

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Appeal-S No. 4476-SB of 2016

Date of Decision: December 01 , 2018.

Shish Ram

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Arshdeep Bhullar, Advocate
for the appellant.

Mr. Pawan Kumar Jangra, Addl.A.G., Haryana.

Mr. S.S.Khurana, Advocate
for the complainant.

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 is aggrieved of judgment and order dated 01.07.2016 passed by the learned Special Judge, Rewari whereby he has been convicted for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') and sentenced to undergo rigorous imprisonment for five years, besides, pay a fine of ₹20,000/- and in default thereof, undergo further simple imprisonment for six months.

Brief facts necessary for adjudication of the appeal are that, FIR No.112 dated 10.04.2015 (Ex.PO) was registered on the statement (Ex.PA) of the complainant (PW1), who is the mother of the victim (PW2). Complainant stated that her husband was serving Central Reserve Police Force (CRPF). They had three daughters, the eldest i.e., the victim being 7 years of age. It was stated that on 09.04.2015 at about 4.00 p.m., victim and other daughter of the complainant were playing in the street. Complainant called the victim to come back home, but there was no response. After some time the victim returned home and told the complainant (her mother) that the appellant-Shish Ram called her to his house on the pretext of viewing television. He removed her underwear, pressed her buttocks and tried to insert his finger in the private part of the victim. The victim further revealed that she was forced to put her hand in the underwear of the appellant. Thereafter, the victim came back home weeping. The complainant contacted her relatives. Some of the villagers started beating the accused. Thereafter, the complainant alongwith the victim, besides, Siya Ram i.e., son of her brother-in-law (Jeth) and Ram Kalan (her Jethani) went to Government Hospital, Kosli. The appellant was also brought in the hospital in an injured condition. The victim was medico-legally examined by PW10 Dr. Nandini Lamba, Medical Officer, General Hospital, Kosli on an application (Ex.PE) moved by PW4 ASI Sunita. Ex.PR is the Medico-Legal Report of the victim.

Formal FIR (Ex.PO) was registered on 10.04.2015 on the basis of complaint (Ex.PA). Rough site plan (Ex.PH) was prepared. Investigation was conducted by PW5 Lady ASI Shoba Rani. Accused was arrested on 19.04.2015.

He was medico-legally examined vide MLR (Ex.PT) on an application (Ex.PJ)

moved by the PW5 ASI Shoba Rani. Appellant suffered disclosure statement (Ex.PI) admitting his involvement in the crime.

Final report under Section 173 Cr.P.C. was presented against the appellant/accused on completion of investigation. Charge for the offence punishable under Section 6 of the POCSO Act was framed against him, to which the appellant pleaded not guilty and claimed trial.

Prosecution examined as many as twelve (12) witnesses to substantiate its case. 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. The appellant stated that the complainant had borrowed a sum of ₹14,000/- from him. A water purifier was supplied to him for a consideration of ₹8,000/-, but the complainant was yet to return the balance of amount i.e., ₹6,000/-. Despite repeated requests, she was not returning the said amount. Hot words were exchanged in respect to the said money on the date of the alleged incident. Hue and cry was raised by the victim's mother (the complainant), due to which people gathered at the spot. The complainant raised allegations against the appellant for attempting to outrage her modesty, due to which injuries were caused to him by the public. A false version has been put-forth by the complainant only with a view to save herself. The appellant further stated that he is an old person of 70 years of age and has been falsely implicated in this case. In defence, the appellant examined his wife Bhateri Devi as DW1.

Learned trial court on considering the facts and circumstances as well as evidence on record concluded that the prosecution has proved its case against the appellant beyond reasonable doubt, thereby convicted the appellant

for the offence punishable under Section 10 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 false implication of the appellant is evident on record. Incident in question is alleged to have taken place at 4.00 p.m. on 09.04.2015 but the appellant was arrested on 19.04.2015 even while it was stated that he was brought to the hospital on 09.04.2015 itself. Appellant is stated to have been identified immediately and was, in fact, subjected to physical assault. There is no explanation as to why he was not arrested for ten days. Furthermore, it is not understandable as to why the victim was taken to the hospital after six hours of the occurrence at 10.30 p.m. and not immediately. It is contended that there was, in fact, a dispute regarding money due to which the appellant was mercilessly beaten and a false case has been imposed upon him. It is further submitted that the appellant is an old person of about 70 years, therefore, commission of such a crime by him is highly improbable. It is thus prayed that this appeal be allowed, the impugned judgment and order be set aside the appellant be acquitted of the charges against him.

Per contra, learned counsel for the State and the complainant submit 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.

Victim in this case is a 7 year old child. Statement (Ex.PB) of the victim under Section 164 Cr.P.C. was recorded on 10.04.2015. Victim herself deposed as PW2. She has given a graphic description of the entire incident as it unfolded. Learned trial court has specifically certified the victim to be a competent witness. There is nothing on record to doubt the said certification. The complainant (PW1) has also given a detailed account of the incident as it unfolded. The defence could not elicit anything in its favour in the cross-examination of the said witness. PW10 Dr. Nandini Lamba specifically deposed that possibility of fingering of private part of the victim cannot be ruled out. The appellant has, in fact, admitted that he was beaten by the public at the time of the incident. Mere fact that the appellant was not arrested till 19.04.2015, cannot be of any benefit to him. Appellant admitted the injuries caused to him on 09.04.2015, though a different colour is sought to be given to the same. Thus, this fact does not in any manner cause a dent in the prosecution version. There is no evidence on record to show that there was any kind of a money dispute between the appellant and the complainant. Furthermore, there is nothing on record to show that the appellant had ever objected to his false implication in the manner as alleged. Merely because the appellant was 68/70 years of age at the time of the accident, cannot lead to a presumption that the appellant could not have committed the offence in question. There is clear and cogent evidence of the commission of the offence by the appellant as above. Prosecution has indeed proved its case against the appellant beyond all reasonable doubt.

No other argument has been raised.

Keeping in view the facts and circumstances of the case, I do not

find any illegality or infirmity in the impugned judgment of conviction and order of sentence dated 01.07.2016 passed by the learned Special Judge, Rewari which calls for any interference.

Accordingly, this appeal is dismissed.

Appellant is on bail which stands cancelled. His bail bonds stand forfeited. Necessary steps be taken by the concerned Chief Judicial Magistrate to secure his custody to serve rest of the sentence imposed upon him.

December 01 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No