

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

323

CRA-S-3778-SB-2014

DATE OF DECISION: 20.01.2018.

PANNA LAL

....Petitioner.

Versus

STATE OF HARYANA

...Respondent.

CORAM:- HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Satish Garg, Advocate
for the appellant.

Mr. D.R. Singla, Deputy Advocate General,
Haryana.

ANUPINDER SINGH GREWAL, J. (Oral)

The appeal is directed against the judgment dated 08.07.2014 whereby the appellant has been convicted under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'). He was sentenced on 09.07.2014 to rigorous imprisonment for a period of 05 years and to pay a fine of Rs. 20,000/-.

It is the case of the prosecution that at around 08:05 p.m. on 15.02.2014, a telephonic message was received at Police Station Woman Sonipat from Police Station Kharkhoda, District Sonipat that the prosecutrix had been brought by her aunt through the Delhi police at Police Station Kharkhoda. She had alleged commission of rape upon her by her father, who was also stated to have been present at Police Station

Kharkhoda. After receiving this information, a police party headed by SI/SHO Promila went to Police Station Kharkhoda whereat the statement of the prosecutrix was recorded. She had stated that she was born on 25.03.2002 and was studying in Class VI at a private school at Bawana. As her mother had left matrimonial house around 5-6 years back she was residing with her aunt at Bawana. Around one and a half years ago, her father and two elder brothers had shifted to village Firojpur Bangar while her two younger brothers were employed at Bawana. During Navratra holidays in the year 2013, her father had taken her to village Firojpur Bangar and on the next day, he committed wrongful act with her. She had started crying and he had threatened to kill her. She also stated that thereafter he kept on doing wrongful acts with her every second/third day. Later, on 10.02.2014, she went alone to Bawana to her aunt's house and disclosed the entire episode to her, who brought her to the police station. On the basis of her statement, a case under Section 376 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') as well as Section 6 of the POCSO Act was registered. She was medico legally examined. The medical examination did not reveal the factum of her being ravished. Her statement under Section 164 Cr.P.C. was also recorded before the Magistrate on 16.12.2014. She had stated before the Magistrate that her father had committed

wrongful acts with her 6-7 times, when she had stayed with him at the village. She also stated that she had gone to her aunt's house on 10.02.2014, who was informed about the incident. On the basis of the statement and the medico legal report, offences under Section 376 IPC and 6 of the POCSO Act were deleted while offences under Section 354 IPC and Section 12 of the POCSO Act were added. The accused was arrested after completion of investigation. The investigation was completed and challan was filed in the Court. The case was committed to the Court of Sessions for trial. The trial Court by the order dated 15.03.2014 framed charges under Section 354A of the IPC and Section 10 of the POCSO Act.

The prosecution in support of its case examined 09 witnesses. PW-1 HC Inder Pal deposed about the sketched site plan Ex. PW-1/A of the place of occurrence as mentioned by the prosecutrix. Pooja Pahal, teacher of the school, where the prosecutrix was studying, was examined as PW-2. She proved certificate Ex.PW2/A issued by the Principal of the school and identified her signatures. She stated that as per entry in school record, the date of birth of the prosecutrix was 23.03.2002. The aunt of the prosecutrix was examined as PW-3. She had deposed that the prosecutrix used to reside with her at Bawana and during Navratra, she had visited her father and when she came back, she had disclosed to her that her father had

committed wrongful acts with her. She had then taken her to police station Bawana and later to Police Station Kharkhoda. She had also stated that the accused was in a drunken condition when he used to sleep with her and touch her inappropriately. Ms. Ankita, Sharma, JMIC, Sonipat has deposed as PW-5, wherein she had stated that the statement of the prosecutrix PW-4/B was recorded by her on receipt of application Ex.PW-5/A and orders passed Ex. PW-5/B. She also deposed about the certificate Ex. PW-5/C appended to the statement. Dr. Richa Malhan was examined as PW-6 and tendered her affidavit PW-6/A that on 16.02.2014, she had conducted medico legal examination of the prosecutrix and report Ex. PW-5/B had been prepared by her. She also stated that there were neither injuries nor any other evidence which would suggest rape. PW-7, SI Krishan Kumar of Police Station Samaypur Badli, Delhi had stated that the prosecutrix was taken to Kharkhoda police station on 15.02.2014 for conducting further proceedings after she had come to police station Bawana along with her aunt alleging wrongful acts by her father. PW-8 deposed about registering formal FIR Ex.PW8/A on receipt of ruqa and making endorsement Ex.PW8/B in that regard. Inspector Promila, who was the Investigating Officer, deposed as PW-9 and stated that she had conducted the

investigation and proved Ex.PW9/A with regard to proceedings conducted by her on ruqa and Ex.PW9/B which was rough site plan of the place of occurrence prepared by her at the instance of the prosecutrix. The accused in his statement under Section 313 Cr.P.C. had stated that he had been falsely implicated in the case.

Learned counsel for the appellant has stated that as the medical evidence did not point to rape or any sexual assault on the prosecutrix and there were no injuries or any mark of sexual assault on the person of the prosecutrix, the accused was entitled to acquittal.

Learned State counsel, on the other hand, states that the statement of the prosecutrix is sufficient to sustain the conviction of the appellant under Section 10 of the POCSO Act. She had in her statement before the Court denied that she had been raped by her father but she had categorically stated that he had inappropriately touched her and therefore, a case under Section 10 of the POCSO Act was fully established.

Heard.

The prosecutrix while appearing as PW-4 had categorically stated that during the Navratra holidays, she had visited her father at the village as he wanted her to help in the household work. At night, she had slept with her father and he had removed her underwear and inappropriately touched and

fondled her. When she resisted and tried to keep her underwear on, he kept trying to remove it. He had done the same the next 2-3 nights. Thereafter, she had called her aunt on the phone and told her that she wanted to come back. She then came back to her aunt and narrated the entire incident to her. Her aunt had taken her to the police at Bawana and thereafter, they went to police station Kharkhoda whereat her statement was recorded. In cross-examination, she had stated that it is correct that her father did not rape her but she had categorically denied the suggestion that her father did not remove her underwear or touch or fondle her inappropriately. She had also denied that she was instigated by her aunt to depose falsely against her father or that there was any animosity between her father and her aunt & uncle. She was over 12 years of age and student of Class VI when the incident took place and her statement was recorded shortly thereafter. The statement of the prosecutrix appears to be truthful and trustworthy. Despite extensive cross-examination, no material contradiction has emerged in her statement. Even otherwise, it would be difficult to believe that a 12 year old girl would falsely implicate her father.

It is well settled that conviction can be based solely on the testimony of the prosecutrix if it is trustworthy and inspires confidence. Reference can be made to the judgment in

the case of **O.M. Baby (Dead) by L.Rs. v. State of Kerala** reported as **JT 2012 (6) SC 117**.

Further, the statement of the prosecution is corroborated by the statement of her aunt, who had deposed as PW-3. Though in cross-examination, it was put to PW-3 that she had deposed falsely due to her animosity with the accused but no material had been brought forth which would indicate that there was any enmity between PW-3 and the accused.

At this stage, learned counsel for the appellant contends that if the conviction of the appellant is being maintained then he deserves to be accorded leniency in the sentence as he has to take care of 02 minor children and his wife had already deserted him. This contention of the learned counsel for the appellant cannot be accepted as the minimum sentence which has been provided for an offence punishable under Section 10 of the POCSO Act is 05 years. This Court cannot sentence the appellant to any period less than 05 years after maintaining his conviction under Section 10 of the POCSO Act.

Consequently, I do not find any merit in this appeal, which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

20.01.2018
SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No