

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Reserved on: April 07, 2022

Date of Decision: April 21, 2022

1) **CRA-S-489-2020**

Sunil @ Bala ... Appellant

Versus

State of Haryana ...Respondent

2) **CRA-S-776-2020**

Kamla ... Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Dr. Sumati Jund, Advocate,
for the appellant(s).

Mr. Vikas Bhardwaj, AAG, Haryana.

Vivek Puri, J.

Both the above mentioned criminal appeals
i.e. CRA-S-489-2020 and CRA-S-776-2020 have been
listed together for hearing as these arise out of
a common judgment of conviction and order of
sentence of the Court of learned Additional
Sessions Judge/Special Judge, Panipat. As such,
both the above mentioned criminal appeals are
being decided by a common judgment.

Both the aforesaid appeals have been preferred against the judgment of conviction dated 08.11.2019 and order of sentence dated 15.11.2019. Both the appellants have been convicted under Sections 342/34, 323/34 of the Indian Penal Code (for short `IPC'). Furthermore, Sunil @ Bala-appellant was convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short `Act, 2012') and Kamla-appellant was convicted under Section 17 of the Act, 2012 and vide order dated 15.11.2019, the appellants were sentenced as following:-

Sunil @ Bala-appellant

Offence under sections	Imprisonment	Fine	In default of fine imprisonment
342 read with Section 34 IPC	Rigorous imprisonment Six months	Rs.500/-	Simple imprisonment for one week
323 read with Section 34 IPC	Rigorous imprisonment Six months	Rs.500/-	Simple imprisonment for one week
6 of the POCSO Act, 2012	Rigorous imprisonment ten years	Rs.10,000/-	Simple imprisonment for two months.

Kamla-appellant

<i>Offence under sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of fine imprisonment</i>
342 read with Section 34 IPC	Rigorous imprisonment Six months	Rs.500/-	Simple imprisonment for one week
323 read with Section 34 IPC	Rigorous imprisonment Six months	Rs.500/-	Simple imprisonment for one week
17 of the POCSO Act, 2012	Rigorous imprisonment ten years	Rs.10,000/-	Simple imprisonment for two months.

The facts as put forth by the prosecution are to the effect that on 20.03.2017, Amarjeet Singh Narwal, President, Bal Anathalya Sondhapur, Panipat, submitted an application to the Incharge, Police Post Samalkha informing that on 19.03.2017 Lady ASI Yogesh Kumari and Head Constable Parmod Kumar, from Police Post Samalkha had brought the victim, aged about 7-8 years, who was resident of Gwalior (U.P.). As per the orders of Child Society after getting her medically examined. The victim was left in the Bal Anathalya. Basanti and Birmati were working as wardens in the Anathalya and used to look after

the small children with respect to the meals and bath etc. On 20.03.2017, Basanti and Birmati told the complainant that while they were giving bath to the victim, they saw severe wounds near her private parts with the signs of burning. The victim was very much frightened and it appeared that someone had done wrong act with her. On the basis of the said application, the FIR was registered and the investigation was conducted.

On completion of investigation, challan was presented and the charge under Sections 342, 323 read with Section 34 IPC was framed. Furthermore, Sunil @ Bala-appellant was charge-sheeted under Section 6 of the Act, 2012 and Kamla-appellant was charge-sheed under Section 17 of the Act, 2012.

In support of its case, prosecution has examined 21 witnesses, besides defence, the appellants examined 04 witnesses in their evidence.

The prosecution has put forth a case to the effect that the victim was working in the house of the appellants where Sunil @ Bala-appellant had committed penetrative sexual assault. Furthermore, Kamla-appellant had

forcibly kept hot forceps (Chimta) on her private parts and threatened her not to disclose the incident to any other person. The victim had stepped into witness box as PW1 and disclosed her age to be 11 years. After putting preliminary questions to her and recording the satisfaction that the victim is capable of giving rational answers to the questions put to her, she was administered oath and her statement was recorded. The victim has deposed to the effect that she along with her mother was residing in a rented room at Samalkha. Her father had already left them. Her mother also left her alone and did not return back. Kamla-appellant was residing in the neighbourhood, who took the victim to her house. The victim was harassed by her and was pressurized to do household work. Sunil-appellant who is the son of Kamla-appellant pressed her mouth and committed wrong act with her on 2-3 occasions. The incident was narrated to Kamla-appellant, who forcibly kept hot forceps (Chimta) on her private part and threatened not to disclose the fact to any person, otherwise she will burn her whole body. Kamla-appellant gave slaps and danda blows to her. Thereafter, she

fled away from the house of the appellants and ultimately taken to the Anathalaya.

Birmati, PW3, was working as warden in the Bal Anathalaya. On 20.03.2017, while giving bath to the victim, she noticed severe injuries on the genital parts of the victim. On her asking, the victim disclosed that one lady whom she had been calling as Dadi had inflicted injuries with hot forceps. She informed the matter to her husband, Amarjit Singh, PW2, who was President of the Bal Anathalaya. Information was given to the police and an application Ex.P3 was submitted. ASI Yogesh, PW6, enquired from the victim and was produced before the Medical Officer at CHC Samalkha for her medical examination. After her medical examination, as per the orders of the Child Welfare Committee, the victim was admitted in Bal Anathalaya, Sondhapur. On 20.03.2017, on the receipt of telephonic information from Amarjeet Singh Narwal, PW2, she visited Bal Anathalaya. She made an endorsement Ex.P24 on the application Ex.P3 submitted by Amarjeet Singh Narwal, PW2, and on the basis thereof, FIR was registered. Sunita Sharma, PW8, was working as Coordinator in Child

Help Line, Panipat and she had visited the Bal Anathalaya on the receipt of the information with regard to the burn injuries upon the victim. Ajit Singh Dahiya, PW17, was working as Member, Child Welfare Committee, Panipat and he issued the order (Ex.P23) and the victim was sent to Orphanage at Sondhapur. Sudesh Malik, PW21, being Legal Aid Counsel had recorded the statement of the victim.

Inspector Kavita, PW4, had conducted the investigation of the case and had effected the arrest of the accused. A forceps (chimta) was recovered from the Kamla-appellant which was taken into consideration vide recovery memo Ex.P5. She had also submitted an application for constitution of Medical Board for the medical examination of the victim. She also got recorded the statement of the victim under Section 164 Cr.P.C. EHC Jagbir Singh, PW5, had prepared the site plan Ex.P19 depicting the place of occurrence. EHC Parmod Kumar, PW11, had carried the application Ex.P3 bearing the endorsement Ex.P24 to the police station for the purpose of registration of the FIR. ASI Yogender Singh, PW14, had registered the FIR Ex.P25. Constable

Vikas, PW15 had delivered the special report after the registration of the FIR. The statement of the victim under Section 164 Cr.P.C. was recorded by Sh. Hitesh Garg, Chief Judicial Magistrate, PW18. On 20.03.2017, Dr. Shivanjali, PW20, had medico legally examined the victim. Thereafter, on 21.03.2017 Dr. Lipika Bansal, PW7, had medico legally examined the victim. Constable Virender, PW10, took the parcel to the Forensic Science Laboratory. Dr. Rakesh, PW12, was working as Dental Surgeon and he had medico legal examined the victim for age verification. As per his opinion, the age of the victim was between 14 and 15 years. Dr. Balram Singh, PW13, had medico legally examined Sunil-appellant and as per his opinion there was nothing to suggest that he was not able to perform sexual act. ASI Bimla, PW19, was then posted as Head Constable and had also joined the investigation. On completion of the investigation, the report under Section 173 Cr.P.C. has been presented under the signatures of Inspector Deepak Kumar, PW16, the Officer Incharge/SHO, Police Station Samalkha.

In their statements recorded under Section 313 Cr.P.C., both the appellants have

denied the correctness of incriminating evidence appearing against them. The defence version put forth by Sunil-appellant is to the effect that the victim was neither known nor he committed any wrong act with her. He was working as driver by profession and mostly remained out of station. The defence version put forth by Kamla-appellant is to the effect that her daughter-in-law is also residing with her and used to do household work. The victim never remained in her house and no act of sexual or physical assault was committed with the victim who was stranger to her.

In the defence, the appellants have examined Sonia, DW1, who is the wife of Sunil-appellant, Rajni, DW2, is the neighbourer of the appellants and as per their version, Sunil-appellant was working as a driver by profession and was not present in the house during the relevant period. Even the victim had not been residing in the house of the appellants. Sanjay, DW3, was working as driver with Sunil-appellant and he has testified to the effect that during the relevant period, they were out of station on the vehicle. Jitender, DW4, is the employer of Sunil-appellant.

I have heard learned counsel for the parties and perused the record.

While assailing the judgment of the learned trial Court, the learned counsel for the appellant has mainly argued that while appearing in the witness box as PW1, the victim has displayed silence with regard to the detail of wrongful act committed upon her by Sunil-appellant during her examination-in-chief. She is the solitary witness to the occurrence and even as per the report of Forensic Science Laboratory, semen could not be detected. As per the deposition of Dr. Rakesh, PW12, the age of the victim has been worked out to be 14-15 years and as such, she was aged more than 12 years at the time of occurrence. Consequently, no offence under Section 6 of the Act, 2012 is made out. It has been argued that in fact, the occurrence took place in the Bal Anathalaya and as a cover up, the appellants have been falsely implicated. Besides, the defence version of the appellants has been wrongly disbelieved and the defence witnesses have been ignored.

On the contrary, while supporting the judgment of the learned trial Court, the learned

State counsel has argued that there is no bar to base the conviction on the solitary statement of the victim as the same is reliable. The statement of the victim has been recorded after the learned trial Court was satisfied that the witness was capable giving rational answers to the questions put to her and was competent witness. There were repeated acts of sexual assault and even hot forceps was used to inflict the injuries on the private part which aggravates the gravity of allegations against the appellants and the case squarely falls in the category of aggravated penetrative sexual assault. The defence version is unreliable and a result of afterthought as there was no documentary evidence to indicate that the appellant was working as driver on a vehicle under Jitender, DW4, and was away from his house during the relevant period.

It may be recapitulated that the parents of the victim have left the house and being alone, she took shelter in the house of the appellants who was residing in the neighbourhood. The victim is the solitary witness to the occurrence and while appearing in the witness box

she has testified with regard to the allegations on oath in the Court.

There cannot be any bar to base the conviction on the testimony of a victim of sexual assault in the event her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, amounts to adding insult to the injury. In the event, the victim of sexual assault gives a vivid and reliable account of the entire episode, there cannot be any bar to base the conviction on the statement of such a witness. The statement of a victim of sexual assault can be relied upon if a deposition inspires confidence and is free from embellishment or improvements. Moreover, the statement of a child witness has to be appreciated with care, caution and circumspection. In the event, the child has intellectual capacity to understand the questions and give rational answers thereto, she can be allowed to testify and the evidence of such a witness is not to be rejected merely on the score that there is no other supporting eye witness or

corroborative evidence provided the evidence of such a witness is reliable and convincing.

The victim while appearing in the witness box has given a vivid, candid and satisfactory account with regard to the occurrence.

The argument raised on behalf of the appellants to the effect that she has not elaborated or described the wrongful act in examination-in-chief is liable to be rejected. The statement of a witness has to be evaluated in entirety. She has categorically and specifically stated that Sunil-appellant had pressed her mouth and committed wrong act with her 2-3 times. During the course of her cross-examination, she has clarified the wrong act to mean that Sunil-appellant has put his private part into her mouth forcibly 2-3 times. At this stage, it shall be appropriate to refer to Section 3(a) of the Act, 2012, which provides as following:-

"3. Penetrative sexual assault - A person is said to commit "penetrative sexual assault", if -

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person;"

A perusal of the aforesaid provision makes it amply clear that the offence of penetrative sexual assault is not only confined to vaginal intercourse. The aforesaid deposition of the victim is indicative of the fact that the act committed by Sunil-appellant squarely falls in the category of penetrative sexual assault. At this stage, it shall not be out of place to mention here that though as per the report of the FSL, no semen was detected, but keeping in view the fact that the victim has not attributed virginal sexual intercourse, the non detection of semen in the vaginal swabs pales into insignificance.

Moreover, the contention of the learned counsel for the appellants to the effect that the incident of inflicting injuries on the genital area of the victim took place in the Bal Anathalaya is not tenable and cannot be accepted in the light of medical opinion emerging on record. Dr. Lipika Bansal, PW7, had medico legally examination the victim on 21.03.2017. The victim was admitted in Bal Anathalaya on 19.03.2017. After two days, she was medico legally examined by Dr. Lipika Bansal, PW7 and

she has given the duration of abrasions to be 7-10 days. She has found following injuries on the person of the victim:-

- "1. Two abrasions with black scab in upper inner aspect of right thigh 2.5 x 1.5 cm. Duration with in 7 to 10 days. Weapon Blunt.*
- 2. Multiple abrasion with back scab over labia majoria and mons.*
- 3. Similar abrasion over upper inner aspect of left thigh, buttocks, lower abdomen and left knee."*

The duration of injuries as specified in the medical opinion are indicative of the fact that such injuries could not have been caused during the period the victim was in Bal Anathalaya. Rather the categoric version of the prosecution is to the effect that for the last few days prior to the occurrence, the victim had been residing in the house of the appellants and as such, the duration of the injuries is co-related with the period when the victim was residing in the house of the appellants.

On 20.03.2017, the victim was medico legally examined by Dr. Shivanjali, PW20 and the relevant injuries No. 1, 2 and 5 as found by her on local examination are reproduced herein below:-

"1. The bilateral thighs inner aspect have oval shaped burn marks with dry brown crusts of 2x2 cm, and having exposed dermis in some parts. The surrounding skin is normal.

2. Bilateral labia majora also have elliptical wounds. Burns marks of 1x1 cm. and vertically placed.

3. xx xx xx

4. xx xx xx

5. Left hip has oval 4x2 cm blackish wound with burn mark with dry brown crust."

It has also been specified that the possibility of aforesaid three injuries by means of a chimta in a heated condition cannot be ruled out. In these set of circumstances, though no semen was detected in the report of FSL, but the ocular version of the victim is duly supported by the injuries and duration thereof as found during the course of her medical examination.

Lastly, the appellants have sought to put forth a case to the effect that as per the medical opinion given by Dr. Rakesh, PW12, the age of the victim was 14-15 years. No other document depicting the date of birth or age of the victim is coming forth. As such, it has to be construed that the age of the victim was more than 12 years and the case does not fall in the

category of aggravated penetrative sexual assault.

In this regard, it may be mentioned here that there is categoric allegation of the victim that the penetrative sexual assault was repeated by Sunil-appellant on 2-3 occasions. Furthermore, Kamla-appellant had intentionally aided and abetted the commission of penetrative sexual assault. Not only that she even had inflicted injuries by means of hot forceps on the genital area of the victim and further threatened her not to disclose the incident. She even willfully concealed the material facts and her act amounts to instigation and abetment to commit an offence. Consequently, the act attributed to the appellants falls in the provisions of Section 5(h) and (l) of the Act, 2012 and amounts to aggravated penetrative sexual assault. The provisions of Section 5(h) and (l) are reproduced as following:-

"5. Aggravated penetrative sexual assault -

(a) to (g) xx xx xx

(h) whoever commit penetrative sexual assault on a child using deadly

*weapons, fire, heated substance or
corrosive substance; or*

(i) to (k) xx xx xx

*(l) whoever commits penetrative sexual
assault on the child more than once or
repeatedly; or"*

Consequently, no justified reason is made out to alter the conviction of the appellant with regard to offence under Section 6 of the Act, 2012 merely on the score that her age is more than 12 years at the time of occurrence.

The appellants have sought to put forth a defence version to the effect that Sunil-appellant was working as a driver and was out of station during the relevant period. It is significant to note that Sonia, DW1, is the wife of Sunil-appellant and Rajni, DW2, is the neighbourer of the appellants. They have testified with regard to the fact that Sunil-appellant was away from the house during the relevant period to substantiate such defence version. The appellant has also examined Sanjay, DW3, who is working as co-driver with him and Jatinder, DW4, who was his employer. It is emerging in the cross-examination of Sanjay, DW3, that he was maintaining a diary Ex.D1 with regard to the expenses. However, such a diary cannot be

termed to be circumstance to conclude that Sunil-appellant was working with him as co-driver and was out of station during the relevant period. No receipt with regard to the payment of toll tax when Sanjay, DW3 along with Sunil-appellant had visited the other station has been proved on record. Even Jatinder, DW4, who is stated to be the employer of Sunil-appellant has not produced any document with regard to the disbursement of salary or engagement of Sunil-appellant as driver. It is emerging in his cross-examination that he along with his brother are having ten commercial vehicles and the annual turnover is to the tune of Rs. 2 crores. He further states that they are not maintaining any record with regard to the salary of Sunil-appellant and Sanjay, DW3 and the salary was being given in cash. It becomes hard to believe that a concern having annual turnover of Rs. 2 crores was not maintaining any document with regard to the disbursement of the salary and wages to their employees. In the absence of any document, the defence version as sought to be put forth by the appellants with regard to the employment of Sunil-appellant as driver or his being out of

station during the relevant period cannot be accepted and is liable to be rejected.

On evaluating the material on record, it is sufficiently proved and established that Sunil-appellant had committed penetrative sexual assault upon the victim on repeated occasions and furthermore, her mother-Kamla-appellant had aided and abetted the commission of such crime.

As such, no illegality or irregularity is made out in the impugned judgment of conviction and order of sentence which may call for interference by this Court. The judgment of conviction has been correctly recorded and adequate sentence commensurate with the guilt of the appellants has been imposed upon them.

Accordingly, both the appeals being devoid of merits stand dismissed.

April 21, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasonable	:	Yes
Whether reportable	:	Yes