

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

CRA-D-683-DB-2016 (O&M)

Reserved on: 04.03.2022

Pronounced on : 11.03.2022

Veer Kumar

..Appellant

Versus

State of Haryana

..Respondent

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Rajender Kumar, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J.

1. In the golden words of Sigmund Freud, "I cannot think of any need in childhood as strong as the need for a father's protection". These words of Sigmund Freud clearly demonstrate that father is one of the pillars in the development of a child's emotional well-being. Children look to their fathers to lay down the socio-moral rules and enforce them. They also look to their fathers to provide a feeling of security, both physical and emotional. But in the present case all these parameters of a fatherhood have been maligned by a father when he committed shameful and abominable act of rape upon his own daughter and defiled her body for a small fling of lust.

2. "X" who was 15 years of age at the time of incident filed a complaint before the police stating inter alia therein that she was studying in 8th Class. Her father, the appellant herein had sexually assaulted her in the night, when her mother had gone somewhere else to attend a marriage. She had also informed her mother and aunt about this

incident. About two months ago, her father Veer Kumar had committed rape on her. This incident happened in the day time when her mother had gone to the bank where she is working as Sweeper. She did not tell this incident to her mother. During these two months, her father had committed bad act with her. She had told the entire facts to her school teacher-Sumita Khurana. Now, on 29.07.2015 in the day time, her father Veer Kumar has committed wrong act with her in their house. Regarding this incident she had told her school teachers Sumita Khurana and Reeta Sharma. On the basis of the said complaint EX.P1, formal FIR was registered.

3. The matter was investigated by W/ASI Kailash Kaur, site plan was prepared, statements of witnesses under Section 161 of the Criminal Procedure Code, 1973 (for short 'the Cr.P.C.') were recorded, statement of prosecutrix under Section 164 of the Cr.P.C. was recorded, the prosecutrix and the accused were medico-legally examined, the accused was arrested and after completion of investigation, accused was challaned to face trial. On finding a case, punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'), the trial court charge-sheeted the accused to which the accused pleaded not guilty and claimed for a trial.

4. In order to prove its case, the prosecution examined as many as 10 prosecution witnesses and produced material documents and objects which were exhibited.

5. After appreciating the evidence on record, learned Additional Sessions Judge, (Exclusive Court for Heinous Crimes

against Women), Kurukshetra vide its judgment of conviction dated 03.06.2016 and order of sentence dated 04.06.2016 held appellant/accused-Veer Kumar guilty under Sections 6 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of 13 years and to pay a fine of Rs.10,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of 02 months.

6. Aggrieved against the above said judgment of conviction and order of sentence, the appellant has filed the present appeal.

7. Learned counsel for the appellant has vehemently submitted that the appellant has been falsely implicated in the present case. The case of the prosecution is merely based upon the circumstantial evidence. The evidence led by the prosecution is highly contradictory. No independent witness has been examined in this case and the entire case is based on the testimony of the official witnesses. Two teachers i.e. Sunita Khurana and Reeta Sharma, to whom the prosecutrix is stated to have narrated the entire incident, have not been examined and even mother of the prosecutrix has not been examined. The prosecutrix turned hostile. In her cross-examination, the prosecutrix denied the contents of complaint and submitted that she had made the complaint on the asking of police aunt. Learned counsel further submits that the Ex.P23- FSL report also does not support the case of the prosecution as no semen could be detected on any of the exhibits. Learned counsel has submitted that the impugned

judgment of the Trial Court is purely based on surmises and conjectures and deserves to be set aside.

8. *Per contra*, learned State counsel has submitted that the appellant has rightly been convicted and sentenced by the trial court. There is cogent evidence on record to show that the appellant had committed the offence. The prosecution has examined as many as 10 witnesses to prove its case. After appreciation of the evidence on record, the Trial Court has rightly convicted and sentenced the appellant.

9. We have given our thoughtful consideration to the submissions made by learned counsel for the appellant and learned State Counsel and have gone through the lower court record.

10. Before proceeding further, it would be apposite to reproduce the statement of the victim made under Section 164 Cr.P.C.

(In Camera) which reads as under:-

“Statement of (Name of Victim xxxx) daughter of Veer Kumar, aged about 15 years, student, resident of Ismailabad, Pehowa, under Section 164 Cr.P.C. (In Camera)..... on S.A.

Q. How many brother-sister have you and in which class and in which school do you read ?

Ans. We are three brother-sisters and I study in 8th class and I study in Government Senior Secondary School, Ismailabad.

Q. Do you know as to whom you are making statement?

Ans. Yes Sir. I know that I am giving my statement to a Judge.

Q. Do you know that on finding your statement to be wrong, proceedings could also be initiated against you?

Ans. Yes Sir. I know that on finding any statement to be wrong, proceedings could also be initiated against me.

Q. Despite that, still do you want to give your statement?

Ans. Yes Sir. Still, I am making my statement. I am making the statement out of my free will and without any fear or pressure from outside.

Sd/- in Hindi (Victim)

Sd/- in English

JMIC, Illaqa Magistrate, Ismailabad
Pehowa. 3.8.2015

I am satisfied that prosecutrix is making her statement voluntarily at her own free will, without any kind of coercion or compulsion from any corner. Let her statement be recorded.

Sd/- in English

JMIC, Illaqa Magistrate, Ismailabad
Pehowa. 3.8.2015

Q. What statement do you want to give?

Ans. Stated that about two months ago, my father Veer Kumar had committed wrong act with me. At that time, I and my father were in the house and after finding opportunity, he had committed wrong act.

Q. Do you want to say anything else?

Ans. Thereafter on 29.07.2015, when I was alone at the house and my mother had gone to the bank, then in the noon time my father has again committed wrong act/rape with me. Again on 30.07.2015, I have told to my teachers in this regard. Then, we got lodged the FIR.

Q. Have you want to say anything else in addition to this?

Ans. No Sir, I do not want to say anything else in addition to this.

RO&AC

Sd/ in Hindi (Victim)

Sd/- in English

Identified by IO & LC JMIC, Illaqa Magistrate, Ismailabad

Kailash Kaur

Pehowa. 3.8.2015

No.516/KKR

It is certified that the statement of prosecutrix under Section 164 Cr.P.C. was recorded in Camera. It is also certified that prosecutrix made her statement voluntarily of her own free will, without any compulsion or coercion from any corner. It is also certified that the statement of the prosecutrix as recorded above bears true and correct account of what has been stated by her and nothing has been added or deleted therein and the same was read over and explained to the prosecutrix who signed the same after admitting the contents of the same to be correct.

Sd/- in English
JMIC, Illaqa Magistrate, Ismailabad
Pehowa. 3.8.2015”

The deposition made by the prosecutrix who appeared as PW-1 before the trial court is reproduced in its entirety as under:-

“The deposition of (Name of Victim XXX) daughter Veer Kumar aged 15 years, student of 8th standard, resident of Balmiki Basti, Ismailabad. On SA

For Prosecution Recorded before me (Poonam Suneja) Additional Sessions Judge (Exclusive Court for heinous crimes against women), Kurukshetra, on this 10th day of November, 2015, on solemn affirmation:

(Proceedings recorded in Camera in view of Section 37 of the Protection of Children from Sexual Offences Act, 2012).

I am studying in 8th Class in Govt. Sr. Sec. School, Ismailabad. My date of birth is 17.5.2000.

I am present at my home on 29.7.2015. My father Veer Kumar, accused present in the court today, assaulted me sexually by touching parts of my body. At that time, my mother was not present at home. I had told this fact to my mother after her return to home from Bank after doing cleanliness work there. I had also disclosed this fact to my Madam Sunita Khuraana in the school. Thereafter I moved application Ex.P1 to the police, which bears my signatures. About two months prior to moving present application also, my father Veer Kumar had assaulted me sexually by touching parts of my body. I was medically examined by the doctor at CHC, Pehowa. Police made inquiry from me. I had also made statement before learned Magistrate at Pehowa.

(At this stage sealed envelope opened and taken out application statement and orders). Statement is Ex.P2 which bears my signatures.

I have heard the contents of application Ex.P1 and statement Ex.P2. I had not mentioned neither in application nor in statement about committing rape upon me by my father.

(At this stage learned Public Prosecutor for State requested that the witness is suppressing the truth so she may be declared hostile and he be allowed to cross-examine her. Request heard and allowed.)

Sd/-(Name of Victim)

*sd/-
(Poonam Suneja)
Additional Sessions Judge,
Kurukshetra*

Xxx by Shri S.K.Mital, Public Prosecutor for State assisted by Shri Shyam Singh, Advocate for complainant.

I do not know the meaning of rape. Volunteered my father had not committed sexual intercourse with me. It is incorrect to suggest that my father had committed rape upon me on 28.7.2015 as well as two months prior to 3.8.2015 or that I am deposing falsely intentionally in order to save my father from punishment. (Confronted with portion A to A of Ex.P1 wherein it is so recorded). This statement is also confronted with portion A to A and B to B of Ex.P2 wherein it is so recorded.)

XXX by Shri P.C. Payal, Advocate for accused Veer Kumar.

Application Ex.P1 was not scribed by me. The same bears my signatures only. I do not know the contents of Ex.P1. Similarly, I do not know the contents of Ex.P2, however, the same bears my signatures. I had made statement Ex.P2 on the asking of police aunt. I never disclosed anything to my teacher in the school. It is correct that my father had asked me by touching my shoulder to stand up and to do the domestic work as I was sleeping.

RO & AC

Sd/- (Name of Victim)

*sd/-(Poonam Suneja)
Additional Sessions Judge
(Exclusive Court for heinous
crimes against Women)
Kurukshetra 10.11.2015"*

11. We find no substance in the arguments of the learned counsel for the appellant.

12. The star argument of the learned counsel for the appellant that the victim has turned hostile and mother and the teachers were not examined as PWs by the prosecution, is misconceived. The aforesaid deposition of the victim-PW1 cannot be read in piecemeal, but it can be read in its entirety. The prosecutrix-PW1 in her examination-in-chief has clearly deposed that *she was present at home on 29.07.2015. Her father Veer Kumar, accused present in the court, assaulted her sexually by touching the parts of her body. At that time, her mother was not present at home. She had told this incident to her mother, who is working as sweeper in the bank, when she came back from work. She had also disclosed this fact to her school teacher Sunita Khurana. Thereafter, she moved application Ex.P1 to the police, About two months prior to moving the application, also, her father Veer Kumar had assaulted her sexually by touching the parts of her body. She was medically examined by the doctor at CHC Pehowa....* This deposition of the victim substantiates the offence committed by the accused. *However, in her cross-examination, the prosecutrix while turning hostile deposed that she did not know the meaning of rape and the contents of her complaint Ex.P1 and her statement Ex.P2. She had given statement Ex.P2 on the asking of the police aunt. She never disclosed anything to her teacher. Her father had only asked her to do domestic work by touching her shoulder as she was sleeping.*

13. Furthermore, the deposition of PW-1 the prosecutrix is corroborated with the deposition of PW-10 W/ASI Kailash Kaur vide which she has proved receipt of application Ex.P1 of complainant, registration FIR Ex.P24, preparation of rough site plan Ex.P26, got recorded statements of Sunita Khurana and Reeta Sharma, school teachers of the victim, medico-legal examination of victim, got recorded the statement of victim under Section 164 of the Cr.P.C., medical examination of accused, taking into possession birth certificate of victim Ex.P3 and preparation of challan etc. In her cross-examination she stated that the victim verbally told her about the dates from 29.05.2015 to 29.07.2015, her father had committed rape upon her about 4-5 times.

14. We are also not convinced with the argument of the learned counsel for the appellant that as per FSL report Ex.P-23, *semen* could not be detected and as such no offence under Section 6 of the POCSO Act is made out against the appellant. Merely because semen could not be found, does not mean that offence under Section 6 of the POCSO Act has not been committed. Section 6 (1) of the POCSO Act stipulates that whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death. In the present case, as per deposition of PW-6, Dr. Lipsy Singla, Medical Officer who also tendered an affidavit Ex.P14 in evidence to the effect, it transpires that on 03.08.2015, she medico-legally examined the prosecutrix. She

proved MLR of the prosecutrix Ex.P15. She identified Ex.P19 to Ex.P22 i.e. salwar, cervical swab, vaginal swab, pubic hair to be of the prosecutrix, taken by her at the time of medical examination. She deposed that possibility of sexual intercourse cannot be ruled out. From a perusal of the MLR of the victim which is on record as Ex.P-15, it transpires that the hymen of the victim was torn and vagina admitted two fingers easily. Furthermore, PW-5 Dr. Anuj Sharma, Medical Officer who has tendered an affidavit Ex.P7 to the effect that on 04.08.2015, he medico-legally examined Veer Kumar-accused and proved MLR Ex.P8 in this regard. He opined that there is nothing to suggest that the person examined by him is not capable of performing sexual intercourse. He deposed that underwear, pubic hair and swab of glans penis Ex.P11 to Ex.P13 are the same, which were taken by him at the time of medical examination of accused. These materials are consistent which are sufficient to prove the aforesaid offence against the appellant beyond reasonable doubts.

15. The argument raised by the learned counsel for the appellant that the prosecutrix has turned hostile is also of no help. In the present case, as noticed above, the prosecutrix duly supported the case of the prosecution in her examination-in-chief, and later on in cross examination, she has turned hostile. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different

statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. While explaining the evidentiary value of hostile witness, Hon'ble Supreme Court in **Radha Mohan Singh vs. State of UP, (2006) 2 SCC 450**, has observed as under:-

".....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

This view was reiterated by the Hon'ble Supreme Court in **Rajendra vs. State of UP, (2009) 13 SCC 480** wherein it was observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. A similar view was taken by the Supreme Court in **Govindappa vs. State of Karnataka, (2010) 6 SCC 533** that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution. In **State of Gujarat v. Anirudhsing, (1997) 6 SCC 514**, the Supreme Court has observed as under:-

"3. Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge-sheet before the court competent to take cognizance of the

offence. The charge-sheet needs to contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty-bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilise social peace, order and progress."

16. In the present case, the prosecutrix testified to her rape or sexual assault at the hands of her father-appellant twice – first time before the Magistrate in her statement recorded under Section 164 of the Cr.P.C. and 2nd time before the Trial Court in the witness box as PW-1. No reasonable explanation has been given by the appellant/accused that why his own daughter has levelled such serious allegations against him.

17. So far as the argument of learned counsel for the appellant regarding no independent witness was examined in the present case is concerned, Hon'ble Supreme court in its judgment in ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753***, while discussing in detail the plight of the victim of sexual assault, had observed that the testimony of victim, in such cases, is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused, where her testimony inspires confidence and is found to be reliable.

18. In view of the above discussions, we are of the considered view that there is no illegality in the judgment of conviction and order of sentence passed by the Trial Court. Accordingly, the present appeal

stands dismissed and the judgment of conviction and order of sentence passed by the trial court are upheld. Pending applications in this case, if any, shall stand disposed of accordingly. Registry to return back the Lower Court Record.

(ASHOK KUMAR VERMA)
JUDGE

(RITU BAHRI)
JUDGE

11.03.2022
MFK/Kothiyal

Whether speaking/reasoned
Whether Reportable

Yes
Yes