

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2767-2022
Reserved on: 03.10.2023
Pronounced on: 16.10.2023

Karamjit Singh alias Kamma
..... Petitioner

Vs.

State of Punjab
..... Respondent

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Madhur Singh, Advocate, for the appellant.
Mr. P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

In Sessions case No.17 of 2017 arising out of FIR No.8 dated 17.04.2017 registered at Police Station Ghanie Ke Banger, under Section 377 of the Indian Penal Code, 1860 [for short ‘the IPC’] and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012 [for short ‘the POCSO Act’], accused Karamjit Singh @ Kamma (now appellant) has been convicted by the Court of Id. Additional Sessions Judge, Gurdaspur under Section 377 IPC and Section 6 of the POCSO Act vide judgment dated 19.12.2017. Vide separate order dated 22.12.2017, he has been sentenced as under: -

Conviction under Section	Sentence awarded to the convict	Fine (in ₹)	Default sentence
377 IPC	RI for 7 years	25,000/-	RI 6 months
6 of POCSO Act	RI for 10 years	25,000/-	RI 6 months

Both the substantive sentences were directed to run concurrently.

2. Present appeal has been filed against the aforesaid judgment of conviction and order of sentence.

3. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

4. Parties involved in this case i.e., the accused, the complainant, the victim and the material witnesses are close relatives, inasmuch as accused is the real mama (maternal uncle) of the victim child 'S' (name withheld to conceal the identity), who was aged below 6 years at the time of crime; complainant Daljit Singh is the father of the victim, whereas one of the witnesses namely PW2 Jaswinder Kaur is the mother of the victim i.e., real sister of the accused. DW1 Balkar Singh is the father of the accused as well as PW2 Jaswinder Kaur i.e., father-in-law of the complainant Daljit Singh and maternal grandfather (nana) of the victim.

5. (i) As per prosecution allegations, marriage of Daljit Singh was performed with Jaswinder Kaur d/o Balkar Singh about 7 years prior to the registration of the FIR. Jaswinder Kaur has two brothers namely, Harpal Singh and Karamjit Singh @ Kamma. Harpal Singh is married, whereas Karamjit Singh @ Kamma is bachelor. From the wedlock of Daljit Singh and Jaswinder Kaur, two sons were born including the victim 'S'.

(ii) On 14.04.2017, Jaswinder Kaur had gone to her parental home in village Riali Khurd alongwith her two sons. On 16.04.2017 at about 7 PM, Daljit Singh went to the place of his in-laws at village Riali Khurd to bring back his wife and sons. He went to the house of his elder brother-in-law Harpal Singh, where his wife and younger son was present, but elder son i.e., victim 'S' was not present. On enquiry from Jaswinder Kaur, he (Daljit Singh) was told that 'S' had been taken away by Karamjit Singh @

Kamma i.e., accused to play with him. Daljit Singh waited for his elder son for about half an hour and then came out of the house to search for his son. In the meantime, he noticed his son 'S' coming from opposite side while weeping. He was frightened at that time. Complainant picked up his son and enquired about the matter as to why he was weeping, at which he (victim 'S') told him that his maternal uncle Karamjit Singh @ Kamma i.e., accused had taken off his trousers and had made him to sit on his thighs and penetrated his penis in his anus, due to which he suffered severe pain and on account of his weeping, the maternal uncle Karamjit Singh @ Kamma had left him in old house in village Riali and fled away. As the complainant came to know from the said disclosure that accused had performed carnal intercourse with his son against the order of nature, he approached the police and made the complaint resulting into registration of FIR.

(iii) Matter was investigated. Statements of witnesses were recorded under Section 161 CrPC. The victim boy was got medico legally examined. Accused was arrested. After completion of investigation, challan was presented in the Court of Id. Jurisdictional Magistrate, who committed the case to the court of Sessions, after making compliance of Section 207 CrPC.

(iv) Accused was charge-sheeted under Section 377 IPC and Section 6 of the POCSO Act, to which he pleaded not guilty and claimed trial.

(v) Prosecution examined as many as 8 witnesses to establish the charges. After conclusion of its evidence, all the incriminating circumstances appearing in the evidence produced by the prosecution were confronted to the accused in his statement recorded under Section 313

CrPC, but he controverted the same and pleaded false implication. According to him, he had been implicated due to enmity with the father of victim, as there was dispute between them regarding money transaction. In his defence, accused examined his father Balkar Singh as DW1 and concluded his defence.

(vi) After hearing both the sides, ld. trial Court recorded the conviction and sentenced the accused as per details given earlier.

6. (i) Assailing the aforesaid conviction and sentence by way of present appeal, it is contended by ld. counsel on behalf of the appellant that the story propounded by the prosecution casts a major doubt upon the reality behind the entire incident and that trial Court failed to appreciate the surrounding circumstances. It is pointed out that conviction has been recorded solely on the version put forth by the PWs and by ignoring the specific defence of the accused that he had been falsely implicated due to money transaction.

(ii) Ld. counsel contends that complainant suppressed the date on which his statement was recorded by the police and also admitted during cross-examination that he had not informed the police that hand and trousers of his son were drenched in blood, though he says that the said trouser was deposited with the police at the time of recording of the statement. Further, no motive behind the crime is proved. The statement of PW2 Jaswinder Kaur is contrary to PW1, inasmuch as she says that she never met the appellant on the date of occurrence i.e., 16.04.2017 and also conceded that she had been taking financial help from her father on some occasions.

(iii) Ld. counsel for the appellant further pointed out that statement of victim child has not been recorded during trial and that the statement of PW1 Daljit Singh and that of PW2 Jaswinder Kaur is not corroborated by medical evidence, inasmuch as PW4 Dr. Jaskaran Singh admitted that DNA samples were not taken and further, the body of the victim was not having any injury mark. It is further pointed out that though trouser of the victim was drenched in blood, but the same was not produced before the medical officer. Despite conducting the potency test of the appellant, no swab was taken for the purpose of examination to detect any semen and so, in all these circumstances, the solitary statement of complainant and his wife failed to inspire confidence for recording conviction.

(iv) With all these submissions, prayer is made for setting aside the impugned judgment of conviction and order of sentence and to acquit the appellant by allowing this appeal.

7. (i) Strongly opposing the prayer of the appellant, ld. State counsel defended the impugned judgment passed by the Court below. Attention is drawn towards the fact that victim child was below 6 years of age at the time of crime as per evidence on record. Further attention is drawn that victim was brought to the Court for the purpose of his examination as a witness, but the Court after putting preliminary questions to him, found him to be unfit for making the statement and it is because of this reason that statement of victim has not been recorded during trial.

(ii) Ld. State counsel submits further that statement of PW1 Daljit Singh and that of PW2 Jaswinder Kaur are quite material, inasmuch as the victim had narrated the incident to PW1 Daljit Singh immediately after the occurrence and at that time, the hands and trouser of the victim were

drenched in blood. Attention is further drawn towards the medico-legal report proved by PW4 Dr. Jaskaran Singh proving that at the time when victim child was medico legally examined on 17.04.2017, there was posterior midline tear with active bleeding and that margins were fresh and so, in these circumstances, the statement of PW1 and PW2 stands fully corroborated.

(iii) Ld. State counsel further submits that even if it be assumed that there was any lapse on the part of the investigating officer in not taking DNA sample, this cannot be a reason to disbelieve the statements of PW1 and PW2. Besides, the DNA test was not necessary in the facts and circumstances of the case. Ld. State counsel further submits that there could be no question of dispute of any identity, the accused being the real maternal uncle of the victim. Ld. State counsel also drawn attention towards the contradictory stand taken by the accused regarding the alleged money transaction and that said defence has been concocted by the accused to avoid the punishment. It is further argued that no father would put the honour of his young child at stake due to any alleged money transaction.

(iv) With all these submissions, prayer is made for dismissal of the appeal.

8. I have considered submissions of both the sides and have appraised the record.

9. Occurrence took place on 16.04.2017. As per birth certificate Ex.PW7/A proved on record by PW7 Manjit Kaur, ANM, SHC Ghanie Ke Banger, the date of birth of victim 'S' is 27.05.2011, which means that as on the date of occurrence, he had not even completed six years of age.

10. Perusal of the trial Court record reveals that the victim child was called in the Court so as to depose on 14.09.2017. However, after putting general questions to him, the Court found that the victim was not able to understand the questions or to give reasonable replies and so, he was found unfit for making the statement. In such circumstances, only because of the non-recording of the statement of the victim as a witness, the prosecution case cannot be disbelieved, though the statement of other witnesses will have to be examined with caution.

11. Statements of PW1 Daljit Singh, PW2 Jaswinder Kaur and PW4 Dr. Jaskaran Singh, Medical Officer, are quite relevant in this case and so, these are being reproduced verbatim.

12. Statement of PW1 Daljit Singh, the father of the victim and the complainant of the case, is as under: -

“Statement of Daljit Singh Son of Sukhdev Singh, R/o Village Sirah, P.S. Ghanie Ke Banger, Tehsil Batala, District Gurdaspur.

On SA.

Stated that I am working as a Carpenter. That seven years ago, my marriage was solemnized with Jaswinder Kaur D/o Balkar Singh, R/o Riyali Khurd. I have two brother in laws and the name of the elder brother in law is Harpal Singh @ Bhola and name of my younger brother in law is Karamjit Singh @ Kamma. My elder brother in law Harpal Singh is married and younger one Karamjit Singh is unmarried. I have two sons. The name of my elder son is Sahil Deep Singh, who is about seven years old and name of younger son is Vishaldeep, aged about three years. On 14.04.2017 I along with my wife Jaswinder Kaur and children above said went to the house of my in laws in village Riyali Khurd. I left my family in the house of my in laws and I went to Amritsar for some work. On 16.04.2017 at about 7:00 P.M. I went to the house of my in laws to bring my family back. I asked my wife Jaswinder Kaur regarding the whereabouts of my son Sahil Deep Singh, who was not there and I asked my wife to get ready. My wife disclosed me that my brother in law Karamjit Singh had

taken him out for playing. I waited for sometime for half an hour. My son did not turn up. I came out of the house of my in law for his search, when I came out of the house, I saw my son was coming to the house of my in laws. He was weeping bitterly. I took him with me and asked him why he was weeping. On my asking, he disclosed me that his maternal uncle Karamjit Singh had removed his pent and committed un-natural offence with him. Thereafter I noticed his hand blood stained. I along-with my family members return to our house and in the way I noticed a Naka of the police at the sua in the area of Talwandi Bharth. I got my statement recorded before the Police Ex. P1 on the same day, which bears my signatures in Punjabi language and same was attested by IO and same is correct. My son above said was medico legally examined at the Civil Hospital Batala on the same day. I identify the accused present today in the court.

At this stage, Ld. Addl. PP for State requested that the witness has suppressed the date of recording his statement. I may be allowed to put leading questions to this extent by way of cross-examination.

Request heard and allowed.

Xxxx by Ld. Addl. PP for State.

It is correct that my statement has been verified on dated 17.04.2017 by the IO. Voluntarily being night on that day, the Investigating Officer might have mentioned such date.

Xxxxn by Sh. Manoj Loomba Adv., counsel for accused.

I reached at 7:00 P.M. in the house of my in laws on 16.04.2017. I went outside after half an hour in search of my son Sahil Deep Singh. When I came out immediately I saw son outside the house. After about one and half hours we started for reporting the matter to the police. We reached at the Naka Bharathwal Talwandi at about 9:30 P.M. We remained at the Naka for about half an hour. At that time I was accompanied by my wife, my two children namely Sahil Deep Singh and Vishal Deep Singh. The police recorded only my statement on that day. I cannot say whether the statement of my son Sahil Deep Singh was recorded by the police or not in this case. However statement of my wife was recorded on 17.04.2017 in my village but I cannot tell the exact time. However it was day light. I did not visit the spot or place of occurrence at any time. On the day of occurrence only Roopa wife of my brother in law Harpal Singh was present at home and nobody else was present from my

in law side on that day. On the day of occurrence my Son was wearing brown colour trouser pent and it was drenched with blood. We handed over the said pent to the Police. It is correct that I have not recorded to the police that pent of my son was drenched with blood and his hand was blood stained. Accused Karamjit Singh did not met us on the day of occurrence. Accused Karamjit Singh was arrested by the police on the next day from his house. Neither I nor my wife took any kind financial help from my in laws. It is incorrect to suggest that accused Karamjit Singh used to raised objection on giving financial help to us by my father in law or that due to this reason I was having strained relations with accused or that we got lodged a false case against him. It is incorrect to suggest that accused has not committed any type of sexual assault on my son Sahil Deep Singh. It is further incorrect to suggest that we got registered a false case due to our strained relations with accused. It is incorrect to suggest that I have deposed falsely.

RO & AC

(Rajnish Garg)

ASJ/GSP 14.09.2017”

13. Statement of PW2 Jaswinder Kaur, the mother of the victim, is as under: -

“Statement of Jaswinder Kaur, W/o Daliit Singh, R/o Village Sirah, P.S. Ghanie Ke Banger, Tehsil Batala, District Gurdaspur.

On SA.

Stated that I am resident of above said place. I was married with Daljit Singh about seven years ago. I have two sons namely Sahil Deep Singh aged about 8 years and younger one is Vishal Deep Singh aged about 3 years. My parental home is situated in village Riyali Khurd, Tehsil Batala, District Gurdaspur. I have two brother. The name of elder one Harpal Singh@ Bhola, who is married and the name of younger one is Karamjit Singh @ Kamma, who is unmarried. On 14.04.2017 I along-with my husband and two children had gone to my parental home at village Riyali Khurd. On 16.04.2017 at about 6:30 P.M. my husband came to took us with him to my in matrimonial home. When my husband came there, I and my younger son namely Vishal Deep Singh were present in the house of my parents. My husband asked me about my elder son Sahil Deep Singh. I told my husband that Sahil Deep Singh had gone outside the house

with my brother Karamjit Singh for playing. We waited for half an hour but elder son Sahil Deep Singh did not turn up. My husband went out of the house to see my son Sahil Deep Singh in his search. My above son was seen coming towards the house by my husband and he was weeping bitterly. My husband picked him up. On asking by my husband, my son Sahil Deep Singh disclosed my husband that his maternal uncle Karamjit Singh had committed sexual assault on him. Thereafter the child revealed me the whole incident. My son was having blood stained on his right hand. I identify the accused present today in the court. IO recorded my statement to this effect.

Xxxn by Sh. Manoj Loomba Adv., counsel for accused.

The Police met me in connection with the present case for the first time at the Naka of Talwandi Bharath at 7:00 P.M. on the date of occurrence. At that time I was accompanied by my husband, my son Sahil Deep Singh, my mother in law Sawinder Kaur. We were on motorcycle at that time. On that day only the statement of my husband Daljit Singh was recorded by the police. Vounteered my statement was recorded on next day i.e. 17.04.2017. My statement was recorded at my matrimonial home by the police in the morning time but I do not remember the exact time. I do not know that whether any other statement was recorded by the police at that time or not. It is correct that I have not recorded in my statement to the Police that my son Sahil Deep Singh disclosed me about the said sexual assault and also not recorded that my son was having blood stained on his right hand. When my husband went outside in search of Sahil Deep Singh, it took five minutes to find him. At that time my sister in law (Bhabhi) Roopa, my father namely Balkar Singh and their children were present at home. We told about the incident to them. Thereafter we directly went to the police to report the matter. We started at about 7:30 P.M. Thereafter we returned to my matrimonial home. I met police official on 16.04.2017 also and at that time Sahildeep Singh was also accompanied with us. Sahil Deep Singh was wearing Trouser/pent at the time of occurrence and the same was drenched with blood. The pent was handed over to the Police on 16.04.2017 at Naka. We remained at the Naka for about half an hour. Police prepared some documents on the spot but I can not give the details of those documents. The Police never met me after 17.04.2017. My husband never took any financial help from my father. Volunteered, I used to take some financial help from my

father on some occasions. It is incorrect to suggest that my brother Karamjit Singh used to raise objection on this point of help. It is incorrect to suggest that I was not having good relations with the accused or our relations were restrained. On the day of occurrence or thereafter I did not visit the spot of occurrence. Accused Karamjit Singh did not met me on 16.04.2017. Volunteered as we got him arrested on that day. I do not know at what time or day the accused was produced in the court. It is incorrect to suggest that accused has not committed any type of sexual assault on my son Sahil Deep Singh. It is further incorrect to suggest that we got registered a false case due to our strained relations with accused. It is incorrect to suggest that I have deposed falsely.

RO & AC

(Rajnish Garg)

ASJ/GSP 14.09.2017”

14. Statement of PW4 Dr. Jaskaran Singh, is as under: -

“Statement of Dr. Jaskaran Singh, Medical Officer, Civil Hospital Batala.

On SA

Stated that on 17.04.2017 I was posted as Medical Officer in Civil Hospital Batala. On that day, IO in this case SHO Paramjit Singh moved an application before doctor on duty in Civil Hospital Batala for medico legal examination of victim Sahil Deep Singh son of Daljit Singh, aged about 7 years, R/o VPO Seeda Chatha, Police Station Ghanie Ke Banger.

A Board of Doctors was constituted by the then SMO and I was ordered to head this board, Dr. Lovkesh Nayyar had joined this Board being Surgeon. On that very day at about 3:20 P.M. I along-with Dr. Vijay Kumar and Dr. Lovkesh Nayyar being members of the Board conducted medico legal examination of above said minor child.

On examination of Anal Canal and Perianal Area, following findings were made: -

Posterior midline tear was present. Bleeding actively, margins were fresh.

Perianal area was moist. Sphinter tone was relaxed. After examination this board of doctors including me was of this opinion that possibility of sodomy-anal penetration can not be ruled out.

I have brought original MLC register today along-with me in the court. I have seen carbon copy of the same on Judicial file, which is correct as per the original brought by me today in the court and is Ex. P3. It bear my signatures, signatures of Dr. Vijay and Dr. Lovkesh Nayyar at various encircled portion on Ex. P3 and I identify the signatures. I have also seen computerized MLR on Judicial file Ex. P4, it also bears my signatures and my stamp, I identify the same.

XXxn by Sh. Manoj Loomba Adv., counsel for accused.

We did not ask any question to the minor before his medical examination. Volunteered we had orally inquired from the victim about the facts of occurrence but we had not prepared any written documents in this respect. The minor was accompanied by his father and police officials. DNA sample in this case was not sent. The victim minor was not having any bodily injury on his person. The clothes of the victim were not produced before us and were also not taken into possession by us.

RO & AC

(Rajnish Garg)

ASJ/GSP 27.09.2017”

15. Apart from the aforesaid witnesses, PW3 Aashish Sharma, Draftsman proved scaled site plan Ex.P2 of the place of crime. PW5 Dr. Arvinder Sharma, Emergency Medical Officer, had medico legally examined the accused - appellant Karamjit Singh @ Kamma and found that there was nothing to suggest that he was incapable of performing sexual intercourse. Dr. Arvinder Sharma proved his report Ex.P6 in this regard. PW6 PHC Salwant Singh proved dispatching of the special reports to the Illaqa Magistrate and Higher Officials without any delay. PW7 Manjit Kaur proved birth certificate of the victim child. PW8 SI Paramjit Singh is the Investigating Officer of the case, who proved all the steps taken during investigation. It has been admitted by PW8 during his cross-examination that he did not make any effort for getting conducted DNA test of the accused and the victim.

16. Perusal of the statements of PW1 Daljit Singh and PW2 Jaswinder Kaur would reveal that their testimony is quite consistent to the effect that on 16.04.2017, when PW1 Daljit Singh reached at the place of his in-laws and after waiting for about half an hour for his son, he went outside the house in search of him, he found the victim child coming weeping bitterly and disclosed to him that the accused had removed his trousers and had committed carnal intercourse against the course of nature. It has also been consistently testified by both of them that the hand and trouser of the child were drenched in blood and that trouser was even handed over to the police. Simply because of the fact that it is not mentioned in the FIR that hand and trouser of the victim were drenched in blood, it cannot be a reason to disbelieve the statement of PW1 Daljit Singh and PW2 Jaswinder Kaur.

17. FIR is not an encyclopedia so as to contain all the minute details of the occurrence. One can very well imagine the condition of a father, who finds that his young child has been subjected to carnal intercourse by none-else than his own *mama* (maternal uncle). His immediate response will be to report the matter to the police and get his son medically examined. In such circumstances, if details like the trouser or hand being drenched in blood is not mentioned in the FIR, this cannot be a reason to disbelieve him.

18. Apart from above, it is most important to notice that the aforesaid testimony of PW1 Daljit Singh and PW2 Jaswinder Kaur finds due corroboration from the medical evidence. When the victim child was medico legally examined on 17.04.2017 at about 3.30 PM, it was found that there was posterior midline tear. Bleeding was active and margins were

fresh. In view of the said finding of the medical examination, the statement of PW1 Daljit Singh and PW2 Jaswinder Kaur stands fully corroborated to the effect that there was bleeding of the victim, which was apparent from his hand and trouser.

19. The appellant has referred to a decision of Hon'ble Supreme Court rendered in *Krishan Kumar Malik Vs. State of Haryana, 2011 (3) RCR (Criminal) 589*, in order to contend that failure to get the DNA test conducted is fatal to the prosecution.

In the above case before Hon'ble Supreme Court, male semen was found in the undergarments of the prosecutrix, but the same was not sent to the forensic laboratory for getting the DNA test or analysis and matching of the semen of the appellant-accused with that found in the undergarments of the prosecutrix. The said lacuna on the part of the prosecutrix was held to be fatal by Hon'ble Supreme Court. However, it was so held after noticing the other circumstances of the case to the effect that while reporting the matter, prosecutrix did not state the name of the accused, who had committed rape despite the fact that she knew his name. Further, it was found that there was no mark of violation on the body of the prosecutrix and besides the prosecutrix was habitual in inter course. It was held that in such circumstances, it had become necessary for prosecution to go in for DNA test.

20. Thus, the Investigating Officer is at liberty to get examined the accused of rape by medical practitioner as per Section 53A of the CrPC, but it is not mandatory. It depends upon facts and circumstances on each case as to whether DNA test should be got conducted or not.

21. In the present case, the victim child was alone with the accused, his own maternal uncle. Being of tender age below six years and having full trust in his *mama* (maternal uncle), the victim child would not have even known the nature of act, his mama-accused was committing with him. He would not have even understood as to what it meant, when the accused asked him to remove his trouser and inserted his penis in the anus. It is only when he felt pain and blood started oozing that he must have started crying. In such circumstances, it cannot be imagined that victim child would have given any resistance to a well build person and so, absence of any injury mark on the person of accused, cannot be a reason to disbelieve the prosecution case. Nor the non-conducting of the DNA test of the victim and the accused, can be a reason to disbelieve the prosecution.

22. It has been contended on behalf of the appellant that there were strained relations between the complainant and the accused due to money transaction and it is for that reason that accused has been falsely implicated.

23. After analyzing the entire evidence on record, I find absolutely no reason to believe the said story of false implication, which clearly appears to be a concoction. Close relations amongst the accused, victim, complainant, witnesses and the defence witness has already been noticed. It has not been disputed that PW2 Jaswinder Kaur alongwith her two sons including victim 'S' had come to the place of his parents on 14.04.2017 i.e. two days prior to the occurrence. It is quite common in our country that the married daughter with her children comes to stay with her parental family. Had there been strained relations due to the alleged money transaction or any other reason, between the complainant and the accused/father of the

accused, PW2 Jaswinder Kaur would not have come along with her children to stay with her parental family.

24. Apart from above, DW1 Balkar Singh, the father of accused, says that his daughter Jaswinder Kaur and her husband Daljit Singh had borrowed ₹1 lakh from him about two years back and had not returned the amount to him and as they were not repaying the same, they had stopped visiting the house. In case the complainant and his wife had stopped visiting the house of parents of PW2, then why the complainant's wife i.e., PW2 Jaswinder Kaur would have gone to the house of her parents on 14.04.2017. The statement of PW1 Daljit Singh and PW2 Jaswinder Kaur to this effect that Jaswinder Kaur alongwith her children had gone to the place of her parents in village Riali Khurd on 14.04.2017, has remained un-rebutted, as no suggestion to the contrary was given to any of these witnesses. For this reason, the statement of DW1 Balkar Singh is not at all reliable.

25. Apart from above, DW1 Balkar Singh is unable to disclose as to when the amount of ₹1 lakh was lent by him to his daughter and son-in-law. Not only this, statement of DW1 Balkar Singh is contrary to the suggestions given to the prosecution witnesses and the statement of the accused under Section 313 CrPC. Accused says in his statement under Section 313 CrPC that he had enmity with the father of the victim regarding money transaction. He is absolutely silent about the nature of money transaction. PW1 Daljit Singh was simply suggested that accused used to raise objection on giving of the financial help by father-in-law PW1 due to which there were strained relations. Said suggestions had been categorically denied by PW1 Daljit Singh.

26. Counsel for the appellant has tried to take benefit out of the stray line stated by PW2 Jaswinder Kaur during her cross-examination to the effect that on some occasions, she used to take some financial help from her father. Here too, she categorically denied that her husband ever took any financial help from her father. The statement of PW2 Jaswinder Kaur is to be read as a whole. No suggestion has been put forth either to PW1 Daljit Singh or to PW2 Jaswinder Kaur that amount of ₹1 lakh was ever lent by DW1 Balkar Singh to them i.e., PW1 or PW2.

27. For the sake of arguments, even if it be assumed that any financial help was ever extended, though it is not proved on record, it is absolutely not believable that PW1 Daljit Singh and PW2 Jaswinder Kaur will put the honour of their young child just below of six years of age at stake for that reason only. As such, defence projected by the accused has been rightly rejected by the trial court

28. On account of the aforesaid discussion, it is held that Id. Court below did not commit any error in recording the conviction. After going through the impugned judgment of conviction, I find absolutely no illegality therein, as the same is based upon proper appreciation of evidence on record. As such, appeal against conviction stands dismissed.

29. As far as the impugned order of sentence is concerned, the conviction of the appellant has been recorded under Section 377 IPC and Section 6 of the POCSO Act. Prior to amendment of POCSO Act in 2019, the sentence provided for committing penetrative sexual assault under Section 6 of the POCSO Act was 7 years imprisonment to life and fine. It may be noted that the said sentence has been increased to the minimum of 10 years rigorous imprisonment. Not only this, if the person commits

penetrative sexual assault on a child below the age of 16 years, then he is punishable with imprisonment between 20 years to life with fine.

30. In the present case, the offence in question was committed in April 2017 i.e., prior to amendment of Section 6 of the POCSO Act in 2019. Having regard to the increasing number of crimes of this nature and also having regard to the close relationship between victim and the accused, the sentence of 10 years rigorous imprisonment imposed by the ld. trial Court, cannot be considered to be excessive in any manner whatsoever. Being mama (maternal uncle) of the victim child, the accused was required to protect him like double ‘ma’ being a mama (maternal uncle). Instead of doing so, the accused proved to be demon for him. No leniency is called for such a person. As such, impugned sentence imposed by the ld. trial Court is also maintained.

Dismissed.

(DEEPAK GUPTA)
JUDGE

16.10.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
Yes/No