

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

**CRA-D-758-DB-2015
Reserved on : 15.05.2019
Date of decision : 24.05.2019**

Prem Singh @ Harbhal Singh @ Bhala

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.J.S.Bedi, Senior Advocate as Amicus Curiae with
Mr.Jasraj Singh, Advocate for the appellant.

Mr.Harbir Sandhu, AAG, Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 03.03.2015 rendered by the Additional Sessions Judge/ Exclusive Court, Amritsar, in Sessions Case No.717 of 2014, whereby the appellant, who was charged with and tried for offences punishable under Sections 363, 365, 376 of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'), was convicted and sentenced as under:-

Under Section	Sentence
363 IPC	Rigorous imprisonment for five years and fine of Rs.5000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for three months.
365 IPC	Rigorous imprisonment for five years and fine of Rs.5000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for three months.

6 of the POCSO Act	Rigorous imprisonment for twelve years and fine of Rs.15,000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for six months.
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All the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that one Gurmej Singh (PW-1) had recorded his statement Ex.PA before SI Bhagwan Singh (PW-3) to the effect that he was resident of village Gonspura. He was a truck driver. His wife used to remain seriously ill. He along with his wife, son Manpreet Singh aged 7 years and daughter (victim) aged 5 years were residing in Manji Hall of Gurdwara Shri Harmandir Sahib for the last eight months. During day time, he along with his wife served in the Langar Hall. However, he used to sleep in Manji Hall along with his family at night. For the last 10 days, one Nihang namely Prem Singh also used to sleep in Manji Hall. On 17.07.2014 in the evening, victim was sleeping in Manji Hall. At about 7.00 P.M. he along with his wife and son went to Langar Hall. Nihang was also sleeping near the victim. At about 8.30 P.M. when they reached Manji Hall, they found his daughter missing. Nihang was also missing. He tried to trace out his daughter but could not trace her. FIR under Sections 363, 363-A, 365 IPC was registered. Investigation was initiated. Servants of SGPC were joined in the investigation. On 23.07.2014, the Investigating Officer along with police officials was present in 100 feet Chowk. Complainant Gurmej Singh came there. In the meantime, Investigating Officer received secret information that Nihang Prem Singh was present at Bus Stand, Tarn Taran, along with the minor victim. Investigating Officer along with police officials reached the spot. Nihang was arrested. The victim was recovered from his possession. On 24.07.2014 victim was

subjected to medico legal examination. Swabs taken during the medico legal examination were sent to the Chemical Examiner, Kharar. The investigation was completed. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statement of accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The appellant was convicted and sentenced as noticed hereinabove.

4. Learned Amicus Curiae appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the judgment and order dated 03.03.2015.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. The victim was examined by PW-7 Dr.Kulwinder Kaur on 24.07.2014. The Board was of the opinion that possibility that she was subjected to sexual assault could not be ruled out. Spermatozoa was detected in all the three samples sent to the Chemical Examiner. The Chemical Examiner report is Ex.PW7/B.

8. PW-6 Dr.Dolly B. Singh had conducted ossification test of the victim. According to her opinion, the radiological age of the victim was less than 7 years.

9. PW-11 Dr.Mandeep Singh had examined the appellant.

According to his opinion, there was nothing to suggest that person was

unable to perform sexual intercourse.

10. PW-1 Gurmej Singh is father of the victim. According to him, he along with his two children, i.e. one son and one daughter was residing in Manji Hall in the premises of Shri Harmandir Sahib. During the day, he along with his family used to serve the people in Langar Hall. During night time, he along with his family used to sleep in Manji Hall. Prem Singh accused was also giving *seva* in Gurudwara. He also used to sleep in the same Manji Hall. He kidnapped his daughter on 17th. He gave statement to the police Ex.PA. His daughter was recovered from the place near Harike Pattan in a Gurdwara. His daughter was handed over to him vide Ex.PB. His daughter was got medico legally examined. He identified the accused in Court. He was declared hostile since he had not supported the case of prosecution in entirety. In his cross-examination by the learned Additional Public Prosecutor, he admitted that his daughter was sleeping in Manji Hall at 7.00 P.M. on 17.07.2014. He along with his wife and son had gone to Langar Hall for taking dinner. Accused was sleeping near his daughter. When he came back to Manji Hall, his daughter was missing. On 23.07.2014 police received a secret information that accused along with his daughter was present at Tarn Taran By-pass. Police raided that place. Accused was apprehended.

11. Statement of PW-1 Gurmej Singh is duly supported by PW-2 Harpreet Kaur, mother of the victim. She testified that on 17.07.2014, her daughter was sleeping in Manji Hall. She along with her husband and son had gone to Langar Hall to take food. Accused was sleeping near his daughter. At about 8.00/8.15 P.M. when they came back, their daughter was

missing. Accused had committed sexual intercourse with her five year old daughter. Her statement was recorded by the police.

12. PW-3 SI Bhagwan Singh had recorded statement Ex.PA. FIR was registered. He visited the place of occurrence, i.e. Gurdwara Manji Hall. On 23.07.2014 he was present at 100 feet chowk. Secret information was received that accused was standing with the victim at Tarn Taran Bypass road. Complainant Gurmej Singh also came. Girl was recovered from the accused. Recovery / identification memo Ex.PC was prepared. Rough site plan of the place of recovery Ex.PW3/6 was prepared. The victim was got medico legally examined on 24.07.2014. On 15.10.2014, offences under Section 376 IPC and under Section 3 /4 of the POCSO Act were added. Medical examination of accused was also got conducted.

13. PW-10 ASI Jujhar Singh deposed that secret information was received that accused was present at 100 feet chowk. The victim aged about 5 years was recovered from the accused.

14. The case of the prosecution precisely is that PW-1 Gurmej Singh was living in Manji Hall of Gurdwara Shri Harmandir Sahib, with his wife and children. Appellant was also residing in Manji Hall. PW-1 Gurmej Singh along with his wife and son had gone to take langar (community meals). When they came back at around 8.15 P.M., daughter was missing. Accused was also sleeping in Manji Hall. Girl was recovered from the possession of appellant. She was medico legally examined by PW-7 Dr.Kulwinder Kaur. PW-7 Dr.Kulwinder Kaur on the basis of Chemical Examiner's report Ex.PW7/B, categorically opined that the possibility of rape could not be ruled out. Spermatozoa was found in introital, vaginal

swabs and anal swabs. The age of the victim as per ossification test by PW-6 Dr.Dolly B. Singh was less than 7 years. The appellant was found capable of performing sexual intercourse as per PW-11 Dr.Mandeep Singh. Statement of PW-1 Gurmej Singh is duly corroborated by PW-2 Harpreet Kaur. The victim was recovered from the possession of the appellant. He has not given any explanation. His defence was that he was falsely implicated. However he has not led any evidence to prove his plea. There is some delay in lodging the FIR but same has been explained. The first priority of the family members was to trace the girl. Since the girl had been recovered from the possession of the appellant, it was for him to explain how spermatozoa was found as per FSL report Ex.PW7/B, under Section 106 of the Indian Evidence Act.

15. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 24, 2019.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No