

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
213 CRA-AS-125-2023 (O&M)
Date of decision: 21.09.2023

Victim minor through her father

...Appellant(s)

Vs.

State of Haryana & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sushil Sheoran, Advocate
for the appellant.

Ms. Deep Shikha Chauhan, AAG Haryana.

NIDHI GUPTA, J.

Present appeal is filed against judgment dated 22.11.2022 passed by learned Additional Sessions Judge-cum-Judge, Fast Track Special Court under POCSO Act, Bhiwani, whereby accused/respondent No.2 herein, has been acquitted in FIR No.354 dated 17.12.2020 under Sections 354-A(2) and 506 IPC and Section 10 of POCSO Act registered at Police Station Civil Lines, Bhiwani.

2. Brief facts of the case as set out in the impugned judgment are that: -

"2....on 17.12.2020, the victim moved a complaint to police alleging that she was resident of House No. 1528, Sector-13, Bhiwani. She was about 10 years old and used to study in 4th standard in Sant Xavier High School, Bhiwani. On 8.10.2020, at about 7.00/8.00 P.M., she and her younger sister were alone at home. At that time, her maternal uncle Karamdeep son of Anil Kumar came to her house and inquired about the persons, who were at home at that time. She told that her grandmother was walking on the road and her younger sister had slept. She further told that her parents had gone to market. The

respondent accused then asked her to accompany him, however, she refused for that. Thereafter, he put his hand on her chest and removed her clothes. In the meantime, the doorbell rang and the respondent accused left the spot after extending threats to kill her, if she would reveal about that incident to anybody. She went inside the bathroom and had slept. Thereafter, her grandmother came back, however, as she had got frightened, she did not reveal anything to her grandmother. Her maternal uncle had also threatened to kidnap her. On previous day, she revealed everything to her grandmother.”

3. The child-victim was examined as PW 8 wherein she has deposed that:-

“13...her date of birth was 17.10.2010. She was studying in 5th standard in Sant Xavier High School, Bhiwani. On 08.10.2020, at about 7.00/8.00 p.m., she was at her home. Her younger sister was sleeping in the bed room. At that time, her maternal uncle Karamdeep came there and inquired about the other members of the family. She told that her parents had gone to the market and her grandmother was roaming in the street. He asked her to accompany him, however, when she refused, he gave her a slap and forcible took her in the Drawing room. He then forced her to remove her clothes and touched her face, chest and thighs. He also gave her bites on her face, chest and thighs. Thereafter, her grand mother rang the door bell. On hearing that, the accused left the spot after extending threats to kill her family members, if she would tell about that incident to anybody. Thereafter she went in the washroom, wore her clothes and went for a sleep in the bed room.”

4. Learned counsel for the appellant/prosecutrix inter alia submits that the learned Court below has acquitted respondent No.2

primarily on account of apparent contradictions in the statements of the appellant in the FIR, in her statement under Section 164 Cr.P.C., and then in her deposition as PW8. Learned counsel submits that the victim was ten-years-old at the time of incident and therefore, there were bound to be minor discrepancies in the statements made by her which cannot be held against her. Learned counsel further states that in acquitting respondent No.2, learned Court below has totally ignored the prosecution evidence on record from which the allegations against respondent No.2 were being substantiated.

5. Learned counsel for the appellant further contends that the other ground of acquittal of respondent no.2 is that the maternal grandfather of the victim came to the house of victim and quarrelled with the mother of the victim upon which she made telephonic call to the police at about 6/7 PM. Learned trial Court has held that it is not probable that she made the complaint to police by calling control room and went to market in such an atmosphere. Learned counsel submits that in this regard the learned trial Court has not considered the whole evidence and documents on record. In her evidence, the mother of the victim stated that her father came at 11 a.m. and started abusing. She further stated that in pursuance to the call made to the control room, police came to the house of victim but the mother told them that she will give the complaint if any by tomorrow and the FIR was lodged on 10.10.2020. Learned counsel submits that as it was a family dispute between daughter and father i.e. mother and maternal grandfather of the victim, there was no seriousness to the quarrel

or such an atmosphere that the mother could not have left the house thereafter. Furthermore, it is stated that the statement on which the learned trial Court relied was not duly proved by producing any witness, and hence, such a document is per-se not admissible.

6. No other argument is raised on behalf of the appellant.
7. I have heard learned counsel for the appellant.
8. Perusal of record reveals that learned Court below after appraising and considering all the documentary as well as oral evidence on record, as also all the pleadings on file and submissions made by the parties, has returned the following findings:-

“34. In this case, a perusal of case file reveals that the incident took place on 8.10.2020 at about 7.00/8.00 P.M., however, the matter was reported to police after about two months on 17.12.2020 when the child victim gave statement Ex.PW6/A to police alleging that on 8.10.2020 at about 7.00 8.00 P.M. she along with her younger sister was alone at home. Her maternal uncle came to her home and inquired about the other family members. She told that her parents had gone to market, her grandmother was walking in the street and her younger sister was sleeping. He asked her to accompany him, however, when she refused, he dragged her to the drawing room, where he put his hand on her chest. He removed all her clothes. Thereafter, someone rang the doorbell and her maternal uncle left the spot after extending threats to kill her family members, if she would reveal about that incident to anybody. She went in the bathroom and had slept. She did not reveal anything to her grandmother due to fear. It is highly improbable that a girl was sleeping in the bathroom after the incident and her family

members did not immediately inquire from her about the reason of doing that.

35. Further, from this statement of the child victim, it transpires that it is the accused who removed all her clothes, while in her statement in the court she has implicated the accused in forcing her to remove her clothes. In her statement Ex.PW6/A given to police, she has nowhere stated that the accused had also bitten her on her face, chest and thigh, while in her statement in the court, she has implicated the accused in biting her on her face, chest and thigh. In her cross examination, she has stated that her mother had inquired about the bite marks on her face, however, she told that due to fall, she had suffered injuries. The court can take notice of the fact that bite marks give different impression than the injuries suffered due to fall on the ground.

36. Further, in her statement Ex.PW8/A recorded under section 164 Cr.P.C.. the child victim has nowhere implicated the accused in removing her clothes or forcing her to remove her clothes. She has simply implicated the accused in biting her on her face, chest and thigh, which was revealed by her for the first time before Learned Magistrate. Thereafter, on hearing the doorbell, he left the spot after extending threats to kill her family members, if she would reveal about that incident to anybody.

37. In a criminal case the accused has no other way to show that a false case has been foisted upon him except to show that the witnesses examined by the prosecution are not telling the truth when they are making discrepant statements on material aspects of the case. In this case, the child victim has continuously changed her stand, hence, a doubt has crept in the prosecution story. Moreover, the accused has taken a specific defence that he never sexually assaulted the child

victim. In fact, his sister Varsha got registered a case under the POCSO Act against the parents of the child victim prior to the present case, hence, this case was got registered by them through their daughter to pressurize his sister for compromising the matter in that case under the POCSO Act. There was a money dispute also between the two families. PW9 the grandmother of the child victim has also admitted in her cross examination that the sister of the accused Karamdeep has also got registered a case under POCSO Act against the parents of the child victim. She further admitted that there was money dispute also between the parties. The accused has also placed on file copy of FIR No. 305 dated 10.10.2020 under sections 323, 354-A(2), 506, 34 of the IPC, Police Station Civil Lines, Bhiwani (Mark D1), which reveals that the maternal aunt (mausi) of the child victim got a case registered against the parents of the child victim implicating the mother of the child victim in giving simple injuries to her and father of the child victim in sexually assaulting her & extending threats to her.

38. In his statement recorded under section 313 Cr.P.C., the accused has further stated that on the date of incident, the mother of the child victim herself had called him telephonically to come to her house and to take his father back, who was the maternal grandfather of the child victim. On that day, an altercation had taken place between the mother of the child victim and the father of the accused, for which a case was already pending. In support of his defence, the accused has also placed on record copy of FIR No.306 dated 10.10.2020, under sections 294, 452 & 506 of the Indian Penal Code, Police Station Civil Lines, Bhiwani Mark D2, which reveals that the mother of the child victim has also got registered a case against her father Anil Kumar, who was also the father of the accused Karamdeep that on 8.10.2020, her father came to her house and abused her. He threatened her to withdraw the criminal cases pending against him and his family members at the instance of the father of the child victim. The accused has

also placed on file statement of the mother of the child victim Ex.D1 given in that FIR, wherein she has admitted that on 8.10.2020 they returned home from court after 2.00/3.00 P.M. She further admitted that when they returned from court, her brother was not with them nor he attended the meeting. She further stated that on that very day, at about 6.00/7.00 P.M. she had made a call in the Control Room through her mobile No. 8396952222. She has stated that she had telephonically informed her brother that her father was abusing them in filthy language, however, her brother did not come to take him back. This court fails to understand when an altercation was taking place between the mother of the child victim and her father on 8.10.2020 at about 6.00/7.00 P.M. and she was calling police by ringing in the Control Room, how she went to market in such an atmosphere as stated by the child victim. This statement of the mother of the child victim rather strengthens the defence of the accused. Since there was history of previous litigation between the family of the child victim & the family of the accused, who were related to each other and there is unexplained delay of two months in reporting the matter to police, the defence taken by the accused seems to be more probable and makes a dent in the story as set up by the prosecution.”

9. Learned counsel for the appellant is unable to controvert or dispute the above said findings of the learned Court below, or show anything whatsoever to this Court, to prove the above said findings to be incorrect. Clearly, there are many discrepancies in the story put forth by the prosecution. Moreover, admittedly, there was a money dispute between the family of the victim and the accused which seems to have instigated the registration of present complaint. Even otherwise, no plausible explanation has been given for the inordinate delay of two months in registering the FIR.

10. In view of the above undisputed findings of the learned Court below, I find no ground is made out to interfere in the impugned judgment. Present appeal accordingly stands **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.

21.09.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No