

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

Crl. Appeal No.D-1873-DB of 2014 (O&M)

Date of Decision: March 19, 2021

Satish Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Aman Dhir, Advocate
for the appellant.

Mr.S.P.S.Tinna, Addl. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 25.07.2014 and order of sentence of even date passed by learned Judge, Special Court, Sangrur, vide which appellant Satish Kumar was held guilty and convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 363 IPC. For the commission of offence under Section 6 of the POCSO Act, the appellant was sentenced to undergo rigorous imprisonment for a period of fourteen years and fine of Rs.25,000/- was also imposed, in default whereof, he was to further undergo rigorous imprisonment for a period of one year. Likewise, for commission of offence under Section 363 IPC, the appellant was sentenced to undergo rigorous imprisonment for a period of five years and fine of Rs.5,000/- was

imposed, in default whereof, he was further to undergo rigorous imprisonment for a period of three months.

Background facts in nutshell are as follows:-

That, as per prosecution version, the complainant had two sons. The elder son is 12½ years and the victim child (name withheld) is about 11 years. On 13.10.2013, the complainant along with his sons and wife had gone to Cheema Mandi to attend marriage at New Park Plaza, situated near village Beerkalan. In the marriage, during late hours, his sons were playing. A young man, aged about 21-22 years, reached near them. At about 12.15 a.m., the complainant noticed that the said young man took his younger son (victim) along with him, while giving some allurement. When, after 5-7 minutes, the complainant did not notice his younger son, he along with his brother-in-law Ajay Garg, had gone outside towards adjoining agricultural land, where he saw that his son (victim), was lying there in blood and he realized that his son was subjected to **sodomy** by said young man and later on, he came to know about said person to be **Satish Kumar s/o Ramesh Kumar r/o village Chohata Bazar, Ward No.1, Sunam**. On the basis of statement got recorded by Umesh Kumar on 14.10.2013, FIR was registered.

During the course of investigation, statements of various witnesses were recorded. Even, medico-legal examination of the victim child was conducted. The samples taken by the attending doctor, were handed over to the police. Even clothes were converted into parcel and taken into possession. The victim was handed over to his father. Accused Satish Kumar was arrested on **15.10.2013** and he was subjected to medical

examination at Civil Hospital, Sunam and one sealed parcel containing

clothes of accused was handed over to the police, which was taken into police possession vide separate memo. Clothes of the accused and parcels, handed over by the doctor, were sent to Chemical Examiner. However, report was not received till filing of final report. On completion of investigation, challan was presented against Satish Kumar.

On presentation of challan, compliance of Section 207 Cr.P.C. was made. The case was committed to the Court of Sessions. In pursuance of the commitment proceedings, on the basis of material coming forth, charges under Section 363 IPC and Section 6 of the POCSO Act were framed against Satish Kumar, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 11 witnesses, namely PW-1 Dr.Vijay Kumar, PW-2 Dr.Gurwinder Singh, PW-3 Umesh Kumar, complainant, PW-4 Head Constable Harbans Singh, PW-5 Kewal Krishan, PW-6 Sarabjit, PW-7 victim, PW-8 Head Constable Dharminder Singh, PW-9 Constable Gurwinder Singh, PW-10 Labh Singh, Patwari and PW-11 ASI Lal Singh. Besides the same, birth certificate of the victim child has been brought on record as Ex.PX, report of Chemical Examiner as Ex.PX (now be read as Ex.PX/A) and Ex.PY. Thereafter, evidence of the prosecution was closed.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to accused-appellant in his statement under Section 313 Cr.P.C. However, the accused-appellant denied those allegations and pleaded not guilty. However, no evidence was led in defence by the accused-appellant.

After hearing learned Public Prosecutor and learned defence

counsel, point for determination was formulated, which reads as under:-

“Whether on 13.11.2013 accused kidnapped the victim and committed carnal intercourse against the order of nature?”

On appraisal of the evidence brought on record, vide impugned judgment of conviction and order of sentence, accused-appellant was held guilty, convicted and sentenced, as already detailed in earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, convict-appellant has filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

In the light of the evidence, adduced on record, it has been assiduously submitted by learned counsel for the appellant that it was incumbent upon the prosecution to establish its version, beyond shadow of reasonable doubt, but however, the evidence so adduced, has not been appraised in the correct perspective. In fact, it is pointed out that there are several flaws coming forth, vis-a-vis, role of the appellant, which in itself negates the prosecution version. Rather, it is submitted that presence of the appellant, at the relevant time of taking place of the alleged occurrence, at the spot, does not stand established. It is submitted that even though, the **'questioned act'** on the basis of medical evidence, so adduced, is taken to be established but even then, the appellant does not stand sufficiently

upon the testimony of PW-6 Sarabjit, who was owner of the joyride and who had employed Satish Kumar. In fact, it is pointed that he has deposed about Satish Kumar to be not present in the marriage palace, at the time of taking place of the occurrence. Also, it is submitted that PW-7 victim has also not sufficiently identified the appellant to be the **wrong doer**. Thus, summing up his arguments, learned counsel for the appellant has made a prayer for extending benefit of doubt to the appellant and to accept the appeal, thereby setting aside the judgment of conviction and order of sentence.

In refutation, learned State counsel resisted the claim of the appellant, tooth and nail. He vehemently submits that evidence, so adduced, has been rightly appraised by learned trial Court and the evidence, so adduced, amply establish about **taking away** of the '**victim child**' by the appellant and subjecting him to carnal intercourse against the order of nature. It is submitted that victim child is also established to be less than 12 years of age, at the relevant time. In fact, learned State counsel has drawn attention of this Court to the medical evidence brought on record and on the basis thereof, he submits that taking place of the '**questioned act**' stands amply established. It is submitted that testimonies of PW-3 Umesh Kumar, who is father of victim child, PW-7 victim child and their relative PW-5 Kewal Krishan, finds sufficient corroboration from the medical evidence.

Thus, in view of the aforesaid submissions, learned State counsel submits that learned trial Court has rightly reached the conclusion qua appellant to have caused the occurrence in question and has rightly convicted him under Section 363 IPC and Section 6 of the POCSO Act.

Even the sentence, so imposed, is also just and reasonable. Therefore, he

has made a prayer for dismissal of the appeal.

In view of the submissions so made, it is pertinent to mention that date of birth of the victim child, as established from the evidence, is 15.01.2003. Suffice to consider the birth certificate, which has been proved on record as Ex.PX and also testimony of complainant, who is father of victim child and who has categorically stated the date of birth of his son (victim child) to be 15.01.2003. Thus, from the evidence brought on record, it stands amply established that the victim child was less than 11 years of age, at the relevant time and thus, was a '**child**' within the meaning of Section 2(d) of the POCSO Act.

The victim child is the most material witness in the present case, who has categorically deposed about the appellant to have taken him away and subjected him to penetrative sexual assault. The relevant portion of his testimony, in verbatim, has been reproduced by the learned trial Court in paragraph 12 of the *ibid* judgment, as herein given:-

“Accused present in the Court is not the person who was operating the Joyride, but he is the person who kidnapped me. Accused present in the Court was standing near me. He made me indulge in talks and took me outside the palace. He threw me behind the wall where there were bushes. He gave me beatings. I was bleeding from my injuries. He removed my clothes. He put something in my mouth and in my anus but I do not know what it was. It appeared to me that it was a part of his body. I was raising noise and accused gave me beatings due to my raising noise. Thereafter he left me.”

Throughout the arguments, learned counsel for the appellant has submitted that the victim had stated that accused present in the Court is not the person, who was operating the joyride and precisely, on this account, it is submitted that convict-appellant is not established to be wrong doer.

However, the aforesaid submission is not acceptable. No doubt, the victim child had stated that the accused present in the Court is not the person, who was operating the joyride but however, this sentence is not to be read singularly but his deposition has to be read in totality and precisely, on this account, learned trial Court, in its wisdom, has reproduced the testimony of the victim child in verbatim. When the testimony of the victim child is taken as a whole, as reproduced in the impugned judgment, it does establish the incriminating role of the appellant. He has categorically stated in the succeeding half portion of the statement, so relied upon by learned defence counsel, that he (accused) is the person, who kidnapped him. He also stated that accused present in the Court was standing near him and he indulged him in talks and took him outside the palace. He also stated that accused threw him behind the wall, where there were bushes and gave him beatings and he started bleeding from injuries. He had also stated about the accused to have put something in his mouth and in his anus but he does not know what it was. He further stated that it appeared to him about the same to be his (accused) part of the body. Thus, considering the aforesaid testimony of the victim, the incriminating role of the appellant stands amply established. In fact, it sufficiently establish about the appellant to have kidnapped the victim child and have caused injuries on his person and committed penetrative sexual assault with him. It has been rightly observed by the learned trial Court that even though, it is the version of the prosecution that the person, who was managing the joyride was the accused and the victim had stated that accused was not managing the joyride but however, it is pertinent to mention that learned trial Court has rightly observed that ride was placed at the venue and no operation, as such, was personally required.

It was a jumping game as the same was inflated with air. The victim has categorically deposed that the accused was standing near the joyride. So, in these circumstances, the victim child has categorically specified the role of the appellant as wrong doer.

Even, further the complainant, who is father of the victim child has categorically deposed about himself along with the victim child and other family members, to have gone to the marriage palace on 13.10.2013. He also categorically stated about joyride (mickey mouse) having installed there and his son (victim child) was also there. He also deposed that at about 12.00-12.15 a.m. (midnight), he did not notice presence of his son and then, he observed that the person managing the joyride was also not there. He has also categorically stated about the manner of spotting of his son and also deposed that his son had told him that the boy managing the ride had taken him by enticing him and committed carnal intercourse against the order of nature with him. He also deposed that on enquiry, they came to know the name of boy managing the joyride to be Satish Kumar and the accused present in the Court is Satish Kumar, who was managing the ride.

Further, even PW-5 Kewal Krishan, relative of the complainant, whose daughter's marriage was celebrated in the marriage palace, at the relevant time, had also stated about Satish Kumar accused, to be incharge of the joyride in the marriage and also stated about accused Satish Kumar to have taken away the victim child and committed carnal intercourse against the order of nature.

Now, it is submitted by learned counsel for the appellant that PW-6 Sarabjit, who was owner of the joyride, has categorically stated about

complaint against him about having consumed liquor. Therefore, it is submitted that it does not stand established that the appellant was present at the marriage palace, at the relevant time. However, the aforesaid submission is not tenable. It is pertinent to mention that while deposing in the Court as PW-6 Sarabjit has categorically deposed about having installed a joyride at Park Plaza marriage palace at Beerkalan, on 13.10.2013, where marriage of daughter of one Kewal (who is PW-5) was to be celebrated. He has also stated about engagement of Satish Kumar to look after that ride @ Rs.300/-. No doubt, thereafter, he had not supported the prosecution version and stated about having sent back Satish Kumar at about 11.20 p.m., on account of complaint received against him of having consumed liquor but it is pertinent to mention that PW-6 is employer of the appellant and he had made an attempt to save the appellant. It has been observed by learned trial Court that at the time, when he was to depose in the Court, PW-6 Sarabjit, had put his hand on the head of accused to bless him and when this Court, put him question, who operated the joyride after 11.20 p.m., he deposed that the same was closed at 11.20 p.m.. However, vis-a-vis the closure of the joyride, after 11.20 p.m., nothing as such, is coming on record. In fact, the said witness PW-6 has not been able to state about the manner in which, he made the accused go away in trolley. Rather, he had stated that he does not know the name of that trolley owner. He also stated that though, he made the accused sit in the trolley but he does not know if he had returned to the palace, thereafter or not. In the light of the same, the part of testimony of PW-6 Sarabjit, seems to be expression of sympathy towards the accused and made an attempt to save him from conviction. Rather, when his testimony,

as such, is taken as a whole, it sufficiently establish about the employment

of Satish Kumar at the marriage palace, at the relevant time.

This, ocular evidence, so coming forth, as discussed aforesaid, also finds corroboration from the medical evidence brought on record. Dr.Gurwinder Singh, who had conducted medico-legal examination of the victim child, has stepped into witness box as PW-2. He tendered into evidence his affidavit Ex.PW2/A, wherein, he had stated about examination of the victim child on 14.10.2013 and on examination, he found following injuries:-

- “1. *Abrasion 4x0.5 cm on left hip, advised X-ray/Surgeon opinion.*
2. *C/o severe pain in anal region, advised surgeon opinion as per surgeon opinion given by the Dr.Dhir at 6 O'clock position local tenderness present. Local redness present, internal sphincter spasm present. Not allowing P.R. Examination, gentaly swab taken. Sent for chemical examination on inquiry there was not h/o constipation proctoscopy cannot done because of spasm, hair absent.*
3. *Abrasion size 2 x 2cm on left cheek.*
4. *Abrasion size 1 x 1cm on right cheek.*
5. *Pain and swelling on right temporal region, advised X-ray/ortho/surgeon opinion.*
6. *Pain and swelling on frontal region, advised X-ray/ortho/surgeon opinion.*
7. *Abrasion 1 x 1 left knee joint on front, advised X-ray/ortho/surgeon opinion.*
8. *Abrasion 1 x 1 right knee joint on front, advised X-ray/ortho/surgeon opinion.*
9. *Abrasion 1 x 1 left elbow joint on back, advised X-ray/ortho/surgeon opinion.*
10. *Abrasion 1 x 1 left elbow joint on back, advised X-ray/ortho/surgeon opinion.*

11. *Reddish contusion size 2 x 1 cm on upper parts of nose, advised X-Ray/ENT opinion.*
12. *Reddish contusion on upper lip.*
13. *Abrasion 1 x 0.5 cm on just above right tonsil local redness and tenderness present, gently swab taken sent for chemical examination, advised Blood investigation and ENT opinion. For injury No.2 & 13 swab was taken and sent for chemical examination and handed over to H.C. Harbans Singh, 1861, P.S. Cheema dated 14-10-2013.”*

Also, he stated that in pursuance of the X-ray report, all the injuries were found to be simple and blunt in nature. It is pertinent to mention that injury No.2 is complaint of severe pain in anal region, surgeon opinion was advised. As per the surgeon opinion, given by Dr.Dhir, at 6 O'clock position, local tenderness was present. Local redness was present. Internal sphincter spasm was present. Not allowing P.R. Examination, gentaly swab taken. Proctoscopy cannot be done because of spasm. The doctor has deposed that as per his clinical findings, the victim was subjected to carnal intercourse against the order of nature. The investigating agency had also taken swabs from the anal region and buccal swab, along with panty, rumal and shirt of the victim, for analysis. As per the report of Chemical Examiner, which is Ex.PX/A, spermatozoa were found in the contents of buccal swab, rectal swab and rumal.

Besides the same, even PW-1 Dr.Vijay Kumar, Medical Officer, has tendered into evidence his affidavit Ex.PA, wherein, he has deposed that there is nothing suggestive of accused Satish Kumar to be not able to perform sex. Even, clothes of the accused were taken into police possession and the parcels were sent for chemical analysis to the Chemical

the accused.

Thus, considering the ocular evidence and medical evidence, so brought on record, it stands amply established beyond reasonable doubt that appellant Satish Kumar had kidnapped victim, a minor child, out of lawful keeping of his parents and committed aggravated penetrative sexual assault, with the child below 12 years of age. Thus, learned trial Court has held appellant Satish Kumar guilty and convicted him under Section 363 IPC and Section 6 of the POCSO Act.

However, so far as, sentence part is concerned, it is pertinent to mention that at the relevant time, when the appellant faced trial, he was 21 years old. He is also stated to be sole bread winner of his family. Considering these mitigating circumstances and also to facilitate the reformation of the appellant, the sentence so imposed is hereby reduced from rigorous imprisonment for 14 years to rigorous imprisonment for 10 years qua imposition of sentence under Section 6 of the POCSO Act. However, other sentences shall remain the same.

With this partial modification in the sentence part, the present appeal is hereby dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

March 19, 2021
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No