

2023:PHHC:138704

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

**CRR No.1491 of 2023 (O&M)
Date of Decision: 31.10.2023**

Himanshu @ Golu

.....Revisionist-Petitioner.

Versus

State of Punjab

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Sylvester Stephen, Advocate
for the revisionist-petitioner.

Mr. Iqbal Singh Mann, D.A.G, Punjab
for the respondent-State.

MEENAKSHI I. MEHTA, J.

The petitioner herein has laid challenge to the judgment and also the order on sentence, passed by learned Principal Magistrate, Juvenile Justice Board-cum-Judicial Magistrate 1st Class, SAS Nagar, Mohali (for short 'the trial Court') on 06.12.2022, whereby he has been held guilty for committing the offences under Sections 376AB & 506 IPC and Sections 6 & 12 of the Protection of Children from Sexual Offences Act (for short 'the POCSO Act') in the criminal case arisen out of the FIR bearing No.72 dated 20.08.2020 as registered at Police Station Nayagaon, under Sections 376, 376 AB, 506 & 511 IPC and Sections 12B & 18 of the POCSO Act and has been awarded the sentence to undergo imprisonment for a period of 03 years but has been ordered to be sent to the Special Home for the above-

said period for reformation and he has also assailed the judgment handed down by learned Judge, Special Court, SAS Nagar, Mohali (for short 'the Appellate Court'), dismissing the appeal, as preferred by him against the afore-mentioned judgment dated 06.12.2022.

2. Shorn and short of unnecessary details, the facts, as revealed from the perusal of the record and culminating in the filing of the present petition, are that the subject FIR had been registered at the instance of the complainant, who alleged that his daughter (here-in-after to be referred as 'the victim'), aged about 08 years, had gone to the common bathroom for the inhabitants of the residential building, to respond to the call of nature and when she did not return, he and his wife started searching for her and then, they saw the petitioner fleeing away from the said bathroom and the victim lying naked on the floor therein. On being enquired by them, she (victim) disclosed that the petitioner had forcibly brought her there and had sexually assaulted her.

3. After the presentation of the Final Police Report/Challan, the Charges were framed against the petitioner under Sections 376(3), 376AB & 506 of IPC and Sections 6 & 12 of the POCSO Act. He pleaded not guilty to the same and claimed trial. After the conclusion of the prosecution evidence, his statement was recorded under Section 313 Cr.P.C wherein he pleaded innocence and also his false implication in the criminal case under reference. He examined two witnesses in his defence evidence. Then, after hearing learned State counsel and learned defence counsel, the trial Court had held the petitioner guilty and awarded sentence to him and the appeal

moved by him against his conviction and punishment, has been dismissed by the Appellate Court, as discussed in the opening para of this judgment.

4. Status-Report has already been submitted on behalf of the respondent-State (by way of the affidavit of the Deputy Superintendent of Police, City-I, District SAS Nagar).

5. I have heard learned counsel for the petitioner as well as learned State counsel in the instant petition, at the preliminary stage and have also gone through the record carefully.

6. Learned counsel for the petitioner has contended that the alleged occurrence was stated to have taken place on 21.06.2020 but the FIR in respect thereof, had been got registered on 20.08.2020 and thus, there was a delay of 02 months in lodging the FIR and this fact, in itself, does suffice to render the entire version of the prosecution to be a highly doubtful one and the petitioner deserves his acquittal on this score alone. To buttress his contentions, he has placed reliance upon the observations made by Hon'ble Supreme Court in **Rajesh Patel vs. State of Jharkhand** **2013(2) R.C.R. (Criminal) 346.**

7. However, the above-raised contention is devoid of any force because the trial Court and also the Appellate Court have exhaustively discussed the aspect of delay in the lodging of the FIR in their respective judgments and have concurrently observed that the complainant had visited the Police Station on the day of the said occurrence itself but the police did not take any action and ultimately, he approached the Child Commission/ Child Welfare Committee and on their intervention, the police had swung

into action and had registered the FIR. In these circumstances, no fault can be attributed to the complainant for the afore-referred delay.

8. The observations, as made by the Apex Court in **Rajesh Patel** (**supra**), do not come to the rescue of the petitioner because the facts and circumstances of the present case are quite distinguishable from those of the cited above. In the afore-noted case, the accused and the prosecutrix, who was working as Nurse in a private hospital, were class-mates and had good acquaintance with each other and on the day of the occurrence, the prosecutrix had gone to the house of the accused at the time when none else was present there and they made physical relations and the prosecutrix did not raise any alarm and rather, she reported the matter to the police after 11 days and therefore, it was considered to be a strong circumstance to arrive at the conclusion that they had indulged in consensual relations whereas in the instant case, the delay in the registration of the FIR stands plausibly explained as discussed above and even otherwise, the victim happened to be just around 08 years old and thus, a child at the relevant time and hence, she could not have consented for any physical intimacy with the petitioner.

9. Learned counsel for the petitioner has, further, contended that the Medico-Legal Report of the victim also does not support her version and the allegations as levelled by the complainant against the petitioner in this case because PW6 Dr. Kamalpreet Kaur has admitted that there was no injury on any external part of the body of the victim and that her hymen was intact and the above-said depositions cast a shadow of doubt on the entire case of the prosecution.

10. Again, the afore-discussed contention does not hold much water because both the Courts below have observed that the above-named PW6 has categorically mentioned in the MLR of the victim that as narrated by her (victim), there was penetration in her (victim's) vagina by finger and this act squarely falls within the definition of 'penetrative sexual assault', as provided under Section 3(b) and constitutes the offence of 'aggravated penetrative sexual assault' as defined under Section 5(m) of the POCSO Act because the victim happened to be a child below the age of 12 years.

11. Lastly, learned counsel for the petitioner has contended that there was a dispute between the father of the victim and the father of the petitioner over some money transaction and the same has resulted in the lodging of the FIR against the petitioner and thus, it becomes explicit that he (petitioner) has been got falsely implicated in the case.

12. I do not find any merit in this contention also because the trial Court has specifically observed in para No.23 in its judgment dated 06.12.2022 that during his cross-examination, DW1 Sunil Gupta, who had been examined by the petitioner to substantiate his afore-discussed version, had admitted that he did not have any documentary proof to show that any money had been given to Ram Rattan by the father of the petitioner and no such transaction had taken place in his presence and rather, he had heard about the said transaction from someone else.

13. As a sequel to the fore-going discussion, it follows that the impugned judgments do not suffer from any illegality, infirmity, perversity or irregularity so as to call for any interference by this Court and therefore,

the same are upheld. Resultantly, the instant revision petition, being *sans* any merit, is hereby dismissed.

October 31, 2023
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes