



CRA-S-4143-SB-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-4143-SB-2018 (O&M)
Reserved on: 18.10.2024
Decided on:- 22.11.2024

Sanjay Kumar
.....Appellant

Versus

State of Haryana
...Respondent

CORAM:- HON’BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Prakash Kr. Singh Tomar, Advocate with
Ms. Ritu Singh, Advocate
for the appellant.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

AMARJOT BHATTI, J.

1. Appellant/convict Sanjay Kumar filed aforesaid appeal against judgment of conviction dated 05.10.2018 and order of sentence dated 06.10.2018 passed by learned Additional Sessions Judge, Charkhi Dadri in Sessions Case bearing No. SC-575 of 2016/RBT-6 of 2016 dated 24.10.2016/19.08.2017, titled as “State Vs. Jaswant Singh and Anr.” vide which appellant –Sanjay Kumar is sentenced as under :-

Offence U/s	Sentence	Fine	In default of fine or a part thereof
10 of the Protection of Children from Sexual Offences Act, 2012	Rigorous imprisonment for a period of Five years.	Rs. 10,000/-	Further simple imprisonment for a period of One month.



2. Brief facts of the case are that mother of the victim 'K' filed written complaint addressed to Incharge Police Post Achina alleging that her son i.e. victim was studying in 8th class in Government Senior Secondary School, Achina District Bhiwani. On 16.07.2016, Sanjay Kumar (Hindi Teacher), asked her son to bring keys of ration room from ration maker. Sanjay Kumar (Hindi Teacher), went behind her son and locked the ration room from inside. He opened zip of his pants and told her son to hold his penis. Her son refused to do it and on this the accused tried to force him to do so. He also told her son to remove his clothes but he hurriedly came outside the room in a puzzled manner. Her son told her that Sanjay Kumar (Hindi Teacher), was smelling of alcohol. Her son disclosed about occurrence to the Principal but he told her son not to disclose about this occurrence to his family members. Even prior to this incident said teacher tried to allure her son by giving him *rasgulla* and *chocolate*. The complainant further alleged that said teacher was in a habit of indulging in such like activities in the school earlier, at Hadodi. He remained under suspension for a long time. The complainant alleged that Principal was also responsible for this act as both Sanjay Kumar (Hindi Teacher) and the Principal were on good terms with each other and they used to come to school in same vehicle. It was further submitted that both Principal and Sanjay Kumar (Hindi Teacher) should be removed from the school and strict action be taken against them. On the basis of aforesaid allegations, present FIR was registered.

3. Investigation of this case was carried out by Sub Inspector Dalbir Singh. He along with police party and complainant inspected the spot and



prepared rough site plan of place of occurrence. Accused Sanjay Kumar was arrested from Dhikara Road, Dadri on 18.07.2016. He was joined in the investigation on 19.07.2016. Statements of witnesses were recorded. Victim was produced before Illaqa Magistrate on 19.07.2016 and application was filed for recording of his statement under Section 164 Cr.P.C. Statement of victim was recorded. Later on victim was also produced before Child Welfare Committee for counseling. Jaswant Singh was granted anticipatory bail on 08.08.2016 from the court of learned Additional Sessions Judge, Charkhi Dadri. He joined investigation on 22.08.2016. After completion of investigation, challan was presented against both the accused..

4. Both accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since offences under Section 6 of POCSO Act are exclusively triable by the Court of Sessions, therefore, learned Judicial Magistrate Ist Class, Charkhi Dadri committed case to the Court of learned Sessions Judge for trial vide commitment order dated 10.10.2016.

5. Learned Sessions Judge, Bhiwani, after hearing arguments, framed charge-sheet against both the accused. Accused Sanjay Kumar (Hindi Teacher) was charge-sheeted under Section 9 of POCSO Act which is punishable under Section 10 of the POCSO Act. Whereas, accused Jaswant Singh was charge-sheeted under Section 21 of POCSO Act.

6. In order to prove facts of the case, prosecution examined Dharmender Singh, Draftsman, S.P.Office, Bhiwani as PW-1, Victim as PW-2, Ct. Hari Om as PW-3, Inspector Ajit Singh as PW-4, Dalbir Singh (retired SI) as PW-5, ASI Anil Kumar, PS Badhra as PW-6, mother of victim 'K' as



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PW-7, HC Anil Kumar, CIA Staff, Bhiwani as PW-8, Jetin Gujral, Judicial Magistrate Ist Class, Charkhi Dadri as PW-9. Thereafter learned Public Prosecutor for the State vide separately recorded statements gave up PW Balbir on 14.07.2017 and thereafter closed prosecution evidence on 31.10.2017.

7. Statements of both the accused were recorded under Section 313 Cr.P.C. to which they pleaded innocence and false implication.

8. In defence, accused examined Kamlajeet Singh, Clerk office of Additional Deputy Commissioner, Bhiwani as DW-1, Karamvir, Assistant in the office of District Education Officer, Bhiwani as DW-2, Constable Shiv Kumar as DW-3 Mukesh Kumar, Drawing Teacher, Govt. Sen. Secondary School, Achina as DW-4, Yogesh Kumar, Clerk Govt. Senior Secondary School, Achina as DW-5. Thereafter, accused persons closed their defence evidence on 05.10.2018.

9. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused, Jaswant Singh was acquitted under Section 21 of POCSO Act, 2012 whereas accused Sanjay Kumar (Hindi Teacher) was held guilty and convicted under Section 10 of POCSO Act vide judgment of conviction dated 05.10.2018 and order of sentence dated 06.10.2018. Feeling aggrieved of this judgment of conviction and order of sentence, present appeal has been filed by appellant/convict Sanjay Kumar.

10. Learned counsel for appellant/convict argued that facts of the case and evidence on record were not rightly appreciated qua appellant/convict Sanjay Kumar. On the same set of allegations Jaswant



Singh, then Principal of the school was acquitted by giving him benefit of doubt where as appellant/convict was held guilty and sentenced. There is delay in lodging the FIR. It is pointed out that alleged occurrence took place on 16.07.2016 but complaint was filed by mother of victim on 18.07.2016. Said delay has remained unexplained and raised serious doubts regarding the alleged incident.

11. There are material discrepancies and contradictions in the testimony of victim. Sole testimony of victim as PW-2 is not sufficient to justify judgment of conviction. There is no corroboration to the testimony of victim. Evidence led in defence was totally ignored by learned trial Court. Learned counsel for appellant/convict referred to the testimony of Mukesh Kumari, Drawing Teacher examined as DW-4 who confirmed that on 16.07.2016 alleged victim appeared in both unit tests of drawing and Sanskrit. He did not disclosed about any incident. He remained present in the school entire day from 8:00 AM to 2:30 PM and appeared in Sanskrit unit test before lunch and Drawing unit test after lunch. Yogesh Kumar, Clerk of Government Senior Secondary School, Achina appeared as DW-5 and produced date sheet of 8th class which is Exhibit DW-5/A, mark sheet, copy of both papers, copy of attendance register and consolidated result as Exhibit DW-5/B to DW-5/G to confirm that victim remained present in the school entire day and appeared in both unit tests. It is argued that in case such like occurrence had taken place with the victim his conduct would have been different.

12. Learned counsel for appellant/convict argued that present FIR is motivated. In fact a departmental enquiry was conducted against teacher



Kirorpati by Principal Jaswant Singh and in the said inquiry proceedings father of victim had given his affidavit in support of said teacher. On account of this, a false FIR has been registered at the instance of Kirorpati, her husband Rajesh and Sarpanch of the village through the complainant. To substantiate this fact appellant/convict had examined Kamlajeet Singh, Clerk office of Additional Deputy Commissioner, Bhiwani as DW-1 who had produced the concerned record i.e. correspondence dated 23.12.2016 pertaining to complaint dated 28.12.2015 Exhibit DW-1/A. Karamvir, Assistant in the office of District Education Officer, Bhiwani DW-2 has proved the correspondence regarding the said complaint and report Exhibit DW-2/A and DW-2/B. Therefore, on account of aforesaid inquiry proceedings against teacher Kirorpati FIR has been lodged by levelling false allegations.

13. Learned counsel for appellant/convict raised the issue that child victim did not suffer any injury. He was never medically examined. Present FIR has been registered under pressure. In fact, at the instance of Rajesh (husband of Kirorpati), Sarpanch of the village and others created scene in the school and also caused loss to the property. Constable Shiv Kumar DW-3 has proved FIR No.0261 dated 29.11.2016 registered under Section 3 of Prevention of Damage to Public Property Act, 1984 and Sections 147, 149, 186, 332, 342, 353, 427 and 506 read with Section 34 of IPC at Police Station Bond Kalan which is Exhibit DW-3/A.

Allegations levelled against present appellant/convict are without any basis. No such occurrence took place. During this period appellant/convict has lost his job and he is behind bars for a period of about 2



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½ years. It is submitted that judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Charkhi Dadri may kindly be set aside by accepting the present appeal.

14. On the other hand, learned counsel for the State argued that prosecution case is duly proved on record from the testimony of victim examined as PW-2. The facts narrated by him were disclosed to his mother who is also examined as PW-7. She filed written complaint Exhibit PD, on the basis of which present FIR was registered which is Exhibit PE. Statement of victim as well as his mother remain consistent on all material points. Considering the nature of allegations, no medical examination was required. However, child victim was produced before Child Welfare Committee and his statement was also recorded by learned Judicial Magistrate Ist Class, Charkhi Dadri under Section 164 Cr.P.C. Sh. Jetin Gujral, JMIC has stepped into the witness box as PW-9 to prove the statement given by victim on oath. Investigation was carried out by retired Sub-Inspector Dalbir Singh who is examined as PW-5. All formalities were completed. Both accused namely Jaswant Singh, Principal and Sanjay Kumar (Hindi Teacher) i.e. present appellant were arrested and on completion of investigation challan was presented by Inspector Ajit Singh PW-4. There are specific serious allegations against appellant/convict of sexual assault of child victim while he was studying in the school. Therefore, considering the gravity of offence and the manner in which it has been committed, judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Charkhi Dadri under Section 10 of POCSO Act does not require any interference.

15. I have considered the arguments and have gone through the



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record with the able assistance of learned counsel for appellant/convict Sanjay Kumar and learned counsel representing State. Present FIR has been registered on the written complaint of mother of victim who is examined as PW-7. On the basis of said written complaint FIR was registered and investigation was carried out. As per the facts, on 16.07.2016 appellant/convict Sanjay Kumar who was Hindi Teacher in Government Senior Secondary School, Achina told the victim (student of 8th class) to get keys of ration room from ration maker and thereafter he followed the child to the ration room and closed the door from inside. He opened the zip of his pants and told the child to hold his penis and when the child refused, he tried to use force upon him. He also told the child to remove his clothes. However, the child rushed out of the room in a puzzled manner. He disclosed about this incident to the Principal of school who told him to remain silent and not to disclose about this fact to his family. Ultimately, the child disclosed about the occurrence to his mother who later on filed written complaint. On the basis of which FIR was registered and both Jaswant Singh Principal and Sanjay Kumar (Hindi Teacher) faced trial. Regarding this occurrence, Jaswant Singh, Principal of the school was charge-sheeted under Section 21 of POCSO Act whereas Sanjay Kumar (Hindi Teacher) was charge-sheeted under Section 9 of POCSO Act. On completion of trial as referred above, Jaswant Singh was acquitted of the charge framed against him giving him benefit of doubt whereas Sanjay Kumar (Hindi Teacher) was held guilty under Section 10 of POCSO Act and was sentenced as under:-



Offence U/s	Sentence	Fine	In default of fine or a part thereof
10 of the Protection of Children from Sexual Offences Act, 2012	Rigorous imprisonment for a period of Five years.	Rs. 10,000/-	Further simple imprisonment for a period of One month.

16. In order to prove the chargesheet, prosecution examined child victim as PW-2 who narrated the entire occurrence as he disclosed to his mother. His statement was also recorded by the Magistrate under Section 164 Cr.P.C. Sh. Jetin Gujral, JMIC had stepped into the witness box as PW-9 to prove the application moved before him on 19.07.2016 Exhibit PF and statement of victim recorded as Ex.PB. Perusal of statement given before Magistrate as well as the statement recorded in the Court on oath has remained consistent on all material facts. Therefore, testimony of victim recorded as PW-2 cannot be brushed aside.

Learned counsel for appellant/convict raised the issue that sole testimony of victim cannot be safely relied upon and there is no independent corroboration to his version. It cannot be ignored that such like incidents take place in isolation. Therefore, no eye witness is expected. Even mother of the victim examined as PW-7 is not eye witness to the occurrence. She has filed complaint on the basis of facts disclosed to her by victim. Learned trial Court is required to see credibility of witness from the statement given at initial stage as well as statement recorded in the Court. In the case in hand learned counsel for appellant/convict could not point out even a single material discrepancy in the statement of victim to shatter his credibility.

17. Learned counsel for appellant/convict further referred to the delay in lodging the report to the police. I have considered this aspect of the



case. Alleged occurrence took place on 16.07.2016 and written complaint was filed by the mother on 18.07.2016. Therefore, there is delay of two days in lodging the complaint to the police. Usually it is seen when such like incident takes place with a child, firstly it takes time for the child to disclose about such like incident to family member and secondly, it further takes time for the family to ponder about such like incident for lodging report to the authorities. In the case in hand when victim came out of room, he informed Principal of the school but instead of taking any action, the child was told to keep silent and was warned not to disclose about the occurrence to his family. Finally, victim child disclosed about the occurrence to his mother who in consultation with her family filed written complaint to the police. On the basis of said complaint FIR has been registered. Therefore, in such like incidents, said delay of two days in lodging the report to the police in my opinion is not material.

18. Learned counsel for appellant convict raised the issue that present FIR has been registered with false allegations as Jaswant Singh, Principal of the school had initiated inquiry against teacher Kirorpati and in the said inquiry proceedings, father of the victim had given affidavit in support of teacher Kirorpati. Ultimately, said teacher was turned out of the job and thereafter at the instance of father of the victim, Rajesh (husband of Kirorpati) and Sarpanch of the village false FIR has been registered against present appellant/convict. I have considered the testimonies of Kamlajit Singh Clerk, DW-1, Karamvir, Assistant DW-2. Appellant/convict Sanjay Kumar had nothing to do with the said inquiry. In fact, Jaswant Singh being Principal of the school had held inquiry on the complaint received qua



Kirorpati. There are no direct allegation of sexual assault against him (Jaswant Singh). Therefore, there was no reason to falsely implicate Sanjay Kumar against whom there are main allegations of sexual assault. Therefore, said defence raised by learned counsel for appellant/convict does not hold any ground.

Thus, considering the evidence on record and the facts narrated by the child victim as PW-2, it is a case of aggravated sexual assault. Sexual assault is defined in Section 7 of the POCSO Act which runs as under:-

*“**Sexual assault.**—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”*

As per facts of the case, it is fully covered under the provisions of Section 9 (f) of POCSO Act as victim was sexually assaulted by appellant/convict Sanjay Kumar while he was posted as Hindi Teacher and the victim was studying in the same school in 8th standard. Occurrence took place in the school premises. Therefore, considering the facts of the case, it is a case of aggravated sexual assault and he was rightly held guilty under Section 10 of the POCSO Act. Considering the gravity of offence, quantum of compensation awarded by learned trial Court does not require any interference. Consequently, judgement of conviction dated 05.10.2018 and order of sentence dated 06.10.2018 passed by learned Additional Sessions Judge, Charkhi Dadri are accordingly upheld and appeal preferred by



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appellant/convict Sanjay Kumar is dismissed.

19. Pending application(s), if any, also stand(s) disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

22.11.2024
Sunil Devi

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No