed as 'old uncle' committed a wrong act with her. PW4 stated that she was bleeding from her behind. The child witness specifically denied that she had deposed on the asking of her parents or that rape was not committed upon her by the appellant.

PW1 Dr. Navneet, Gynaecologist at the GMCH, Sector 32,

Chandigarh, on examination of the victim observed as under:-

“..... After thorough medical examination, no injury marks or abrasion were found on the face, breast, thigh or back. On local examination, the hymen was found intact, however, a tear was present on the anal sphincter 1.5 cm x 3 cm at 12 O'clock position. Bleeding was present there.”

The probable duration of the injuries is mentioned to be within four to six hours. PW1 denied that a false report had been submitted by her to the suitability of the police.

PW2 Dr. Eishan Aryan, after conducting the medical examination of the appellant observed as under:-

“..... The patient was having abrasion .5x65 cm abrasion over right leg just below knee joint on external examination. On genital examination, blood tinged white fluid present on glads of penis. The patient was also having multiple superficial laceration over foreskin of penis size .10x.10 cm to .35x.40 cm. The aforesaid injury was fresh one. After thorough examination on the accused Raj Nath, there was nothing to suggest that he was not incapable of performing sexual intercourse.”

The birth certificate of the victim is duly proved by PW6 Gulab Singh, Statistical Assistant, office of the Registrar, Birth and Death, Municipal Corporation, Sector 17, Chandigarh. The said witness was not cross-examined, despite opportunity. It is proved on record that the victim was nearly seven (7) years old at the time of the occurrence. PW7 ASI Sher Singh, the Investigating Officer in this case has given specific details of the investigation as were carried out. He has specifically denied the suggestion that he arrested the appellant to implicate him in any false case on the instigation of the parents of the victim.

It is not disputed that the appellant was apprehended at the spot and arrested immediately. Evidence on record unerringly points to the commission of the offence in question by the appellant. No other hypothesis inconsistent with the guilt of the appellant emerges in the present case. The complainant (PW3) and the victim (PW4) have clearly deposed regarding the commission of the offence by the appellant. The details have been clearly narrated by both the complainant and the victim. Doubtless to say, a child witness at times can be a dangerous witness, but after careful scrutiny of the evidence, if the child's testimony is found to be trustworthy, the same should be accepted. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **State of Karnataka v. Shantappa Madivalappa Galapuji and others, 2009 (12) SCC 731.**

In the present case, the learned trial court has duly assessed the capability, understanding and maturity of the child witness and duly certified that the said child witness (PW4) is a competent witness. There is nothing on record to compel this Court to look at the testimony of the child witness with suspicion. Similarly, there is no evidence on record to impeach the credibility of the complainant.

The ocular version is duly corroborated by the medical evidence on record. Argument of learned counsel for the appellant that as hymen of the victim was intact therefore no offence was committed upon her, is indeed fallacious, untenable hence, rejected. PW1 Dr. Navneet has proved the presence of injuries on the anal sphincter of the victim. Fresh bleeding was found present. Injury was found present on the private parts of the appellant as duly proved by PW2 Dr. Eishan Aryan. Furthermore, as per the DNA report Ex.P15, though no semen was

detected on the undergarment of the victim, it was detected on the pink coloured Kurti/shirt of the child. The DNA report by itself does not establish the innocence of the appellant in the given facts and circumstances of the case. Culpability of the appellant is proved on a wholesome evaluation of the evidence on record.

Defence sought to be raised that the appellant has been falsely implicated in this case due to enmity of the complainant's husband and the appellant is not substantiated by any evidence on record. Apart from the fact that no such stand has been taken by the appellant in his statement under Section 313 Cr.P.C., there is nothing on record to prove that there was any enmity between the appellant and the complainant's husband. The victim in this case was a minor girl of tender years (about 7 years old). The appellant was apprehended on the spot itself. Medical evidence in regard to the victim as well as the appellant clearly points to the commission of the offence in question. There is indeed nothing on record which creates even an iota of doubt on the complicity of the present appellant in the commission of the offence as above.

Keeping in view the facts and circumstances of the case, I do not find any illegality or infirmity in the impugned judgment of conviction dated 25.04.2014 and order of sentence dated 28.04.2014 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh.

Accordingly, this appeal is dismissed.

(LISA GILL)
JUDGE

March 10 , 2018.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No