

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1418-SB-2014
Reserved on: 23rd September, 2024
Pronounced on: 25th September, 2024

Rachna
...Appellant
Versus
State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR
Present: Mr. Jagjit Singh Chatrath, Legal Aid Counsel
for the appellant.
Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR, J.

1. The present appeal is preferred against judgment of conviction and order of sentence dated 30.09.2013 passed by learned Judge, Special Court, Kurukshetra in FIR, bearing no. 80 dated 09.06.2013 registered under Sections 376, 506 of IPC and Section 8 of the Protection of Children against Sexual Offences Act, 2012 (hereinafter the ‘POCSO Act’) at Police Station Ismailabad, Kurukshetra, whereby the appellant was sentenced as under:

Offence	Sentence
Section 8 of the POCSO Act	Rigorous imprisonment for 4.5 years and a fine of Rs.40,000/-, in default of which simple imprisonment for 5 months.

2. The facts, tersely put are that on 09.06.2013, the father of the victim moved a written complaint before the police wherein he alleged that his daughter, who was 9 years old at the time of occurrence, at about 3 PM was on



her way to purchase some household articles. On the way, the appellant – accused who owned a shoe repair shop, called the victim inside the shop on the pretext of giving her some money. As soon as the victim entered the shop, the appellant - accused caught hold of the victim and tried to rape her upon which the victim raised an alarm. As soon as the complainant and his wife were made aware of this occurrence, they rushed to the shoe repair shop and rescued their daughter from the appellant-accused. Subsequently, the victim narrated her ordeal to the complainant. She further revealed that two months before the incident, the appellant – accused molested her and also threatened to kill her if she disclosed this to anyone. Thus out of fear the victim did not reveal anything that day. On the basis of this written complaint, the FIR (supra) was registered. The victim and the appellant were medico legally examined. Upon completion of the investigation, Final Report under section 173 of Cr.P.C. was presented before the Court.

3. The learned trial Court framed charges under Section 506 of IPC and Section 6 of the POCSO Act, to which the accused pleaded not guilty and claimed trial.

4. The prosecution examined as many as 13 witnesses to prove its case. Thereafter, the statement of the appellant under Section 313 of the Cr.P.C. was recorded, wherein the appellant pleaded false implication, however, no witness was examined by the defence in order to prove his innocence.

5. After taking into account all the material on record, the appellant-accused was convicted by the learned trial Court vide judgment dated 30.09.2013.



6. Learned counsel for the appellant assails the judgment of conviction on the ground that the learned trial Court mechanically decided the case without due application of mind and not recording any reasoned and concrete observations. The appellant – accused has been falsely implicated in the present case. There are discrepancies in the statements of the prosecution witnesses, however, the learned Court below has erred in holding that these discrepancies are minor in nature. The contradictions in the testimonies of the prosecution witnesses are clearly material and as such, the appellant – accused should be given the benefit of the doubt. Moreover, the learned trial court has failed to appreciate that as per the statement of the victim as well as the complainant there is no allegation that the appellant-accused touched the private parts of the victim. Clearly, no offence is made out under Section 8 of the POCSO Act. Lastly the impugned judgement of conviction is based on surmises and conjectures. The inferences do not satisfactorily prove the case of the prosecution.

7. Learned State counsel opposes the appeal filed by the appellant on the ground that the charge for the offence punishable under Section 8 of the POCSO Act has been clearly and unimpeachably proved. The learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, and therefore, no interference is warranted by this court in the instant appeal.

8. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgement of the learned trial Court to indicate perversity or misreading of evidence. The submissions advanced with respect to the



material contradictions and improvements in the testimonies of the prosecution witnesses by learned counsel for the appellant, this Court finds that the discrepancies were only minor in nature which are bound to occur as no true witness can possibly escape from making some discrepant details. It is important to note that the witnesses were examined after a significant time had passed from the date of the occurrence. Also, the victim was only 9 years old and therefore, some minor additions and omissions are bound to be present. Pertinently, the complainant was not an eyewitness. The version set up by him is completely based upon the version narrated to him by the victim and thus minor differences in the testimonies of the complainant and the victim do not raise any substantial doubts. Be that as it may, the evidence on record is sufficient to affirm the guilt of the accused on the charge framed against him.

9. As per the deposition of PW-4, namely, Dr. Ekta Bathla, who medico-legally examined the victim, there was slight redness present on the vaginal introitus. There was no tear or laceration and the hymen was intact. The learned court below was absolutely right in acquitting the appellant-accused of the charges framed under Section 6 of the POCSO Act since there was no medical evidence to suggest that penetrative sexual assault had taken place. In fact, even the testimony of the victim clearly indicates that no penetrative sexual assault took place. As a result, the allegations with regard to rape, which was committed two months prior to the incident could not be satisfactorily established by the prosecution.

10. As far as sexual assault is concerned, the case set up by the prosecution clearly establishes that the appellant-accused touched the private parts of the victim with a sexual intent. In cases of such nature, the court

cannot rely on medical evidence and has to give weightage to the testimonies of the prosecution witnesses. A perusal of the trial Court record shows that the victim had a consistent stand before the Magistrate, when she first disclosed the incident, during the recording of her statement before the learned Magistrate on 10.06.2013 under Section 164 of Cr.P.C. and during the course of trial. The version put forth by the victim has been duly corroborated by the father of the victim i.e. the complainant as well as the Investigating Officer, who was examined as PW-13.

12. In view of the facts and circumstances of the case, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

13. Pending miscellaneous application(s) if any, stand disposed of.

25.09.2024

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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No