

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

CRA-S-932-SB OF 2016

Date of decision:- 20.01.2018

Aman

...Appellant

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Sheenu Sura, Legal Aid Counsel
for the appellant.

Mr. D.K.Mittal, DAG, Haryana.

RITU BAHRI J. (Oral)

This appeal has been preferred against the judgment of 10.12.2015 and order of sentence dated 14.12.2015 passed by Learned Additional Sessions Judge, Gurgaon, vide which the appellant has been held guilty under Sections 376, 452 IPC and Section 6 of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO Act). He was sentenced for a period of seven years, two years and ten years rigorous imprisonment respectively, under Sections 376, 452 of IPC and Section 6 of POCSO Act. Fine of Rs. 3500/-, Rs. 1000/- and Rs. 5000/- were also imposed under the aforesaid heads. In default thereof further imprisonment for fourteen months, four months and twenty months, respectively, were awarded. All the sentences were ordered to run concurrently. The matter was also recommended to the District Legal Services Authority, Gurgaon for awarding suitable compensation to the prosecutrix.

Learned Counsel for the appellant has referred to the statement

made by the prosecutrix under Section 164 as Ex. PC where it has been specifically stated that 10-15 days ago, there was no one in house and she was alone at home and all her brothers and sisters had gone to School. Room of Aman is adjoining her room. Aman came to her room and started molesting her. On resistance, he overpowered her and he committed rape upon her. She raised hue and cry but no one came for help as there was no one who could be attracted on the spot. She disclosed the entire version to her aunt living in her neighborhood. She advised prosecutrix to tell the incident to her father but as her father was short tempered, she was frightened. When she was bleeding profusely and the bleeding did not stop even for a month, then she narrated the incident to her father who took her to the police station. In her statement under section 164 Cr.P.C. Ex. PC recorded on 25.06.2015 she specifically mentioned that she was bleeding from the last 15 days and thereafter, her medical was conducted on the same date. On perusal of the medical report as Ex. PJ, nothing was mentioned about with regard to bleeding of the prosecutrix since 15 days. It mainly shows that the possibility of sexual assault cannot be ruled out. Even the neighborhood aunt whom she told the entire version after 2-3 days, has not been associated by investigating agency.

Since samples were taken on 25-06.2015 after 25 days of the incident, a FSL report conducted on 29.09.2015 as Ex. PP, shows that Laboratory examinations were carried out to detect the presence of semen on the exhibit performing chemical test and microscopy. Based upon these examinations, the results obtained that Semen Could not be detected on exhibit-1 (vaginal swabs). On the basis of all the three evidence i.e. A

statement recorded in Section 164 as Ex. PC, Medical Report as Ex.PJ and FSL report as Ex. PP does not make the case of entire sexual assault as per the Section 5 of POCSO Act and hence the conviction is not made out.

I have heard learned counsel for the appellant and perused the case file.

Though, as per the report the possibility of sexual assault could not be ruled out but it could not be covered under Section 5 of the POCSO Act and it can be covered under Section 7 of POCSO Act.

The age of the prosecutrix was taken as 13 years and as per deposition of ASI Mohd. Sharif into police possession as Ex.PE where he has clearly stated that the head Master of the school had recorded the date of birth of the prosecutrix as 14.10.2002. No objection was ever raised by the accused with regard to the manner of taking into possession document Ex.PE from the Head Master. Even the conduct of ASI Mohd. Sharif could not be impeached by the accused during his cross-examination and sentences under Section 376 and Section 6 of POCSO Act are not made out.

Accordingly, this appeal is partly allowed and conviction is being modified and order of sentence dated 14.12.2015 passed by Learned Additional Sessions Judge, Gurgaon is being set aside.

Keeping in view the facts and circumstances, Sentence under Sections 370 and Section 5 of POCSO Act not made out and possibility of sexual assault could not be ruled out, thus, accused committed sexual assault as defined under **Section 7 of POCSO Act**, which is punishable under **Section 8 of the POCSO Act**.

Sentence is being modified and the accused awarded sentence under Section 452-IPC, a rigorous imprisonment for a period of two years with a fine of Rs. 1000/- and sentence under section 8 of the POCSO Act a

rigorous imprisonment for a period of three years and to pay a fine of Rs.500/-. Hence, both the substantive sentences shall run concurrently.

20.01.2018
Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *No*