

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

**Crl. Appeal No. S-593-SB of 2015
Date of decision : 06.10.2018**

Manish Arora

... Appellant

versus

U.T. Chandigarh

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. G.S. Sandhu, Advocate
for the appellant.**

Mr. Amit Kumar Goyal, APP Chandigarh.

ANITA CHAUDHRY, J.

Challenge has been laid here to the judgment of conviction dated 09.01.2015 and order dated 12.01.2015 vide which the appellant has been held guilty under Sections 10 and 12 of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO Act) and 354-C IPC. He was sentenced to undergo rigorous imprisonment for seven years, three years and one year respectively. A fine of Rs.1 lakh was imposed under Section 10 of the POCSO Act. In default whereof he was required to further undergo rigorous imprisonment for six months. The appellant had been directed to pay Rs.3000/- and Rs.1000/- under Section 12 of the POCSO Act and Section 354-C IPC respectively, in default whereof further rigorous imprisonment for one month and seven days respectively was awarded. The appellant was also held guilty under Section 354-A IPC but no separate sentence under this head was awarded as sentence was already awarded

under the graver offence under Section 12 of the POCSO Act. All the sentences were ordered to run concurrently. The fine, if realized, was ordered to be paid to Victims A and B, as compensation.

It was a case where the appellant was serving as a Supervisor with the Children Home for Girls, Chandigarh. The (girl) inmates made complaints (Ex.PA & Ex.PB) against him on the child help line about sexual abuse. The complaints were forwarded to the Department of Social Welfare on 03.04.2014 vide letter Ex.PC. A Committee was constituted on the same date vide Ex.PD. The Committee after enquiry, vide report dated 16.04.2014 (Ex.PE) recommended action against the appellant for sexually exploiting the child inmates. The Wardens Meena Sharma and Manjeet Kaur were also held responsible for not taking timely action despite well versed with the overt acts of the appellant. The operative part thereof reads as under:-

“From the perusal of all the above statements the Committee was of unanimous opinion that the complaint made by the residents of Bal Niketan against Sh. Manish Kumar, Supervisor is genuine. He used to sexually harass the residents girls. Ms. Manjit Attendant has also stated in her statement that all the residents have told her about the misbehaviour of the Supervisor and she reported the same to Ms. Meena, Attendant as she is senior to her and took further no action which shows her insensitivity towards the residents and also consequently, shows gross negligence towards the performance of her duties by not reporting the incident to the Hony. Secretary. Thus, she along with Ms. Meena equally share the responsibility of this inhuman act and accordingly, deserve strict action to be taken against them. During the course of enquiry, Mr. Manish Kumar, Supervisor, also stated before the

committee that he used to hug, touch the shoulder and pat the children like a father which clearly shows that he used to touch the residents intentionally. Ms. Amar Kulwant Singh has also stated before the committee that Supervisor was only allowed to enter the dormitories only at the time when the children/ residents has gone to their respective schools whereas the children/ residents and the attendants have stated that he used to come oftenly in the dormitories in their presence also. Thus, there is contradiction in the statements of Hony. Secretary, residents and attendants which shows that something wrong was happening in the Home.”

On the basis of enquiry report, a complaint was made to the police. Consequently, FIR No. 187 dated 21.04.2014 under Sections 354, 354-A IPC and Sections 10 and 12 of the POCSO Act was registered at Police Station Sector 11 Chandigarh and investigated.

The girl inmates were joined and their statements were recorded. They reiterated that the accused used to do obscene acts with them and sexually misbehaved with the inmates and touched their private parts and hugged them as and when they went to him to take stationary etc. It was further alleged that he peeped into the room when they used to change their clothes. A site plan was prepared. The accused was arrested on 23.04.2014. On completion of investigation final report was filed.

Charge under Sections 10 & 12 of POCSO Act and under Sections 354-A, 354-B and 354-C IPC was framed. The appellant claimed trial.

At the trial, the prosecution examined eight witnesses. The victims, who were referred as Victim A and Victim B were examined as

PW1 and PW2 respectively. They reiterated the prosecution allegations. PW3 Rajesh Jogpal was the Director, Social Welfare and had filed the complaint with the police. PW4 Smt. Saroj produced and proved the salary register, leave register, attendance register and documents pertaining to the inmates. PW5 SI Aarti Goel was the Investigating Officer of the case. PW6 Gurdial Singh proved the date of birth of Victim B as 03.11.1998. PW7 HC Yash Pal had prepared the scaled site plan (Ex.PAE) and PW8 Aslam Mohd. had produced the birth record of Victim A who was born on 07.03.2004.

Accused abjured the trial in his statement under Section 313 Cr.P.C. He denied the allegations. According to him, he was residing in the Children Home with his wife and two daughters since 2006 and had treated the inmates as his daughters. PW1 and 2 had come to the Children Home in 2010 and 2011 respectively. He had no direct links with the inmates and House Mother stayed in each dormitories who used to collect the material from him on requisition. PW2 had affair and he stopped her and informed the Secretary of the Home. The boys caused nuisance outside the Home and also hurled abuses upon him. He complained to the Secretary of the Home. Annoyed with this, PW1 and PW2 levelled false allegations against him.

In defence, the appellant examined six witnesses. They deposed that everything was alright in the Children Home and they had never heard of any misconduct on the part of the appellant and the allegations levelled by PW1 and 2 were false.

On appraisal of the evidence produced on record, the trial Court rejected the defence plea and held the appellant guilty under Sections 10 and 12 of the POCSO Act and under Section 354-A and 354-C IPC and sentenced him in the manner indicated above.

Dis-satisfied with the same, the appellant has filed the present appeal.

I have heard learned counsel for the appellant and learned counsel appearing for UT Chandigarh and have gone through the records carefully.

Learned counsel for the appellant had urged that the trial Court had erred in holding him guilty on the basis of unreliable and unconvincing evidence. Elaborating his submission, he pointed that PW2 was annoyed with the appellant as he had stopped her from meeting her boyfriend and she was creating nuisance at the Home where her boyfriend and his companions had created ruckus and they misbehaved with the appellant. According to him, vide Ex.DA PW2 had tendered apology to the appellant and the appellant brought these mis-deeds to the knowledge of the Secretary. On account of the grudge he was falsely implicated and story was concocted and there is no specific date or time. He had further submitted that the appellant was staying in the Home along with his wife and two daughters and it was impossible for him to abuse the inmates especially when other female employees were there. He had further submitted that a story was concocted by PW2 and there were periodic checks in the Home by the Welfare Department and Chandigarh Administration, but no complaint was made against the appellant and the problem started only when PW2 had come to stay in the Home. According to learned counsel, she felt the appellant to be hurdle in meetings her boyfriend and to keep him away, he was implicated in this case. Learned counsel had referred to letters, Mark G to L and had submitted that those were written to PW2 by her boyfriend. He had also referred to some photographs and it was claimed that PW2 was together

with her boyfriend. According to him, PW1 was ten years old and being of tender age she was influenced by PW2 to depose against the appellant and no reliance could be placed on the child witness who had been tutored and PW2 had reasons to falsely implicate the appellant. He further referred to letters Ex.DB and Ex.DC and statements marked B and E to contend that the other inmates and their parents had given clean chit of the appellant. He had further submitted that the appellant was managing the affairs of the Home in correct and right manner and always treated the inmates as his family members and the trial Court fell into error by not relying upon the testimonies of defence witnesses who were primarily related to the Home and have deposed in so many words about the fair conduct of the appellant. He had further urged that the work and conduct of the appellant was upto the mark and on 10.04.2014 he had submitted his resignation, but the same was not accepted vide letter Mark-O by the competent authority and it was only on account of his working and his dedication towards his work.

Learned State counsel has supported the judgment passed by the trial Court. He had submitted that no credible and legally admissible evidence was adduced by the appellant. According to him, none from the other inmates or their parents were produced by the appellant to prove his false implication. The letters were not proved on record and the appellant failed to get the handwriting on the apology compared to prove that it was of PW2. According to him, the story propounded by the defence witnesses was an after-thought. He had further submitted that it was not disputed that PW2 was studying in a co-educational institutions and the photographs might have been clicked in the school and merely because she was with some boys in the photo was not enough to presume that she was having an

affair. He had submitted that the appellant was to look after the welfare of the inmates, but he misused his position and sexually exploited the inmates and was rightly convicted.

It is not in dispute that the appellant was working as Supervisor in the children home at the relevant time. There is no dispute regarding his identity. He was working there since 2006 and Pws 1 and 2 took admission in the Home in the years 2010 and 2011 respectively. As per records produced and proved on record, date of birth of PW1 was 07.03.2004 and PW2 was born on 03.11.1998. They were just ten and fourteen years of age when the complaints were made.

PW2 was the first to raise a voice against the appellant. She had made complaint to the child helpline. She deposed that after the death of her mother, she started living in the Home as her father was a caterer and often remained busy. Appellant who was the Supervisor there used to sexually harass and assault the inmates. She deposed that the inmates used to avoid meeting the appellant as he often called them in their office and embraced them with bad intention. She narrated that once she was sleeping and was not well, then the accused sat on her bed and removed the quilt. On one occasion the appellant pulled her shirt and praised about the shirt she was wearing. The trauma which they underwent depicts from her further deposition that the girls used to go to the office of appellant together to take books and were afraid of going alone.

The statement of this witness is un-impeached. The fear and trauma which she and others had undergone in the Home is apparent from her deposition. Despite lengthy cross-examination, nothing adverse has come against the prosecution witness. The testimony was

unshattered.

Statement of PW2 finds corroboration from PW1. She also narrated the events. PW1 in unequivocal terms deposed that there were two aunts in the Bal Niketan who used to take care of the girls. The appellant was working there. He used to embrace the girls with bad intention. She had further stated that he used to open the zip of his pant and made her to sit in his lap and sexually assaulted her. The appellant used to pull up her shirt and pressed her breasts and he usually watched them when they were changing clothes.

The plea that PW1 was tutored and was under the influence of PW2 and not a reliable witness, is without substance. The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify.

In the case of **Dalbir Singh & Ors. Vs. The State of Haryana 2003 (1) RCR(Crl.) 727**, the Division Bench of this Court, while relying upon the testimony of a child witness of 8 years age, held as under:-

“18. The law regarding the testimony of a child witness is well settled. A conviction can be based on the basis of testimony of a child witness. His testimony can be relied on even in the absence of oath, if he understood nature of the questions and gave rational answers thereof. The only precaution, which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable and his or her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a

witness be corroborated before the conviction can be allowed to stand, but as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. Before recording the statement of a child witness, the learned trial Court has to satisfy itself that the witness was capable to depose. The testimony of a child witness cannot be rejected simply on the ground that because of his tender age, he was likely to be tutored. It is not the law that if a witness is child, his evidence shall be rejected even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be awayed by what others tell him.”

There is no legal impediment in believing the testimony of a child witness, which otherwise is found reliable, subject to certain safeguards viz. the Court while assessing the evidence of a child witness must satisfy that the witness was capable to depose and his or her demeanour must be like any other competent witness and there is no likelihood of being tutored. The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices her manners, her apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose her capacity and intelligence as well as her understanding of the obligation of an oath and after its satisfaction there is no obstacle in the way of accepting the evidence of a child witness. **(See Golla Yelugu Govindu Vs. State of Andhra Pradesh 2008(4) SCALE 569).**

PW1 was ten years old when she was examined in the Court. It

cannot be believed that she was tutored. Before her examination, certain questions were put to her and after assessing the answers, the Court observed that the witness was competent to depose after satisfying itself about the capacity to understand the questions, the Court proceeded to record her statement after administering oath. In the instant case, there was no reason for PW1 to depose falsely against the appellant. She bravely underwent the test of cross-examination. Nothing could be elicited from her cross-examination. She firmly denied all the suggestions.

By not giving specific date or time of assault, the statement of child witness cannot be ignored, especially when she narrated the incidents vividly. A child of tender age is always receptive to abnormal events which take place in their lives and it never fades from their memories. She had given vivid description of the incidents that had taken place with her in the Children Home.

The plea that except PW1 and PW2 no other inmate had complained against the appellant, carries no weight. It is not the quantity which matters. The two girls come forward and spoke against the appellant and described his mis-deeds. Their testimonies cannot be thrown on ground only because the other inmates had not come forward or made any complaint.

No doubt none of the Committee members was produced by the prosecution but it is not fatal. It was for the department to see who all were involved and what action was to be taken. The statements of victims were the most important.

The defence taken by the appellant regarding affair of PW2 and that he stopped her from meeting her boyfriend has not been proved.

Letters Mark G to L were not proved by the defence. The accused failed to examine a handwriting expert to prove that they were addressed to PW2. Again the photographs of PW2 with some boys does not prove that she was having an affair with one of the boys. She was studying in a co-educational institute and she specifically admitted that the photo was clicked during a theater show in the school. The Supervisor did not complain to any authority or to her father that PW2 was caught in a compromising position with a boy.

The defence witnesses produced by the appellant were officials. The accused did not produce any other inmate to support him. Had he been sure of his innocence, he could have produced the other inmates. The author of Ex.DB, Ex.DC and statements Mark B & E were not produced. Writing Ex.DA does not show that PW2 had tendered apology or that she was admitting to any affair. It refers to abuses given by the boys. No reason is indicated in it for tendering apology. The defence was rightly discarded by the trial Court as it was not convincing. There is no reason to take a different view. The conviction of the appellant was rightly recorded. His conviction is maintained.

Faced with the situation, learned counsel for the appellant had urged that the sentence imposed upon the appellant is excessive and he is behind the bars since the date of his arrest and was a first offender and more than fifty years of age and the sole bread earner of family. It was urged that he had two grown up daughters and their future was at stake.

The offence committed by the appellant is of such a nature that he does not deserve any leniency in the matter of sentence, but considering the fact that he has two grown up daughters and the sole bread earner and

has suffered incarceration for the last several years, the sentence imposed upon the appellant under Section 10 of POCSO Act only is reduced to six years. The sentence awarded to the appellant under Sections 12 of POCSO Act and Section 354-C IPC is maintained. The fine imposed by the Court below and the default clause are maintained.

Appeal stands disposed of.

October 06,2018

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No