

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

CRA-D-1784-DB-2014 (O/M)
Date of Decision: May 16, 2023

Sandeep Kumar ...Appellant

Versus

Union Territory Chandigarh ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Hoshiar Singh Jaswal, Advocate
for appellant.

Mr. Rajiv Vij, Additional P.P.
UT Chandigarh.

HARINDER SINGH SIDHU, J.

This appeal has been preferred against the judgment and order dated 4/6.9.2014 passed by the Additional Sessions Judge, Court, Chandigarh in Sessions Case No.437 of 2013 whereby the appellant, who was charged with and tried for offence punishable under Section 6 of Protection of Children From Sexual Offences Act, 2012 and under Section 376 (2) IPC has been convicted and sentenced to undergo rigorous imprisonment for a period of 20 years and to pay fine of Rs.1,00,000/- and in default to further undergo rigorous imprisonment for a period of 1 year under Section 376 (2) IPC.

2. The case was registered on the complaint of Anita (mother of the prosecutrix) who stated that she alongwith her family were residing in

Mohali. On 31.07.2013, she was present at her house along with her daughter (prosecutrix) who was 2 ½ year old. The child had difficulty in going to sleep. At about 10.00 pm after breast feeding her she went to answer the call of the nature in the open space at a short distance from their house. She left her daughter with her neighbour as her husband had not returned to the house from his work. The appellant who was residing in the house adjoining to her house, was sitting in front of her house on a folding bed. She asked him to take care of her daughter till she returned. After 15-20 minutes, when she came back she found that her daughter was crying and was bleeding from perineal region. When she asked her daughter as to what had happened and the reason of bleeding she replied that father of Hari Om. Meanwhile, her husband came. The persons from locality also gathered there. The accused also came there after a while. The police also reached. Her daughter was taken to the hospital. She was given medical aid. The appellant was arrested. She stated that the eldest son of the appellant namely Hari Om aged about 4 years used to play with her children and as such the children knew his name. She also stated that since the wife of the appellant alongwith her two children Hari Om and Ayush had gone to her village, the appellant used to spend most of his time in their house. He used to play with his children. He also used to have meals there.

3. After medical examination of the prosecutrix a parcel containing white frock, purple coloured pajami and two vaginal swabs, an envelope containing copy of MLR, were taken into police possession.

-3-

containing his clothes and blood sample were taken into police possession. Both parcels were sent to FSL .

4. PW1 Dr. Sudha Rani conducted the medical examination of the prosecutrix. On local examination bleeding P/V was present. The victim was further examined under anaesthesia in OT where two vaginal swabs were taken. Hymen was found torn. There was laceration of 2 cm on the posterior vaginal wall extending 1 cm on the posterior fourchette in the mid line. Stitching done. Haemostasis was secured. She deposed that the child was wearing the same frock since the assault but had changed the underwear. After medical examination a parcel containing white frock, purple coloured pajami and two vaginal swabs, an envelope containing copy of MLR, were handed over to the accompanying lady constable.

5. PW3 Dr. Roop Kiran Kaur who medico- legally examined the appellant proved the MLR Ex.P3 in which she opined that in her opinion there is no evidence that he cannot perform sexual intercourse. She further deposed that she had also taken the blood sample of the accused and handed over the same to the accompanying police officials.

6. PW8 Ms.Sunita who conducted the DNA examination proved her original report Ex.P15 and opined that the contributor of the blood stain detected on clothing of prosecutrix (GPL 450 item (s) # Ex. 45010702 A, 45010702B, 45010702 C) and clothing of the accused Sandeep (jeans pant and shirt), GPL 450/13 item (s) # Ex.-45010703 (A and B) is (Prosecutrix) (GPL 450/13 item (s) # Ex.-45010701).

-4-

does not contest the conviction. He stated that the conviction be maintained but the sentence be reduced. He states that appellant is the father of two minor children who were aged about 2 ½ and 1 ½ year at the time of his conviction. He himself was 25 years of age. His parents are old and he is sole bread winner in the family.

8. On the other hand Mr. Rajiv Vij Ld. Add. P.P. argued that there is no question of reduction of sentence particularly in view of the fact that the victim is a minor.

9. We have gone through the judgment and record. We are satisfied that on the evidence on record as briefly noticed above the conviction of the appellant has been rightly recorded. The appeal to that extent is dismissed.

10. The appellant has been convicted for the offences under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and under Section 376(2) (i) of the IPC. In view of Section 42 of the POCSO Act the sentence has been awarded under Section 376(2) (i) of the IPC.

11. The date of the incident is 31.07.2013. As per Section 376 IPC after the Criminal Law (Amendment Act) 2013 (w.e.f. 3.2.2013) the punishment for the offence under Section 376(2) IPC is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

12. However, considering the facts of the case and particularly

sentence of appellant from 20 years rigorous imprisonment to 15 years rigorous imprisonment.

13. Accordingly the appeal qua conviction is dismissed. However the sentence is reduced to 15 years rigorous imprisonment. The appellant will have to pay the fine as imposed by the Trial Court.

14. With the above modification in the sentence, the appeal is disposed of.

(LALIT BATRA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

May 16, 2023

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No