

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

CRA-S No.5166-SB of 2015
Date of decision: 10th September, 2019

Shyam Karan

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderpreet Singh, Advocate for the appellant.
Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

Having been found guilty for commission of offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'the Act') and being convicted to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for two months, the convict Shyam Karan has come up in this invocation by way of appeal.

Upon hearing Mr.Sanjay Majithia, Senior Advocate assisted by Mr.Inderpreet Singh, Advocate on behalf of the appellant, Mr. Amrik Narwal, Dy. Advocate General, Haryana on behalf of the State and on perusal of the records. The complainant Sumitra Devi PW1 mother of the

victim, a minor girl aged around 12 years, student of seventh class, in her allegations contained in complaint Ex.P1 alleged that on 13.05.2015 when her daughter went to school around 10:00 a.m., Rajinder master (not arrayed as an accused) asked her to bring newspaper from the PT master, present appellant, but the girl refused to oblige, upon which Rajinder master slapped her and under fear she went to fetch the newspaper from the office of the accused and demanded the same from him. While giving the newspaper, it is alleged that the accused laid the victim on the table and thereafter laid himself upon her and when the girl tried to save herself she fell down and after giving a kick blow to the accused, she fled away from the spot and disclosed the story to the complainant. Upon this, the complainant, her husband and others reached the school and when the accused was confronted, he kept mum and thereafter the matter was referred to the police. Besides the complainant as PW1, who did not support the prosecution stand, the prosecution examined PW2 the victim who also resiled from her testimony, followed by the deposition of HC Sudeep Kumar PW3, SI Shadi Ram PW4 and HC Mahinder Singh PW5. Thereafter, prosecution examined Sunil Kumar JMJC Kurukshetra as PW6 to prove statement under Section 164 Cr.P.C. of the victim followed by the testimony of PW7 Lady ASI Paramjit Kaur and PW8 EHC Suresh Kumar and thereafter prosecution evidence was closed. When confronted with the incriminating evidence,

the accused denied the same taking pleas that being the PT master he had refused the victim to enter the classroom on account of being not in proper uniform and due to which he has been falsely implicated. The accused while denying the allegations, in his defence, examined his colleague DW1 Parveen Pal, DW2 Paramjit Kaur Cook in the mid-day meal scheme of the school, DW3 Naresh Kumar JBT teacher of the school and thereafter father of the victim testified as DW4 to undermine the case of the prosecution and lastly the defence examined DW5 Surinder Pal, a co-villager. All these witnesses refuted the claim of the prosecution lending credence to the defence. It is consequent thereupon by the impugned findings dated 01.12.2015 the Court of learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women) Kurukshetra convicted the accused.

Appreciating the submissions of learned counsel for the appellant, it is well set golden principle of criminal jurisprudence that onus to prove its case always rests upon the prosecution and which is supposed to prove the same beyond any shadow of reasonable doubt. As has been argued by learned counsel for the two sides, the occurrence has taken place on 13.05.2015 at 10:00 a.m. when the school was open and in the school premises. It is vehemently submitted on behalf of the appellant that in spite of the admission by the witnesses in their testimony that it was a big school with number of teachers and pupils, non-joining of any

other witness by the prosecution certainly needs to be taken with a pinch of salt. More so, to the specific query of the Court, learned State counsel could not convince that the initial occurrence has emancipated from the act of one Rajinder master who had asked the victim to bring newspaper from the accused and on refusal by the girl, had given her a slap. There is specific stand of the complainant that all this has happened on account of collusion of both these two persons which is reflected from her written complaint Ex.P1. How and under what circumstances, as has been conceded at the bar by learned State counsel, the other person Rajinder master has not been arraigned and put to trial, is anybody's guess and rather reflects upon the partisan approach of the investigating agency in this direction.

The next line of submission that has come forth from the side of the appellant is that there is no witness to support the prosecution story, certainly could not be displaced by the learned State counsel. No doubt, testimony of hostile witness cannot be outrightly thrown out but if there is corroboration from other means and instills confidence in the Court as to the truthfulness of that very piece of evidence, the same can be considered as legitimate and legal piece of evidence. However, in the present case, learned State counsel failed to bring to the notice of this Court anything worthwhile that has come in the cross-examination of

these prosecution witnesses which could in any manner support the prosecution story.

The next question that arises in the submissions is the only piece of evidence, the statement of the victim recorded by the learned Judicial Magistrate PW6, who has proved the application of the police Ex.P14 and orders of the Court Ex.P15. This Court is of the firm view that a statement under Section 164 Cr.P.C. is not a substantial piece of evidence and it is a fundamental rule of criminal jurisprudence that statement of the witness recorded under these provisions can only be used for the purpose of contradicting or corroborating the witness. But sad enough, the victim has absolutely denied having ever made such a statement and nothing could be borne out of her cross-examination after being declared hostile which could advance the case of the prosecution. Thus, in the light of law laid down in '**George vs. State of Kerala**' **1998(2) RCR(Criminal) 199**, this little piece of evidence Ex.P5 does not come to the rescue of the prosecution.

The last argument that has come about from the side of the appellant is the manner in which the Court below had given undue and unfair preference to the demeanor of the witness and which is the sole point which has led to this judgment of conviction and which argument of the learned counsel for the appellant could not be successfully controverted by the learned State counsel.

Section 280 Cr.P.C. enunciates that whenever a Sessions Judge or a Magistrate records evidence of a witness, he shall also record his remarks (if any) and he thinks material respecting the demeanor of such witness whilst under examination, in itself shows that such a demeanor ought to be recorded while the witness is being examined. In the case before this Court, it is after the witness was declared hostile and cross-examined by the State and thereafter cross-examined by the defence, after the signatures of the witness were obtained on her testimony, this Court observation has come about and thus, in sharp contradiction of the requirements of Section 280 Cr.P.C. Moreover, the observations that have come about by the Court purely on the presumption of the Court that the child witness has given a statement under tremendous pressure and that she was never satisfied with her statement, are observations off the cuff. In spite of best endeavours of this Court, learned State counsel could not substantiate from the record how the Court has come to this conclusion, is anybody's guess being based on purely surmises and conjectures. More so, as is there in the impugned findings, the Court has been swayed much by the emotional inclination rather than appreciating the legal evidence on the record, and thus, has fallen into an error in passing the impugned judgment. In the light of what has been observed, detailed and discussed above, the impugned findings are certainly incorrect appreciation of evidence on

record and being illegal in its approach and incorrect in its findings, need to be set aside by way of acceptance of the present appeal.

Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

September 10, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No