

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

**CRM No.A-2118 of 2019
Date of Decision: January 22, 2020**

Rupinder Kaur

...Applicant

VERSUS

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Rajiv Joshi, Advocate
for the applicant.

ARCHANA PURI, J.

The present application under Section 378(4) Cr.P.C. has been filed by applicant-Rupinder Kaur seeking grant of leave to file appeal to challenge judgment dated 12.07.2019 passed by learned Judge, (Special Court), SBS Nagar, whereby accused-respondent No.2 was acquitted.

The background facts in nutshell are, as follows:-

That, complainant Rupinder Kaur is housewife and her husband Manku, is a labourer. The complainant had been assisting her mother-in-law, who runs a *karyana* shop in the house. She has two children i.e. one daughter (name withheld) aged 3½ years born on 04.01.2015 and one son aged about one year. On that day i.e. 04.08.2018, she got recorded her statement, that 'at about 6.00 p.m., her daughter was playing in the courtyard and street but she was not seen for some time. Despite search made for her

daughter, she could not find her. Then, she heard cries of her daughter coming from northern side of her shop, 2-3 houses away from her house. After opening the iron gate, she entered the house and opened the wooden door of the room. She found her daughter to be lying on the cot in the room and her clothes were removed. Boota Ram @ Vicky son of late Malkiat Ram, resident of village Pandrawal, who is owner of the house, had removed his clothes of lower portion and was attempting to commit sexual intercourse with her daughter. Complainant had then narrated the story to her mother-in-law and other family members, who made a telephonic call at Police Station.

The case was registered on the statement got recorded by Rupinder Kaur on 04.08.2018 to ASI Surinder Pal.

On completion of investigation, challan was presented against accused under Sections 376, 511 IPC and Section 3 and 4 of POCSO Act, 2012.

Compliance of Section 207 Cr.P.C. was made. On the basis of material coming forth, charge under Section 376 IPC, Sections 4 and 18 of POCSO Act was framed against accused Boota Ram @ Vicky, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution has examined as many as 9 witness, besides adducing documentary evidence.

PW-1 Rupinder Kaur, complainant, **PW-2 Manku**, father of the victim, **PW-3 Ms.Gurmeet Kaur**, Principal, **PW-4 Satvinder Sahni**, **PW-5 Head Constable Hem Raj**, **PW-6 Dr.Ravinder Singh**, **PW-7 Vinod Khanna**, **PW-8 ASI Surinder Pal** and **PW-9 Dr.Navneet Kaur**.

On closure of the prosecution evidence, all the incriminating

circumstances appearing in the prosecution evidence were put to the accused in his statement under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. The accused did not lead any evidence in defence.

After hearing learned Public Prosecutor for the State and learned defence counsel, learned trial Court, while extending benefit of doubt, acquitted accused Boota Ram @ Vicky of the charges levelled against him vide impugned judgment dated 12.07.2019.

Feeling aggrieved by the aforesaid judgment of acquittal, complainant Rupinder Kaur, has the present application for grant of leave to appeal.

Even, lower Court record has been requisitioned.

We have heard learned counsel for the applicant and perused the record.

Perusal of the record reveals about the proceedings to have been initiated at the instance of Rupinder Kaur, who is mother of the victim. As per version of the prosecution, the occurrence had taken place on 04.08.2018, when complainant found her child/victim to be not traceable while she was playing in the courtyard and street. However, on hearing cries of her daughter, coming from northern side of her house, complainant had gone to the concerned house and therefrom, she recovered her daughter, in the company of the accused, while she was naked and accused had also removed his clothes of lower portion.

Rupinder Kaur complainant, while in the witness box as PW-1, has proved her statement, got recorded to the police, which is Ex.PW1/A.

However, it is pertinent to mention that while facing cross-examination, the

complainant had stated to have gone to the house of Sundri on 03.08.2018 at about 5.00 p.m. and she also stated further that on that day, police had come to her house at night time at about 7.30 p.m. She further deposed that she rang up police on 03.08.2018 at about 6.00 p.m. regarding the alleged occurrence and she also deposed that she got recorded her statement to the police official on 03.08.2018 while sitting at her house at village Pandrawal. However, this part of the testimony of the complainant is contrary to the version put forth by the prosecution as it is the specific claim of the prosecution that statement of the complainant was recorded on 04.08.2018, when the complainant along with her husband Manku met the police party near village Pandrawal and it was recorded on 04.08.2018. Meaning thereby, there is contradiction coming forth about the date, as to when the statement of the complainant was recorded and also relating to the place where it was recorded and more particularly, about the date, when the occurrence had taken place. Not only this, even complainant had stated about recording of the statement of her husband along with her on 03.08.2018.

Even, PW-2 Manku, who is father of the victim, in his examination-in-chief has stated that on 04.08.2018, his wife had disclosed about the occurrence and he had then got recorded his statement. However, when facing cross-examination, he deposed that on 03.08.2018, when he reached his house at about 6.30 p.m., i.e. on that very day, his wife had told him about the alleged occurrence and then, she had made a phone call to the police at about 7.00 p.m. on 03.08.2018 and at about 7.30 p.m., police officials had come. He also stated that his wife had made statement to the police on 03.08.2018 at about 7.30 p.m. and further he also stated that at

that very time, he had also made statement to the police. Thus, both the said witnesses are discrepant qua the date of taking place of the occurrence and even, the date when the proceedings were initiated and also the place where, they had met the police party.

Not only this, also it is further pertinent to mention that there is stark contradiction coming forth with regard to the victim child having been taken to Civil Hospital. The complainant, stated that she had not handed over any clothes of her daughter to police during investigation of the case and she further also stated that she did not get her daughter medically examined from Civil Hospital, Nawanshahr on 04.08.2018. However, PW-2 Manku, who is father of the victim, had stated that on 03.08.2018, police officials had taken his wife and daughter along with them to Civil Hospital, Nawanshahr and her daughter remained admitted in Civil Hospital, Nawanshahr, on 03.08.2018, for the whole night and on 04.08.2018, she was discharged by the doctor. PW-1 had also deposed that she reached Civil Hospital, Nawanshahr in the evening of 04.08.2018. There is, as such, no clarity, coming forth, about the date and time, when the complainant had gone to Civil Hospital along with the victim child. In this regard, it is pertinent to mention that PW-9 Dr.Navneet Kaur, Medical Officer, Civil Hospital, Nawanshahr, had stated that on 05.08.2018, police moved an application Ex.PW-8/E for conducting medical examination of the victim child but the parents of the victim child refused to get their child medically examined vide endorsement PW-8/F. This all the more further shows the contradiction qua the date of visit to Civil Hospital along with the victim child. Also, no medical examination, as such, has been conducted. Even,

further there is also contradiction coming forth, about disrobing of victim

child by Boota Ram @ Vicky and also of himself being naked at the relevant time. Though, the complainant herself had stated that when she went inside the room, her daughter was lying naked and accused Boota Ram @ Vicky had also removed his lower clothes but however, PW-2 Manku had stated that when his wife opened the door of the room, she saw daughter lying on the cot and she was totally disrobed by Boota Ram @ Vicky and he was standing near his daughter. He also further deposed that he had stripped himself naked and had tried to sexually exploit his daughter and in case, his wife had not reached timely at the spot, any untoward incident might have been taken place.

Besides the aforesaid contradictions, it is important to make reference to the testimony of PW-4 Satvinder Sahni, who as per PW-2 Manku, is an eye witness to the occurrence in question. As per the said witness, on 04.08.2018, at about 6.00 p.m., daughter of Rupinder Kaur was playing in street and after some time, Rupinder Kaur started searching for her daughter. While she was searching for her daughter, her shrieks were heard by Rupinder Kaur. Then, she opened the door and found her daughter to be lying on the cot, in a naked condition as victim was disrobed and Vicky also put off his lower and he was trying to sexually abuse the victim. However, this version, itself, is in contradiction to the version put forth by the complainant. Not only this, while facing cross-examination, PW-4 Satvinder Sahni had deposed that Rupinder Kaur mother of victim, did not open the door of the house of Boota Ram @ Vicky in his presence. He also stated that she never went to search her daughter in his presence. Furthermore, he also stated that he never saw the victim in naked condition.

Boota Ram did not sexually harassed the victim in his presence. Also, he stated that he did not follow Rupinder Kaur, while she entered the room on hearing alleged shrieks of her daughter. He further stated that he got recorded his statement, whatever was told to him by the mother of the victim and he did not join investigation in this case on 03.08.2018. He also further stated that the alleged occurrence dated 04.08.2018 did not take place in his presence. Thus, the said witness has taken a somersault in cross-examination and demolished the version, as set up in his examination-in-chief. Not only this, even PW-2 Manku had stated about Satvinder Sahni to have accompanied the police officials, while showing the place of occurrence to the police for preparation of the site plan. He also further stated that Satvinder Sahni had signed the site plan while sitting in his house and Satvinder Sahni had made a statement to the police while sitting in his house. However, site plan shows that it does not bear signatures of Satvinder Sahni. Moreover, this site plan is dated 04.08.2018. Even, qua site plan, PW-5 Hem Raj, who was associated by the Investigating Officer at the time of effecting the arrest of accused Boota Ram @ Vicky, also in cross-examination, had stated that on 03.08.2018, he did not go to the house of complainant in the evening at about 5.00 p.m. with other police officials.

Thus, considering the testimonies of aforesaid material witnesses, it is evident that complainant as well as father of the victim, are themselves not clear about the date, as to when the occurrence had taken place. There are contradictions coming forth in the testimonies of all the aforesaid witnesses, vis-a-vis the material aspect of time of taking place of the occurrence and about the manner, in which the complainant had reached the spot of occurrence, as well as, having the occurrence being witnessed by

PW-4 Satvinder Sahni.

No doubt, as now submitted by learned counsel for the application, there is presumption against the accused under Section 29 of the POCSO Act but however, the same is statutory presumption, which would stand activated only if the prosecution proves the foundational facts. If the facts, as put forth by the prosecution, stands established, then the statutory presumption is activated and burden shifts upon the accused to rebut the presumption. However, in this case, statutory presumption would not be activated as the foundational facts, as discussed above, do not stand established by the prosecution. Thus, no sustenance, as such, can be drawn from the statutory presumption, as provided in Section 29 of the POCSO Act.

In the light of the aforesaid discussion, learned trial Court has evaluated the evidence coming on record, in correct perspective and rightly extended benefit of doubt to the accused and acquitted him of the charges framed against him. Thus, the impugned judgment merits no interference.

As such, the application in hand stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

January 22, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No