

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-669-2019
Date of decision : July 24, 2023

JAGGA SINGHAPPELLANT
VERSUS
STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms Poonam Verma, Advocate, for the appellant

Ms. Monika Jalota, Senior Deputy Advocate General,
Punjab

KULDEEP TIWARI,J.

1. The present appeal has been directed at the instance of sole appellant, who become aggrieved, for the verdict of conviction and order of sentence dated 9.7.2019, as rendered by learned Judge, Special Court, Barnala, upon case FIR No. 51 dated 17.5.2018, constituting therein offences under Sections 450, 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, POCSO Act), registered at Police Station Tapa, District Barnala. Through a separate sentencing order drawn on 09.07.2019, the learned trial Judge concerned, imposed the hereinafter extracted sentences upon the convict.

<i>Under Section 450 of IPC</i>	<i>To undergo rigorous imprisonment for a period of seven years and to pay fine of Rs 2000/- (Two thousand only) and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.</i>
<i>Under Section 6 of POCSO Act</i>	<i>To undergo rigorous imprisonment for a period of twenty years and to pay fine of Rs 5000/- (Five thousand only) and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.</i>

FACTUAL MATRIX

2. The prosecution story unfolded from the statement of the mother of the prosecutrix (identity of prosecutrix and her family is withheld in terms of Explanation attached to Section 33(7) of POCSO Act), Ex. PB, recorded on 17.5.2018, whereby she alleged that she has four children, one boy and three daughters. Her husband is a labourer and residing at village Tajke on rent. On 16.5.2018 at about 3.00 PM, she along with her husband went to village Pakhon Kalan to take medicine and her children were at home. When she returned in the evening at about 6.00 PM, her daughter (prosecutrix) aged about 9 years was weeping. On inquiry, while weeping, she informed that Jagga Singh present appellant-accused had come to their house and demanded a glass of water and when the prosecutrix handed over the glass of water, he dragged her inside the room and removed her clothes and committed wrongful act with her and when she started weeping loudly, then her elder sister came inside and raised alarm and because of which Jagga Singh fled away from the spot. On the basis of above statement, FIR was registered against the appellant-accused under Sections 376 A B IPC and Section 6 of the POCSO Act, 2012.

INVESTIGATION PROCEEDINGS

3. Upon registration of FIR, the Investigating Officer SI Amandeep Kaur (PW3) proceeded with the investigation and inspected the spot of occurrence and prepared site plan Ex. PW3/C at the instance of complainant. Then she took the prosecutrix to the

Civil Hospital, Tapa, where she moved written application Ex. PW3/D for getting conducted the medical examination of the prosecutrix. However, the Gynaecologist was reported to be on leave, therefore, the matter was referred to Civil Hospital, Barnala for medical examination. In the evening by 7.00 PM, the Investigating Officer reached Civil Hospital, Barnala and made a phone call to SMO, Civil Hospital, Barnala regarding availability of lady Medical Officer for conducting the MLR. However, she was advised to get the same done from Civil Hospital, Tapa, as lady Medical Officers were posted there. On next date, i.e. on 18.5.2018, the Investigating Officer got the MLR conducted. The prosecutrix was medico legally examined by Dr. Preet Maninder (PW7). The samples of vaginal swabs were taken and were handed over to the Investigating Officer. The statement of the prosecutrix under Section 164 Cr.P.C. was also recorded before the Judicial Magistrate Ist Class. The accused was arrested. After completion of investigation, FSL report and on receipt of Chemical Examiner report, final report under Section 173 Cr.P.C. was filed through Station House Officer before the learned Illaqa Magistrate.

4. Considering the case to be exclusively triable by the court of Sessions, the case was committed by the learned Illaqa Magistrate vide order dated 10.8.2018.

PROCEEDINGS BEFORE THE TRIAL COURT

5. The learned trial court framed charges against the appellant-accused under Sections 450, 376 IPC and Section 6 of the

POCSO Act, 2012. The appellant-accused pleaded not guilty and claimed trial. Consequently, the prosecution in order to establish the charges against the accused examined as much as nine witnesses. The accused in his defence examined Sh. Naib Singh, Notary Public, as DW1, who proved on record, the affidavits sworn by the mother and father of the prosecutrix, as Ex. D1 and D2, respectively. In his statement under Section 313 Cr.P.C., the accused simply denied all the allegations and stated that he has been falsely implicated in this case at the instigation of people due to suspicion.

6. With the able assistance of learned counsel for both the sides, this Court examined the entire record and judgment passed by the learned trial court. The entire case, as put forward by the prosecution, primarily revolves around the statement of prosecutrix (PW1) and statement of mother of the prosecutrix examined as PW2 as well as medical evidence. The case of the prosecution is that the prosecutrix being minor i.e. about 9 years of age was subjected to sexual assault by the appellant-accused, therefore, this Court culled out the following issues for adjudication:-

- 1. Age of the prosecutrix.*
- 2. Whether the prosecutrix was subjected to sexual assault by the appellant-accused.*

Age of the prosecutrix

7. In order to prove the age of the prosecutrix, the prosecution has examined Jagraj Singh, ETT Teacher, Government Primary School, Tajoke, Barnala, as PW4, who brought on record

and proved admission and withdrawal register of 3rd standard of Primary School, Tapke. As per school record, the prosecutrix was studying in 3rd class and her name was entered at Sr. No. 3265 with her father name and her date of birth is recorded as 10.1.2010. The relevant entry was proved as Ex. PW4/A. He also proved on record, school certificate issued on 24.5.2018, by Sh. Beant Singh, Incharge Head Teacher, as Ex. PW4/B. His cross-examination could not help the appellant-accused as nothing was elicited to doubt the veracity of documents (supra), which became adduced into evidence by PW4. Further PW7, Dr. Preet Maninder, who medico legally examined the prosecutrix, has proved on record the MLR Ex. PW7/A and in MLR she has recorded the age of the prosecutrix as 9 years. The defence has not cross-examined the doctor with regard to the veracity of age of the prosecutrix as recorded by Dr. Preet Maninder. Therefore, from the above discussed facts, we can safely conclude that the prosecution has proved beyond reasonable doubt, that the prosecutrix was aged 9 years on the date of occurrence and thereby she was disabled to mete any lawful consent to the convict to subject her to any **sexual intercourse**.

Whether the prosecutrix was subjected to sexual assault by the appellant-accused.

8. The learned State counsel has drawn the attention of this Court towards the statement of the prosecutrix, as recorded under Section 164 Cr.P.C. The same is read as under:-

“Stated that on 16.05.2018, at about 03.00 pm, my parents gone to take medicines then, Jagga Singh

beggar came to our home. He demanded a glass of water. When I handed over water to him, then Jagga Singh dragged me inside the room forcibly and removed my clothes and did wrongful act and I started weeping loudly. Then, my elder sister, Karamjit Kaur, came inside and raised alarm and Jagga Singh ran away from the spot. I heard my statement which is correct.”

9. When the prosecutrix stepped into witness box, she, in her examination-in-chief has stated as under:-

“In this year on 16th of that month during summers at about 4-5 PM, my parents had gone to take medicine. I, my sister and my brother were at home. My sister and brother had gone outside the home. Accused present in the court came to our home. (witness pointed finger towards accused and the accused disclosed his name as Jagga Singh). He demanded glass of water. I gave him water. He did not drink water and took me inside the home. He removed my clothes and did wrongful act. I shirked. My sister K. Kaur came inside and she raised alarm and accused ran away from the spot. I reported the matter to my mother. My statement was recorded in the court.”

10. She was subjected to cross-examination. However, she further strengthened her statement, as made in her earlier statement in examination-in-chief, wherein she had specifically stated that the appellant-accused used to visit their house number of times before the occurrence and proved that the prosecutrix has been studying in the Government school and as per the school record, her date of birth was recorded as 10.1.2010. It is relevant to record here that the prosecutrix was recalled for further cross-examination. Her further cross-examination was conducted after three months from the

CRA-D-669-2019

earlier statement where she stated that she was not known to the appellant-accused and he has not done wrong act with her. However, in the last she categorically stated that she has not filed the case at the instance of somebody, rather the appellant-accused has committed wrong act with her. The relevant extract of the cross-examination is read as under:-

"I was not known to Jagga Singh. His name was not told to me by anyone. Police has not asked anything from me. Jagga Singh accused present in the court has not done any wrong act with me. I have filed case against Jagga Singh. I have not filed case against him at the instance of somebody rather he has committed wrong act with me."

11. Finding contradictions in the statement of the prosecutrix, the trial court put a specific question to the prosecutrix. The question and answer thereto reads as under:-

" Q. What wrong act he has committed with you?

Ans. He came to our home and demanded a glass of water. He after taking the glass of water spilled it. Thereafter he took me inside the room. Thereafter he removed my cloths and committed wrong act with me."

12. Thereafter, finally, she again, during cross-examination, supported the case of the prosecution.

13. On reading the statement of the prosecutrix in totality, we do not find any improvement or any contradiction in her statement, rather she remained consistent with her first statement till she was re-cross-examined. At each and every step, she strengthened the case of the prosecution and categorically stated that it was appellant-

accused who had committed sexual assault upon her. On the court's question, she specifically stated that it was the appellant-accused who removed her clothes and committed wrong act with her. The efforts of the appellant-accused to win over the child witness remained futile, as she, upon her being recalled for further cross-examination, rather stood by her earlier statement. Therefore, the statement of the prosecutrix is fully credible and worthy of acceptance. There is no inconsistency or discrepancy in the statement of the child witness. Let us examine, whether there is any corroborative evidence becoming adduced into evidence by the prosecution.

MEDICAL EVIDENCE

14. The prosecution examined Dr. Preet Maninder who medico legally examined the prosecutrix on 18.5.2018. She proved on record MLR as Ex. PW7/A. She also identified her signatures on computerized copy of MLR Ex. PW7/B. There are two MLRs, one is hand written and the other is computerized copy, which is signed by PW7. As per the MLR, the prosecutrix gave history of sexual assault.

On examination, the doctor made the following observation:-

“No marks of fresh injury over body present. Labia Majora & Minora are well developed. Pubic Hair are not developed. No fresh injury present. No fresh bleeding. No congestion or vulvar swelling present. Hymen intact. Two vaginal swabs are made and sent for chemical examination for presence of spermatozoa. Patient changed clothes and washed and not brought. Victim took bath, defecate, urinate normally. No H/O oral sex and Anal sex. She brush teeth. Monarchy not started.”

15. The perusal of above report clearly depicts that there was swelling on the internal part of the prosecutrix. Further the chemical examination report of vaginal swabs proved the presence of spermatozoa. The report of FSL is proved on record as PW3/K by the prosecution. Thus, the medical evidence clearly establishes that the prosecutrix was sexually assaulted.

SUBMISSIONS BY COUNSEL FOR THE APPELLANT

16. Counsel for the appellant vehemently argued that there is considerable delay in lodging the FIR and she also pointed out towards mark Ex. DA upon computerized MLR to show that all the columns are filled up with the word "No". This part of MLR described the details with regard to penetration and the doctor has filled up all the columns with the word "No". Therefore, it is a case of no penetration as per the MLR itself and the prosecutrix's hymen was intact and there was no injury and therefore it is established that the prosecutrix was not subjected to sexual assault. She further stated that there is two days delay in medical examination which caused suspicion regarding presence of spermatozoa on vaginal swabs. While referring to the statement of the mother of the prosecutrix as PW2, counsel for the appellant submitted that the complainant has not supported the prosecution case, and submits, that the contents of affidavits sworn by her and her husband, as Ex. D1 and Ex. D2, besides the perusal of statement of mother and the prosecutrix along with these exhibits, clearly belies the allegations of the prosecution and causes dent to the prosecution story.

ANALYSIS

17. We have examined the submissions made by counsel for the appellant. However, we are unable to accept the arguments addressed by counsel for the appellant for the reasons as discussed hereinafter:-

18. First of all, there is no improvement or contradiction in the statement of PW1 who is a child of nine years old. She was twice subjected to the cross-examination. In both, she fully supported the case of the prosecution and the defence has failed to impeach her credibility nor has elicited anything which could cause dent to the case of the prosecution, therefore, we can safely conclude the statement of the prosecutrix as credible and reliable. It is trite law that the statement of the prosecutrix is sufficient to record a verdict of conviction qua charges of rape and thereto no corroborative evidence is required. Nonetheless, the prosecution has also led evidence to corroborate the statement of the prosecutrix. The medical evidence clearly depicts that there was swelling on her internal part despite the fact that she was medically examined after two days of the occurrence. The delay in medical examination of the prosecutrix is well explained by Dr. Preet Maninder, PW7 and the Investigating Officer, SI Amandeep Kaur, PW3. As per their statements, on the date of registration of the FIR, there was no lady Medical Officer available in the Civil Hospital, Tapa and the SMO, Civil Hospital, Barnala also advised the Investigating Officer to get the prosecutrix medico legally examined from Civil Hospital, Tapa, as

lady Medical Officers were only available there. The defence has not confronted the veracity of the above witness with the explanation (supra), as became rendered by the prosecution. Thus, the inordinate delay in conducting of the medical examination of the prosecutrix is well explained and is not fatal to the case of the prosecution. Further the presence of spermatozoa on vaginal swabs fully proves that the prosecutrix was subjected to sexual assault.

19. The reliance placed by the counsel for the appellant on Ex. D1 and Ex. D2, affidavits sworn by mother and father of the prosecutrix is also of no help for the appellant-accused. The statement of the mother of the prosecutrix was recorded on 17.5.2019, after one year of the occurrence and it seems that they entered into a compromise with the appellant-accused and thus had not won over by the appellant-accused. Therefore, even if they resiled from their statements, it does not cause any dent to the case of the prosecution, specifically, when the statement of the prosecutrix is credible and is fully supported by medical evidence, thus to bring home the guilt to the accused. Further, there is a statutory presumption against the appellant-accused in view of Section 29 of the POCSO Act. Although the statutory presumption is rebuttable, however, the appellant-accused has led no evidence to rebut that statutory presumption.

20. In view of the above discussions and reasons, we have no hesitation to hold that the prosecution has proved the charges against the appellant-accused beyond reasonable doubt and

CRA-D-669-2019

therefore, we do not find any merit in the present appeal and consequently, the same is dismissed and the order of conviction and sentence dated 9.7.2019, passed by the learned Judge, Special Court, is upheld.

25. The appellant/accused, if not in custody, shall forthwith be taken into custody to honour rest of the sentence(s) imposed.

26. The case property, if any, be dealt with in accordance with law after expiry of the period of limitation for filing the appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 24, 2023
'dalbir'

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>