

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

**CRA-S No.1069-SB of 2018 (O&M)
Date of Decision-08.10.2021**

Deep Gir ... Appellant
Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.P.S. Sandhu, Advocate
for the appellant.

Mr. H.S. Sullar, DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. This is an appeal filed against the impugned judgment of conviction dated 18.01.2018 and order of sentence dated 19.01.2018, passed by the Sessions Judge, Sangrur, vide which the appellant was convicted for the offences under Section 377 IPC and Section 4 of Protection of Children from Sexual Offences Act (for short POCSO Act). Appellant was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.5000/- under Section 377 IPC along with default clause and to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.5000/- under Section 4 of the POCSO Act along with default clause. Both the sentences were ordered to run concurrently.

[2]. Vide order dated 24.07.2019, the appeal was directed to be listed in motion hearing for final disposal. The record of the case

was also requisitioned. Prayer for suspension of sentence was not entertained. Thereafter, appellant again filed CRM No.12716 of 2019 for suspension of sentence, but faced with the order dated 24.07.2019 passed by the Co-ordinate Bench, learned counsel for the appellant preferred to address arguments on merits.

[3]. Prosecution story started with the allegations that on 27.09.2016, police party was present at bus stand, Balran on patrolling duty. Complainant Brish Bhan along with his son (victim) came there. Brish Bhan got his statement recorded before ASI Jagjit Singh to the effect that he is running a karyana shop and is having three sons. Younger son (victim) is aged 14 years and is studying in 7th class. On 27.09.2016 at about 9:AM, the victim went to play in the street, but he did not return. Complainant started searching him. When he reached in front of the house of the appellant, he heard noise of weeping of his son from the house of the appellant. After entering the outer gate of the house, he went inside and saw that the accused/appellant was doing wrong act with his son. On seeing the complainant, the accused/appellant put on his lower, pushed him and ran away. Victim alleged that accused/appellant brought him in the house for showing video on his mobile phone. He was alone in the house and he did wrongful act with him by inserting his private part in the private part of the victim against his wishes. With this background, the FIR came to be registered.

[4]. The investigation was conducted by the police. The victim was medically examined from Sub Divisional Hospital, Moonak. MLR was prepared. Swabs and other sealed parcels containing clothes of the victim along with one envelope, all sealed with the seal of doctor were handed over to the police and the same were taken into police possession. The case property was deposited in Malkhana. Doctor referred the victim to Rajindra Hospital, Patiala for treatment. On 28.09.2016, the accused/appellant was arrested on the identification of the complainant. Accused was also medically examined. On 29.09.2016, the victim was produced before Sub Divisional Judicial Magistrate, Moonak for recording his statement under Section 164 Cr.P.C. As per birth certificate of the victim, his age was verified. The parcels handed over by the doctor were sent for chemical analysis. After completion of the investigation, challan was presented against accused/appellant. Charges were framed against accused/appellant under Section 377 IPC and Section 4 of POCSO Act, to which the accused pleaded not guilty and claimed trial.

[5]. In order to prove guilt of the accused, the prosecution examined PW-1 Imandeep Singh, Clerk office of Civil Surgeon, PW-2 victim, PW-3 Brish Bhan (complainant), PW-4 Dr. Aseem Mehta, Medical Officer, Sub Divisional Hospital, Moonak, PW-5 Darshan Kumar Verma, Assistant Librarian, Central Registration Office, Rajindra Hospital, Patiala, PW-6 Dr. Mohnish Kumar,

Medical Officer, Sub Divisional Hospital, Moonak, PW-7 Head Constable Sunil Kumar, PW-8 Constable Pinku Kumar, PW-9 ASI Jagjit Singh, Investigating Officer and PW-10 Dr. Rupinder, Junior Resident, Department of Surgery, Rajindra Hospital, Patiala. Thereafter, prosecution closed the evidence.

[6]. Statement of the accused was recorded under Section 313 Cr.P.C and the entire incriminatory evidence was put to him in his statement under Section 313 Cr.P.C. The accused pleaded innocence and pleaded his false implication. Accused did not prefer to lead any evidence in defence.

[7]. The trial Court after hearing the arguments, convicted and sentenced the accused/appellant in the manner as discussed in the preceding para of the judgment.

[8]. I have heard learned counsel for the parties.

[9]. Complainant while appearing as PW-3 has reiterated his version given in the FIR. Victim while appearing as PW-2, confirmed the version of the complainant Brish Bhan (PW-3) that he was playing in the street on 27.09.2016 at about 9:00 AM. The accused came there and told him that he will show him a video in his mobile phone and on that pretext, he took away the victim in his house, where he was alone. Accused/appellant did wrong act with the victim. When he raised alarm by screaming, the complainant reached at the spot. Accused after putting on his lower and by giving push to the complainant, ran away. The statement of the

complainant was recorded by the police on that very day. The statement of the victim was recorded under Section 164 Cr.P.C (Ex.PD). The age of the victim was proved with the statement of Imandeep Singh, Clerk (PW-1), who had produced birth certificate of the victim. As per his statement, entry No.30 was recorded on 02.09.2003 in the relevant register, showing the birth of the victim as 13.08.2003. The attested copy of the birth certificate was exhibited as Ex.PA. The report of the office was exhibited as Ex.PB and the relevant entry of the register was exhibited as Ex.PC.

[10]. Dr. Mohnish Kumar, Medical Officer (PW-6) confirmed the MLR of the victim prepared on 27.09.2016 when he medico legally examined the victim. According to his statement, the victim complained of pain around perianal region and anal region. Anal examination done in knee elbow position found minor lacerations present on the anal opening above and below. No external injury was found on the body, except anal region. Culture swab from anal and perianal region, clothes and culture swab were taken and kept for chemical analysis for spermatozoa examination. The victim was referred to Rajindra Hospital, Patiala for surgery and for forensic expert opinion. As per report of chemical examiner Ex.PU, spermatozoa were found in the two anal swabs and underwear. Doctor gave the opinion on the basis of chemical examiner report (Ex.PU) that spermatozoa were found in the contents of exhibits, so there was possibility of sexual intercourse. On medical examination of the accused, it was found that all the secondary

sexual characters were well developed and there was nothing to suggest that he was incapable of performing sexual intercourse. The statement of the victim recorded under Section 164 Cr.P.C also found approval by the scientific examinations.

[11]. Learned counsel for the appellant submitted that there are contradictions in the statement of the complainant and medical opinion, which would disprove the act itself.

[12]. The testimony of the victim was supported by the testimony of the complainant and the overall version was duly corroborated with the evidence and medical record proved by Dr. Mohnish Kumar (PW-6). According to him, minor lacerations were found on the anal opening above and below. The victim was referred to Rajindra Hospital, Patiala for surgery and forensic expert opinion. Doctor after analyzing chemical examiner report, found that spermatozoa were found on the contents of Ex.I (a), (b) and II(b). Doctor gave his opinion accordingly that spermatozoa were found on the contents of exhibits, therefore, possibility of sexual intercourse could not be ruled out. The treatment record of Rajindra Hospital was proved by Dr. Rupinder, Junior Resident (PW-10).

[13]. After taking into consideration the totality of facts and circumstances of the case, the trial Court found that prosecution has established the case beyond all reasonable doubt. The accused/appellant did not lead any evidence in defence after taking

plea of his innocence in his statement recorded under Section 313 Cr.P.C. The prosecution successfully brought home the guilt of the accused/appellant to the hilt and proved the allegations against the accused/appellant.

[14]. After considering the arguments in the light of material on record, I find no justification to interfere in the impugned judgment of conviction and order of sentence.

[15]. Faced with this situation, learned counsel for the appellant prayed for reduction in the sentence in view of period already undergone by the accused/appellant.

[16]. Keeping in view the gravity of offence and nature in which a minor victim has been subjected to unnatural offence, no ground is made out to reduce the sentence in any manner. The present appeal is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

08.10.2021

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No