

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1016-2019

Date of Decision: 18.10.2019

Deva Singh

...Appellant

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Bhupinder Kaur, Advocate for the appellant.
Mr. Anmol Malik, AAG, Haryana.

ANIL KSHETARPAL, J.

Through this appeal, the correctness of judgment of conviction and order of sentence passed against the appellant under Section 4 of Protection of Children from Sexual Offences Act 2012 (for short 'the Act of 2012') is being assailed.

The case set up by the prosecution is that on 20th December 2017, a telephonic message was received regarding admission of a minor child in the Community Health Centre, Ratia, complaining sexual assault. SHO Women Police Station, Fathehabad on reaching there obtained medico legal report, medical communication and complaint from mother of the child and got recorded her statement. She has stated that her husband had already died. She has three sons and one daughter. On 19th December 2017 at about 7:15 PM, her son victim had gone out, on her asking, to his brother (her another son) and when victim was going to Ratia Mandi to meet his elder brother, Deva Singh-convict/appellant took the victim into a shop of *band baja*, switched off the lights of the shop and thereafter he put his penis

in the mouth of the victim and committed rape of the victim. Deva Singh-appellant also kissed victim on his cheek. When victim raised alarm then Deva Singh gave him leg and fist blows. Thereafter two motor-cyclists rescued the child/victim and left him at his house, where the victim disclosed the incident to her whereupon she took the child/victim to the Government Hospital Ratia.

On the basis of statement, FIR was registered. Statement of child was recorded under Section 164 Cr.P.C.; counseling of the child was got done from Child Welfare Committee Fathehabad. Thereafter the investigation was conducted by the Deputy Superintendent of Police and during verification, case against Deva Singh was found to be true.

On completion of the investigation, final police report along with accompanying documents were supplied to the convict free of cost. The court framed the charge, to which convict pleaded not guilty and claimed trial.

Prosecution in order to prove its case examined 13 witnesses. Satish Kumari, JBT Teacher, was examined as PW-1 to prove the age of the child; PW-2 Balwant Singh, Draftsman, was examined to prove scaled site plan. Victim child was examined as PW-3. After putting some questions of general nature in order to ascertain his maturity understanding and capacity to depose and finding the answers of the child to be satisfactory, his statement on oath was recorded. He supported the case of the prosecution. Mother of the child/first informant was examined as PW-4; Lila Ram, Criminal Ahlmad in the Court of learned Sub Divisional Judicial Magistrate, Ratia was examined as PW-5; Krishan Lal, Pharmacist was examined as PW-6 to prove birth of the victim from the office of Registrar

Death and Birth; Krishan Kumar was examined as PW-7, who had deposited the case property in the Forensic Science Laboratory; SHO Bimla Devi was examined as PW-8; HC Mahender Singh, who accompanied SHO, was examined as PW-9; Dr. Sheenu Gupta, who medico-legally examined the victim and took samples, was examined as PW-10; Gurpal Singh, Head Constable, was examined as PW-11; Dr. M.K.Malik, Senior Scientific Officer, Forensic Science Laboratory Madhuban, was examined as PW-12 and Dr. Anshuman Rai, Senior Scientific Assistant (B), DNA Division, Forensic Science Laboratory (H), Madhuban was examined as PW-13.

All incrementing evidence/material produced and proved by the prosecution was put to the accused in order to afford him an opportunity to render explanation thereof. Convict claimed false implication and trial. No evidence was led by the convict.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgment passed by the Court below and the record.

Learned counsel for the appellant, while referring to the medico legal report, has submitted that at the most, it is a case of oral sex. She, while drawing attention of the Court to the statement of the victim under Section 164 Cr.P.C. and deposition of the victim in Court as PW-3, has stated that the evidence of the victim cannot be relied upon as there are material variations and improvements in the statement of the victim. She has further submitted that it is a case of the prosecution that two motorcyclists rescued the victim and dropped the victim at his house. However both the motorcyclists have not been examined. She has next submitted that on careful perusal of the report of DNA profiling Exhibit P34, Item No.1a and

Item No.1b of DNA profiling are not matching with the DNA profile of Item No.10 i.e. belonging to Deva Singh-appellant. She, hence, submitted that the prosecution has failed to establish its case beyond shadow of reasonable doubt.

On the other hand, learned counsel for the State has supported the judgment and pleaded that prosecution has successfully proved its case beyond shadow of reasonable doubt.

As regards first argument of learned counsel for the appellant, it is apparent that the child/victim complained of pain on touching of genitals as well as on touching of anal region when he was examined by the doctor. He had also complained of kissing of various body parts including genitals of the victim as well as introduction of penis into victim's mouth by the accused as well as kissing of lips of the victim. When the child was examined under Section 164 Cr.P.C. Ex. P-5/A, he had stated that wrong act was done by the appellant. Child is proved to be around 11 years of age at the time of incident. In such a situation, the deposition of the victim is required to be examined.

On the reading of the statement of the child, he has stated that convict took him in his shop and removed his garments and committed wrong act. Child bravely faced the cross-examination and the defence failed in shaking his evidence. Still further, prosecution had proved its case by scientific evidence by sending woolen inner pant worn by the victim, cotton woolen swab of anal, cotton woolen swab of perianal and pant/trouser of the appellant for scientific examination. Forensic Science Laboratory has reported that human semen was detected on woolen inner pant, anal and perianal swab belonging to the victim and the pant worn by the appellant.

However, on remaining samples and exhibits semen could not be detected.

Still further the prosecution, in order to prove its case beyond reasonable doubt, got the report from the Forensic Science Laboratory Haryana DNA profiling division in which, it was found that Item Nos.3 and 4 i.e. swab from anal and perianal of the victim matched with DNA profile of appellant. No doubt, DNA profile of woolen inner and the pant did not match with Deva Singh, however, in view of overwhelming evidence led by the prosecution, this Court has come to conclusion that evidence of the victim stands corroborated by medical and scientific evidence.

On careful examination of PW-10 Dr.Sheenu Gupta, it is clear that the victim child had complained of pain. When victim was examined by her, a specific suggestion was put to her by the learned counsel for the convict and she had denied the suggestion that the child only complained of oral penetration. She went on to depose that child complained of pain on touching genitals as well as anal region. Further, on reading of Section 3 of the Act of 2012, even oral sex or sex with mouth is also an independent offence.

Next argument of learned counsel for the appellant that two boys, who rescued the victim, have not been examined, although appears to be attractive on the first blush, however, on careful scrutiny, fails to impress this Court. Two boys, who rescued the victim to his house, were not known to the victim (a child of 11 years), hence, failure of the prosecution to examine them in evidence is insignificant in view of overwhelming evidence.

In view of the overwhelming scientific evidence, non-examination of two boys does not create a dent on the case of the prosecution.

Forensic Science Laboratory has found human semen on woolen inner, pant, anal and perianal swab of the victim. Similarly, human semen was also found on the pant/trouser worn by the appellant-convict. The anal and perianal swab is matching with the DNA profile of appellant.

Further, there is a statutory presumption in favour of the prosecution as per Section 29 of the Act of 2012. It is for the accused to prove that he is not guilty. Thus, a reverse onus has been placed on the accused statutorily which is different from ordinary criminal cases. Similarly Section 30 of the Act of 2012, provides for statutory presumption of culpable mental state of the accused. Thus, the scheme of the Act is different than what is normally provided in the offences committed under Indian Penal Code.

On the analysis of entire evidence, this Court does not find any reason to interfere. Hence, the appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

18.10.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No