

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

CRA-D-1092-DB-2016 (O&M)
Date of decision : 22.11.2019

Satpal

..... Appellant

versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MRS.JUSTICE ALKA SARIN**

Present : Mr. Ved Priya Malik, Advocate and
 Mr. Anupam Sharma, Advocate
 for the appellant (Legal Aid counsel).

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment and orders of conviction dated 22.03.2016 passed by the Additional Sessions Judge, Rohtak whereby the appellant had been convicted under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 (for short POCSO Act) and Sections 293 and 506 IPC in FIR No.105 dated 08.04.2014 registered at Police Station Kalanaur, District Rohtak. The sentence awarded to the appellant was as under :-

(i) To undergo imprisonment for life till the remainder of his natural life and to pay a fine of Rs.10,000/- for the commission of offence punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012. In default of payment of fine, he shall further undergo simple imprisonment of six months.

(ii) To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- for the commission of offence punishable under Section 293 of the Indian Penal Code. In default of payment of fine, he shall further undergo simple imprisonment of one month.

(iii) To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- for the commission of offence punishable under Section 506 Indian Penal Code. In default of payment of fine, he shall further undergo simple imprisonment of 15 days.

2. As per the prosecution on 08.04.2014 the minor prosecutrix made a call to the Women Help Line informing the police that the appellant (her father) was repeatedly assaulting her sexually. The police reached the spot, took the girl to the Magistrate where she recorded her statement under Section 164 Cr.P.C. Thereafter, she was taken to the General Hospital, Kalanaur and her medical legal examination was done. Subsequently the appellant was prosecuted. The appellant was tried and was convicted as mentioned above and hence the present appeal.

3. The prosecution examined nineteen witnesses namely Ms. Kiran Bala, the Supervisor, Nari Niketan, Karnal as PW1, A (the victim) as PW2, Inspector Rattan Singh as PW3, HC Sumit Kumar, Draftsman, SP Office, Rohtak as PW4, EASI Jai Parkash as PW5, Dr.Sushila, the Medical Officer, General Hospital, Kalanaur as PW6, Lady Constable Promila as PW7, Lady Constable Poonam as PW8, Constable Pardeep as PW9, Ms. Sushma Rani, the Principal, Govt. Girls Senior Secondary School, Kalanaur as PW10, Sh.Ashwani Kumar, Addl. Chief Judicial Magistrate, Rohtak as PW11, Ms. Jyoti Solanki, Advocate as PW12, SI Surender Singh as PW13, Constable Sanjay as PW14,

Dr.Luv Sharma, the Professor, Department of Forensic Medicine, PGIMS, Rohtak as PW15, Ms. Sneh Lata, the District Programme Officer, Child Welfare Committee, Rohtak as PW16, Dr.Raman, the Medical Officer, General Hospital, Rohtak as PW17, Constable Manjeet Singh as PW18 and L/ASI Sarita as PW19. The important witnesses being PW2, PW6, PW11, PW15, PW17 and PW19 their testimony would require a close scrutiny.

4. PW2 A, the victim has deposed that she used to stay at her home and do work. From last several years, her father i.e. present accused used to commit rape with her forcibly. He also used to commit unnatural sex with her. On her refusal, he used to threaten her that she would be killed besides beating. He also used to show her obscene books. Her mother is already dead and she is only child of her parents. On 08.04.2014, she contacted women help-line at No.1091 by their mobile no.9355416436 and concerned police came to their home by PCR and took her to the police station. In presence of Ms Jyoti Solanki, Advocate her statement Ex.P4 was recorded which bears her signature at Point-A. Thereafter, she was taken to the General Hospital Kalanaur and her medical examination was got conducted at about 12.30 (mid night) vide MLR Mark-A having her signature at point-A whereby she gave her consent for the examination. Thereafter, she was taken to her home where she handed over her salwar and jumpher (shirt) to the police which were lying under GADDA. Thereafter, she was brought to the District Courts, Rohtak and her statement Ex.P5 was got recorded by a Judge. Thereafter, she was again taken to her home by the police and that time one more police official accompanied them and at her pointing out, site plans Mark-

B and Mark-C were prepared. Later, she was produced before the Child Welfare Committee, Rohtak from where she was sent to the Nari Niketan, Karnal for her lodging. Later, the police took her to the PGIMS, Rohtak, twice i.e. On 21.04.2014 and 26.04.2014 for her age determination test. Her date of birth is 04.04.2000 and she had studied in Government Girls Middle School, Kalanaur up to 6th class. She also proved book Mark-D having obscene material which her father had showed her.

5. PW6 Dr.Sushila, the Medical Officer has deposed that on 08.04.2014, on police request she medico-legally examined the prosecutrix and prepared her MLR ExP.10. Further, in regard to the conducted examination, she also sworn her affidavit Ex.P11 and proved her pajami Ex.P12, T-shirt Ex.P13 and Kurti Ex.P14 taken out from a sealed parcel having seal of FSL which after the examination, she had handed over to the police after converting same into a sealed parcel. She also proved vials Ex.P15, Ex.P16 and Ex.P17 taken out from another sealed parcel having seal of FSL relating to the prosecutrix having swabs etc. After seeing FSL report Ex.P8, she also opined that possibility of sexual intercourse with the prosecutrix cannot be ruled out.

6. PW11 Sh.Ashwani Kumar, Addl. Chief Judicial Magistrate, Rohtak has deposed that on 09.04.2014, L/ASI Sarita, the investigating officer moved an application Ex.P27 before him with request for recording of the statement of the prosecutrix under section 164 Cr.P.C. Thereafter vide order Ex.P28, he gave the prosecutrix half an hour's time to think over the matter and thereafter took up the case. The prosecutrix expressed her willingness to make her statement thus, he recorded her statement Ex.P5 without any addition or omission. Contents of her

statement were also read over to her and after admitting it to be correct, she put her signatures. He also issued certificate Ex.P29 about voluntary nature of statement made by prosecutrix and in view of her statement the prosecutrix was sent to Nari Niketan, Karnal.

7. PW15 Dr.Luv Sharma, the Professor, Department of Forensic Medicine, PGIMS, Rohtak has deposed that on 16.04.2014, a Board was constituted for ossification test of the prosecutrix and he was appointed as the Chairman of said Board whereas Dr.Ravinder Solanki, the Dentist and Dr.Jyotsana Sain, the Radiologist were members. On 26.04.2014, the prosecutrix was examined by the Board for assessing her age. He conducted general physical examination of concerned whereas Dr. Ravinder conducted dental examination and Dr.Jyotsana Sain made radiological examination by way of having X-rays. After receiving the report, final report Ex.P33 was prepared and the age of prosecutrix was estimated between 13-15 years. In regard to the conducted examination, PW15 also swore his affidavit Ex.P34.

8. PW17 Dr. Raman has deposed that on 09.04.2014, while posted as Medical Officer in the General Hospital, Rohtak, on the police request, he medico-legally examined the accused and prepared his MLR Ex.P36. In regard to conducted examination, he has also sworn his affidavit Ex.P37 and proved underwear Ex.P38 taken out from a sealed parcel having seal of FSL of the accused which after his examination, he had handed over to the police in a sealed parcel.

9. PW19 L/ASI Sarita, the Investigating Officer of case has deposed that on 08.04.2014, the victim was brought to the police station by local police through P.C.R. It being a case of sexual assault a Lady

Advocate Ms Jyoti Solanki was called to the police station who counseled the victim. Thereafter, she made the complaint by suffering her statement Ex.P4 in their presence, which was attested by her and Ms. Jyoti Solanki, Advocate. Further, in pursuance of her said complaint she recorded formal FIR Ex.P4O having her endorsement Ex.P41. Later, she sent special report to Illaqa Magistrate and Senior Police officers through Constable Sanjay. Thereafter, she along with Lady Constables Poonam and Promila took the victim to the General Hospital, Kalanaur and on her request she was medico-legally examined by Dr.Sushila. After the examination, the doctor handed over her two sealed parcels having belongings of the victim, one envelope and sample seal which she took into possession vide memo Ex.P18 against attestation of above said Lady Constables. Thereafter, they went to the house of victim and on her pointing out, she made spot inspection and prepared rough site plan Ex.P42/Mark-B. Later, the victim produced her clothes i.e. Salwar and jumpher which she took into possession vide memo Ex.P19 after converting same into a sealed parcel having seal of SR against attestation of same set of witnesses. After the use, seal was handed over to LC Promila. Next day i.e. On 09.04.2014 she got prepared scaled site plan Ex.P6 of the spot of occurrence through HC Sumit Kumar, the Draftsman, SP Office Rohtak. Thereafter, the victim was brought to the District Courts, Rohtak and by moving an application Ex.P27, she got recorded her statement Ex.P5 under section 164 Cr.P.C. through Magistrate. She also obtained copy of that statement. Thereafter, the victim was produced before the Child Welfare Committee, Rohtak and in view of orders of that Committee, she was got lodged in the Nari Niketan, Karnal vide memo

Ex.P1 against attestation of Ms.Kiran, the Supervisor. After coming back from Karnal, she along with Constable Sultan and Constable Pardeep went in search of accused Satpal who was arrested near gate of disposal pump where he along with his daughter used to live. At the time of his interrogation, the accused produced before her obscene book Ex.P21 bringing out from his house which she took into possession vide memo Ex.P22 against attestation of Constables Sultan and Pardeep. Same day i.e. on 09.04.2014, the accused was taken to the General Hospital, Kalanaur and he was also got medico-legally examined. After his examination, doctor handed over two sealed parcels having his belongings, one envelope and sample seal to her which she took into possession vide memo Ex.P23 against attestation of same set of witnesses. After coming back to the police station case property was handed over to the Malkhana Mohrrir and accused was lodged in police lock up. On 14.04.2014, after calling the local FSL team headed by Dr. Saroj Dahiya, she got inspected the spot of occurrence through them and the In-charge handed over her a shawl which was lying on the bed and she took same into possession vide memo Ex.P20 after converting same into a sealed parcel having seal SR against attestation of LC Poonam. On 15.04.2014, she went to the Govt. Girls Senior Secondary School, Kalanaur and on her request the Principal handed over her relevant extract Ex.P43 of the admission and withdrawal register showing that the victim was admitted in the school on 19.04.2011 vide entry No.8339. She took that extract Ex.P43, the school leaving certificate Ex.P24 of victim and certificate Ex.P25 through Ms. Sushma Rani, the Principal vide memo Ex.P26 against her attestation. Thereafter, she went to the

Chief Medical Officer, Rohtak and moved application Ex.P44 for the ossification test of victim and he had referred the case to the PGIMS, Rohtak for needful. On 17.04.2014, the Superintendent of the PGIMS, Rohtak constituted a Board and fixed 21.04.2014 for the ossification test of victim. That day, she produced the victim before that Board and after conducting the test, the Board asked to produce her on 26.04.2014 for remaining test. Thereafter, the victim was got lodged in Nari Niketan, Karnal vide memo Ex.P2 against attestation of Ms Kiran, the Supervisor. On 26.04.2014, the victim was again produced before the Medical Board and she was further examined. After her examination, the victim was again lodged in Nari Niketan, Karnal vide memo Ex.P3 against attestation of the Supervisor. On 03.05.2014, she received report Ex.P33 of the Board regarding her test. At relevant times, she also recorded statements of the witnesses who had joined investigation with her. She further proved Shawl Ex.P45 bringing out from one sealed parcel and Lady shirt Ex.P46 and Salwar Ex.P47 bringing out from another sealed parcel. It is also deposed that Ex.P46 and Ex.P47 were produced by the victim before her at her house. After the completion of investigation of case, the final report under Section 173 Cr.PC. was prepared by Inspector/SHORattan Singh.

10. It may be mentioned here that during her testimony the prosecutrix struck to her guns despite been cross examined. As a matter of fact, we find that the cross examination was at some points needlessly aggressive. Be that as it may, she stated that the mother had died in her childhood and the appellant had been abusing her for quite some time.

She also deposed about the extent of his depravity because he used to

force her to see pornographic books and movies. Her medical examination also unequivocally showed that she had been raped repeatedly.

11. The only argument raised by the counsel for the appellant is that the child was misguided and made false allegations.

12. On the other hand, learned State counsel has argued that the testimony of the child witness is credible, coherent and she had not been shaken at all during her cross examination. She further stated that as per FSL report Ex.P8, it is seen that human semen was found not only on the salwar, jumpher and shawl of the victim which were recovered from her home but upon her worn apparels also and the vaginal and perianal swabs.

13. We have gone through the testimony. We find no reason to disbelieve the child. We could not understand the consequences of what she was saying. We can only sympathize with her and pay tribute to her in having braved these almost insurmountable odds and deposed against her own father. She well knew that as a result of this she would be left practically an orphan but she went ahead and courageously recounted the horrors which were inflicted upon her.

14. We see no reason to take a different view to that taken by the Trial Court.

15. We find that no compensation was awarded to the victim. The girl is now a major. We recommend that compensation of Rs.5.00 lacs be deposited in a fixed deposit in her name and she be granted monthly interest. If she wants to withdraw the main amount she may move an application to the trial Court.

- 16. Appeal stands dismissed.
- 17. Since the main case has been decided, the pending CrI.Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

22.11.2019
pooja sharma-I

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No