

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

CRA-D-842-DB of 2017 (O&M)

Reserved on : 20.03.2019

Date of decision : 25.03.2019

Krishan

.... APPELLANT

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mrs. Shashi Ghuman, Advocate,
for the appellant.

Mr. Vishal Garg, Addl. A.G., Haryana.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 17.07.2017 and order dated 21.07.2017, rendered by learned Additional Sessions Judge-cum-Special Court for Heinous Crime Against Women, Hisar, in Sessions Case No. 05-SC of 2016. Appellant Krishan was charged with and tried for the offences punishable under Sections 376 (2) (n), 452, 506 of the Indian Penal Code (hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as

`POCSO Act'). He was convicted and sentenced as under :-

Offence	Rigorous imprisonment	Fine	Imprisonment in default of payment of fine
452 IPC	3 years	₹ 2,000/-	One month
376 (2) (n) IPC	12 years	₹10,000/-	Two months
506 IPC	2 years	---	---
6 of POCSO Act	12 years	₹ 10,000/-	Two months

All the substantive sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that Balbir son of Amar Singh had lodged a complaint on 19.11.2015 to the effect that his wife had died 15 years ago due to cancer. He had three daughters. His daughter (prosecutrix) was aged about 15 years. She was a student of 7th standard. The prosecutrix had taken ill after the festival of Diwali. On 18.11.2015 at about 5.00/6.00 PM, the complainant asked the prosecutrix about her health. She told that Krishan, their neighbour, used to give her currency note of ₹ 10/- and was doing wrong act with her for last many days. He also threatened her. The FIR was registered. Site plan was prepared. The prosecutrix was medico legally examined. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He

denied the case of the prosecution.

4. The appellant was convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case against the appellant beyond reasonable doubt. He supported the judgment and order of the learned Court below.

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

7. PW.1, the prosecutrix (name withheld), testified that when she was alone, Krishan came to her house. He committed rape on her in the night time and threatened her that she should not tell this incident to any one. He had sexually assaulted her on several occasions, whenever she was alone at her home. Her statement, Ex.PA, was recorded by the police. She identified her signatures at Point A. In the examination-in-chief, she deposed that on the day of incident, her father was not at home. However, in cross-examination, she testified that her father was at home but he was under the influence of liquor. A court question was put to her. She deposed that in fact, on that day, her father was not present at home.

8. PW.2 Balbir is the father of the prosecutrix. He deposed that his daughter (prosecutrix) was 15 years old. She was a student of 7th standard in the Government school. On 18.11.2015, he went to village Ludas. He came back at about 10.00 AM on 19.11.2015. He found that his daughter (prosecutrix) was not well. The prosecutrix told that Krishan had

sexually assaulted her and had also done so previously. His statement was recorded vide Ex.PD.

9. PW.3 Raju had prepared the scaled site plan, Ex.PE, of the place of occurrence.

10. PW.4 Kailash Chander has proved the date of birth of the prosecutrix. According to the certificate, Ex.PH, her date of birth was 06.12.1999. He proved photo copy of the original admission register, Ex.PF, and photo copy of the admission form, Ex.PG.

11. PW.7 SI Sheela Devi had conducted the investigation. She deposed that statement of Balbir was recorded vide Ex.PD. FIR was registered vide Ex.PK. The prosecutrix was medico legally examined. She visited the place of occurrence along with Balbir PW. She prepared rough site plan Ex.PO. In pursuance of his disclosure statement, Ex.PP, the accused pointed out the place of occurrence and demarcated the place of occurrence vide Ex.PQ. The prosecutrix was produced before the Judicial Magistrate on 21.11.2015. She made her statement Ex.PB under Section 164 Cr.P.C. Site plan was prepared. In her cross-examination, she deposed that she had correctly recorded the statement of Balbir vide Ex.PD and statement of the prosecutrix vide Ex.PA, without any addition or omission. The prosecutrix was got medico legally examined on the same day.

12. PW.9 Dr. Neeru Gupta had medico legally examined the prosecutrix. She led her evidence by way of affidavit Ex.PW.9/A. According to the MLR, Ex.P3, the possibility of sexual intercourse could not be ruled out.

13. According to the Forensic Science Laboratory, Ex.PI, human semen was detected on exhibit-1 (Salwar) and exhibit-6 (Pyjama). However, semen could not be detected on exhibit-2 (Pubic hair), exhibits-3, 4 and 5 (Vaginal swabs) and exhibit-7 (Pubic hair).

14. According to the Forensic Science Laboratory, Ex.PQ, DNA profile could not be obtained in source of item No.1 (Salwar) which was necessary to compare with the DNA profile of Krishan (source of item No.8). Hence, no opinion could be given.

15. What emerges from the discussion of evidence, here-in-above, is that the prosecutrix was minor on the day of occurrence. Her date of birth is 06.12.1999. She was raped by the appellant. The prosecutrix had also stated that the appellant had sexually assaulted her many times. The statement of the prosecutrix (name withheld) is duly corroborated by PW.9 Dr. Neeru Gupta. According to the Forensic Science Laboratory report, Ex.PI, human semen was detected on exhibit-1 (Salwar) and exhibit-6 (Pyjama). The DNA report was inconclusive, since DNA profile could not be obtained in source of item No.1 (Salwar). However, there is overwhelming evidence on record that the appellant has sexually assaulted the prosecutrix. The statement of the prosecutrix is also corroborated by her father, PW.2 Balbir. Statement of the prosecutrix was also recorded under Section 164 Cr.P.C. The date of birth of the prosecutrix has been proved by PW.4 Kailash Chander, Headmaster of the school. The trial court has correctly appreciated the oral as well as documentary evidence.

16. Accordingly, the prosecution has proved its case against the appellant beyond reasonable doubt. There is no reason for us to interfere

with the well reasoned judgment and order of the learned trial court. The appeal is, accordingly, dismissed.

(**RAJIV SHARMA**)
JUDGE

March 25, 2019
ndj

(**KULDIP SINGH**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes