

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

205

**CRM-6802-2019 in/and
CRA-D-1073-DB-2013 (O&M)
Date of decision: 10.07.2019**

Rajesh @ Pappu

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

HON'BLE MR. JUSTICE HARNARESH SINGH GILL

-.-

Present: Mr. Rajender Kumar, Advocate
for the appellant.

Ms. Palika Monga, DAG, Haryana.

AJAY TEWARI, J. (ORAL)

CRM-6802-2019

This is an application for suspension of sentence of applicant/appellant.

By consent the main case is taken up on board for its final disposal.

Main case

1. This appeal has been instituted against the judgment and order dated 27.08.2013 passed by Special Court, Kurukshetra under the Protection of Children from Sexual Offences Act, 2012 (for short '*POCSO Act*') by which the accused-appellant had been convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period

of 14 years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) which shall go to the complainant as compensation under Section 357 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). The accused-appellant had also been convicted under Section 506 of the Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo rigorous imprisonment for the period of two years.

2. Brief facts of the case are that on 09.02.2013, while patrolling at T-point of Dera Fateh Singh Road, Pehowa police officials were met with complainant 'F' along with his wife 'M' and daughter 'K' (real name withheld for the purpose of keeping identity of the child secret in terms of the provisions of Section 33(7) of the POCSO Act. They reported that the appellant, who was their neighbour, (living opposite to their house) had assaulted 'K' physically and also made attempts to rape her after taking off his trousers.

3. In the trial Court, charge was framed against the accused-appellant under Section 6 of the POCSO Act, and 506 of IPC to which he pleaded not guilty and claimed trial.

4. In the course of the trial as many as 15 prosecution witnesses were examined. Having been convicted he has filed the present appeal.

5. Before considering the arguments of learned counsel it would be appropriate to mention that 'K' appeared to give testimony and categorically and unequivocally stated about the allegations which were levelled in the FIR. The only suggestion made to her was that there was a dispute between the mother of the appellant and her mother, which she specifically denied. The medical evidence was in the form of affidavit of Doctor Neha Khaneja, Medical Officer, L.N.J.P. Hospital, Kurukshetra.

Para 3 of whose affidavit reads as follows:-

“The victim gave history of assault with finger and tongue. Last attempt was on 08.02.2013. There was a history of passage of slight bleeding on the day of examination since morning. On general examination BP-110/70 mmHg PR-88 per minute. Baby was giving response to the comments adequately.”

The cross examination of that Doctor reads as under:-

“XXXX by Shri Pushpinder S.Rana, Advocate for the accused.

Rubal was brought by her parents, Assistant Sub-Inspector Ramesh, Head Constable Virender and lady Constable Sudesh at about 1825 hours on 09.02.2013 in L.N.J.P. Hospital, Kurukshetra. We medico legal examined her at about 1900 hours after the panel consisting of myself and Dr. Renu Chawla, S.M.O. was constituted. Initially, the history was disclosed by mother Pushpa and when she was stopped, thereafter Rubal had narrated the occurrence as she was giving response to the comments adequately. The victim has stated that the assault was done with finger and tongue only. The possibility of inserting finger by the child herself for itching cannot be ruled out but the suffering of the injury as in the case is highly unlikely by such self insertion of the finger. There is no possibility of causing injury as in the present case if a child falls on a sharp pointed weapon as in that case there is possibility of incised wound. The blood was very small in quantity and was fresh one within a period of 24 to 48 hours. It is incorrect to suggest that I have deposed falsely.”

6. The supporting testimony came in the form of statement of mother of the prosecutrix. She stated about how she had come to know of the whole sordid incident.

7. Learned counsel for the appellant has argued that there are certain discrepancies in the statements of 'K' and 'M'. As regards 'K', he has argued that in the examination-in-chief she had stated that she had gone to the house of the appellant to pick guavas but in the cross-examination she had stated that she had gone there because she was asked by other children to come and play. In our considered opinion this minor inconsistency will not detract from her statement and the medical evidence. The second argument is that there was a dispute between the mother of the appellant and the mother of 'K', but beyond putting a question to this effect no evidence was led about the same. As regards the testimony of the mother, learned counsel has argued that at the time of the first complaint she did not disclose that her daughter had mentioned about the pain and this was disclosed only in the second complaint. Learned Deputy Advocate General, Haryana has argued that this is also a minor inconsistency, and being faced with the enormity of the dastardly act, it cannot be held against the mother if she did not give a word to word detailed account, because at that time she was only reporting the assault. We find merit in this argument.

8. No other argument has been raised by learned counsel for the appellant. Consequently, we have no hesitation in upholding the conviction.

9. Learned counsel for the appellant has further argued that the appellant is a young man who has otherwise a clean record and he has already learnt a lesson by spending about 6 ½ years in prison. He has made a prayer to reduce his sentence to the period already undergone by him.

10. Learned State counsel has argued that in this case there is no scope for reduction of any sentence because the appellant was a trusted

neighbour and had betrayed the trust of not only of his wife but also of the minor child.

11. Having considered both the arguments, we find that the views expressed by the learned counsel are too extreme, and consequently the sentence imposed upon the accused is reduced to 11 years under Section 6 of the POCSO Act. We however enhance the fine to Rs.1,50,000/- which shall be deposited within a period of 3 months. The same will be in the shape of fixed deposit in the name of the minor 'K' and be released to her attaining the age of majority. In default of payment fine, the appeal would be deemed to be dismissed. Sentence under Section 506 of IPC shall be maintained.

12. Appeal stands disposed of is above terms.

13. Since the main case is decided pending CRM if any stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

10.07.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No