

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- April 4, 2024
CRA-D-178-2021 (O&M)

JawdeenAppellant

Versus

State of Haryana ...Respondent

CORAM:- HON’BLE MRS. JUSTICE LISA GILL
HON’BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Surinder Mohan Sharma, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

AMARJOT BHATTI, J.

1. Appellant/convict Jawdeen has filed present appeal against judgment of conviction dated 24.02.2021 and order of sentence dated 02.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court under Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’), Gurugram in Sessions Case bearing No. 494 of 2018, titled as “State Vs. Jawdeen” vide which appellant/convict was sentenced as under:-

Offence	Sentence of Imprisonment
Under Section 6 of the POCSO Act	Rigorous imprisonment for a period of twelve years and to pay a fine of ₹20,000/-. In default of payment of fine or a part thereof, further rigorous imprisonment for a period of one year.

2. Victim was granted compensation of ₹4 lakhs payable under Victim Compensation Fund or other scheme or fund established for the purpose of compensation and rehabilitation of victim under Section 357A of

Code of Criminal Procedure, 1973 or any other law as detailed therein.

3. Brief facts as per prosecution case are that complainant i.e. 'A' mother of girl child (name withheld and to be referred as 'A' hereinafter) filed a written complaint to SHO, Police Station Manesar that she was resident of Ward No. 11, Pataudi. On 22.04.2018 wood work was going on in her house. Fariyad, a mason was working along with carpenter Jawdeen. Her daughter 'M' (name withheld and to be referred as 'M' hereinafter) aged about 7 years was sleeping in the house alone when complainant went to feed cattle. At about 04:15 pm, when she returned home, she noticed that room in which her minor daughter 'M' was sleeping was bolted from inside. She heard shrieks of her daughter. On this, she called Mason Fariyad and knocked at the door. Jawdeen opened the door from inside. She noticed that pants of her daughter 'M' were removed and she was crying bitterly. She further noticed that pants of Jawdeen were also open. She inquired from her daughter and in the meantime Jawdeen ran away from there. On inquiry, her minor daughter 'M' explained the manner in which she was sexually assaulted by Jawdeen 'M', the victim revealed that appellant opened his pant and put his finger from where she urinates (vagina) and kept touching her and he also exposed the area from where he urinates (penis). Complainant 'A' stated that Jawdeen took undue advantage of her absence and sexually exploited/tried to rape her minor daughter 'M'. With these allegations, present FIR was registered.

4. On this complaint, formal FIR No. 09 dated 23.04.2018 was registered under Sections 342, 506 of Indian Penal Code, 1860 (for short 'IPC') and under Section 4 of POCSO Act, 2012. Investigation was commenced. Medical examination of victim 'M' was conducted at

Government Hospital, Gurugram. Statement of victim under Section 164

Cr.P.C. was duly recorded on 23.04.2018 before learned JMIC, Gurugram. Thereafter, on 17.06.2018 the father of accused Jawdeen produced him before the police and he was arrested by L/SI Meena in Police Station Women, Manesar and accordingly, his arrest memo was prepared. During interrogation, on 18.06.2018, accused suffered disclosure statement and demarcated the place of occurrence. The accused was medically examined. After completion of investigation, challan was presented in the Court of Illaqa Magistrate at Gurgaon.

5. Accused was supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Learned Additional Sessions Judge, Gurgaon, after hearing the arguments, framed charge-sheet on 21.08.2018 against accused under Sections 4 of POCSO Act and 506 of IPC, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial. As victim 'M' was less than 12 years of age at the time of commission of alleged offence, learned trial Court amended the charge-sheet vide order dated 05.11.2018 and accordingly, charge under Sections 6 of POCSO Act (in alternative under Section 376(2) (n) of IPC) and 506 of IPC was framed against accused Jawdeen, to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of the case, prosecution examined victim 'M' as PW-1, 'A' mother of victim 'M' as PW-2, 'R' father of victim 'M' as PW-3, ASI Dharampal, Draftsman as PW-4, L/HC Beena Devi as PW-5, Constable Kuldeep Singh as PW-6, L/Constable Pooja as PW-7, Dr. Sumedha, Medical Officer, Government Hospital, Gurugram as PW-8, Amarnath, Clerk, MC Pataudi as PW-9, Dr. Yogender, Medical Officer, Government Hospital, Sector-10, Gurugram as PW-10, L/SI Meena as PW-

11, L/SI Saroj Bala as PW-12, Fariyad as PW-13, Mamta, Ex-Member

CWC, Gurugram as PW-14, Inspector Raj Bala as PW-15 and L/Constable Kavita as PW-16.

7. Statement of accused was recorded under Section 313 Cr.P.C. on 03.02.2021. Thereafter, supplementary statement of accused under Section 313 Cr.P.C. was also recorded on dated 23.02.2021. While denying all incriminating evidence put to him, he pleaded innocence and false implication.

8. Learned counsel for accused closed defence evidence without examining any witness.

9. After hearing arguments advanced by learned Public Prosecutor and learned counsel representing the accused besides considering evidence on record, accused Jawdeen was convicted and sentenced under Section 6 of POCSO Act (in alternative under Section 376(2)(n) of IPC) and acquitted of the charge punishable under Section 506 of IPC, vide judgment of conviction dated 24.02.2021 and order of sentence dated 02.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, Gurugram as detailed therein.

10. Feeling aggrieved of this judgment of conviction and order of sentence, present appeal has been filed by the convict.

11. Learned counsel for appellant/convict raised the argument that judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, Gurugram is unsustainable being based on assumptions. Allegations levelled against appellant/convict are false. Testimony of prosecution witnesses is unreliable and they have given improved version. Learned counsel for appellant/convict referred to the testimony of minor victim 'M' PW1 where

she categorically stated that on that day she had gone to her school and

thereafter, she played for some time and went to sleep in the room. On the other hand, 'A' mother of victim as PW2 claimed that victim had not gone to her school on that day. He further referred to cross-examination of aforesaid witnesses where it came on record that house of complainant is situated in thickly populated area and sister of complainant is residing on the first floor in same building. Therefore, in such like situation there was no chance of committing such like offence. Learned trial Court, it was submitted, had wrongly relied upon the testimony of minor child by ignoring other material evidence. It is pointed out that no such occurrence took place and appellant was falsely implicated on account of money dispute between the complainant and father of appellant.

Learned counsel for appellant/convict further pointed out that version putforward by prosecution is not supported by medical record. He referred to the statement of Dr. Sumedha, Medical Officer, Government Hospital, Gurugram examined as PW8 who had proved on record Medical Examination Report of victim 'M' as Ex.P9 and report of Forensic Science Laboratory (FSL) as Ex.PX. As per Medical Examination Report Ex.P9, there was no internal or external injury on the person of victim. Learned counsel for appellant/convict also pointed out that as per report of FSL Ex.PX, semen could not be detected on exhibit-1 (Pants) and exhibit-2 (Vaginal swab), therefore, there is no evidence of commission of rape being committed upon victim. At the most, it can be a case of simple assault.

It is submitted that appellant is a young boy who has remained in custody for long duration. He is sole bread winner of family and was never involved in such like offence. Evidence led by prosecution does not prove the guilt of appellant/convict beyond the shadows of reasonable doubt.

Therefore, judgment of conviction dated 24.02.2021 and order of sentence

dated 02.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, Gurugram be set aside and appellant/convict Jawdeen be acquitted of the charge framed against him by accepting present appeal.

12. On the other hand, learned counsel representing the State argued that prosecution case is duly proved on record from the testimony of victim examined as PW1. Her version is fully supported by her mother 'A' examined as PW2. Fariyad who was working as Mason in the house was also examined as PW13 who further admitted that he had seen Jawdeen running away from the room in which he was working. Father of victim 'R' was examined as PW3 who also confirmed the occurrence and the fact that he was telephonically informed about the occurrence which took place with his daughter. Complainant approached the police immediately and on the basis of written complaint of complainant 'A', FIR was lodged and investigation was started. Medical record of victim 'M' is proved by Dr. Sumedha, Medical Officer, Government Hospital, Gurugram examined as PW8, Medical Examination Report of victim is Ex.P9. Similarly, on arrest of appellant/convict, he was also medically examined by Dr. Yogender, Medical Officer, Government Hospital, Sector-10, Gurugram and copy of his Medico Legal Report (MLR) is Ex.P12. Report of FSL is Ex.PX. It is argued that sexual assault is proved on record from the testimony of victim examined as PW1, supported by recitals in MLR Ex.P12. Link evidence is proved on record by examining L/HC Beena Devi PW5 and L/Ct. Kavita examined as PW16. Initially, investigation was carried out by L/SI Saroj Bala examined as PW12 and thereafter, investigation came into the hands of L/SI Meena examined as PW11. Appellant was arrested on 17.06.2018 vide arrest memo Ex.P6. He was joined in investigation and was medically

examined. He had demarcated the place of occurrence. Appellant/convict did not take any specific stand when his statement was recorded under Section 313 Cr.P.C. There is nothing on record to show that there was money dispute between complainant or with appellant/convict or his father. Aforesaid defence raised by appellant/convict is without any basis and an after thought.

Thus, from the evidence led by prosecution, it is duly established that appellant/convict sexually assaulted minor victim when she was alone in the house. All the facts and evidence on record, were rightly considered and appreciated by learned trial Court and appellant/convict was rightly held guilty and convicted under Section 6 of POCSO Act, 2012. It was submitted that appeal preferred by appellant/convict deserves dismissal.

13. We heard arguments advanced by learned counsel for appellant/convict and learned counsel representing the State and have gone through the record carefully with their able assistance. In the case in hand, FIR was registered on written application dated 23.04.2018 Ex.P2 filed by complainant 'A' who is mother of minor victim 'M'. She categorically stated that on the day of occurrence i.e. 22.04.2018, minor victim was sleeping in room when she went out for feeding the cattle. At about 04:15 pm, when she returned home, she saw that room was bolted from inside. She heard shrieks of her daughter. On this, she called Mason Fariyad and started knocking at the door. Ultimately, door was opened by Jawdeen and she saw that pants of her daughter were removed and she was crying. She further noticed that pants of Jawdeen were open and he fled away from the spot. On inquiry, victim disclosed the manner she was sexually exploited by Jawdeen. With these allegations, present FIR No. 09 dated 23.04.2018 was registered under Sections 342, 506 of IPC and under Section 4 of POCSO Act, 2012, which is

Ex.P15. Jawdeen had surrendered and was arrested in this case on

17.06.2018 vide arrest memo Ex.P6. Investigation was completed and he was challaned in aforesaid FIR. Initially, charge-sheet was framed under Sections 4 of POCSO Act and 506 of IPC. Later on, charge-sheet was amended under Section 6 of POCSO Act (in alternative under Section 376(2)(n) of IPC) and Section 506 of IPC.

14. In order to prove the charge-sheet, testimony of minor victim is material piece of evidence. Occurrence took place on 22.04.2018 at about 04:15 pm and complainant approached the police and on the basis of her written complaint Ex.P2, FIR was registered on 23.04.2018 at 07:00 am. Child victim was brought for medical examination at about 07:15 am and was medically examined at about 08:15 am on 23.04.2018, as per Medical Examination Report Ex.P9. Statement of victim was recorded under Section 164 Cr.P.C. by learned Judicial Magistrate Ist Class on the same day, which is Ex.P1. Victim reiterated that her parents had left the home while she was sleeping alone in the room when appellant entered and closed the door of the room upon which she got up. She stated that the appellant (referred to as uncle who was doing work of windows in their home) opened her pant and removed it and opened his pant as well. Appellant is stated to have touched her at various places. It is noted by learned JMIC that child pointed towards her vagina and chest at this point. Victim while pointing to her vagina stated that appellant put his penis there, upon which she felt pain and cried but the uncle (appellant) did not stop. Her mother in the meantime came and knocked loudly on the door upon which he opened the door and ran away. In the case in hand, occurrence took place with child victim 'M' when she was alone in the house. The prosecution has examined Amarnath, Clerk, MC Pataudi as PW9 who produced date of birth record of child, according to which her date of birth is 17.10.2010. Copy of relevant entry is Ex.P11.

Therefore, at the time of said occurrence, victim was seven and a half years old child. Thus testimony of minor victim is material and relevant. Section 118 of The Indian Evidence Act, 1872 runs as under :-

“118. Who may testify – All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”

It is well settled law that Court can rely upon the testimony of child witness and it can form basis of conviction if the testimony is truthful and credible. Corroboration of testimony of a child witness is not mandatory but as a rule of prudence, it is desirable to see the corroboration from other reliable evidence placed on record. Therefore, testimony of a child witness cannot be brushed aside solely on the ground of lack of corroboration. The Indian Evidence Act, 1872 does not prescribe any particular age to determine or to treat a witness to be a competent witness. A child of tender age can testify if the child has intellectual capacity to understand the questions and give rational answers thereof. Gainful reference can be made to the authority cited in 2009(12) SCC 731 case titled “State of Karnataka Versus Shantappa Madivalappa Galapuji and Ors.”, where evidentiary value of child witness was explained. Keeping in view the settled position of law, testimony of child victim ‘M’ examined as PW1 is considered. The version put forward by child victim in her statement recorded under Section 164 Cr.P.C. Ex.P1 was fully corroborated by victim when she was examined as

PW1. Before recording statement of child victim, elementary questions were put to her and she was found to be a competent witness by learned trial Court. Statement was recorded in question-answer form and child victim again explained the manner in which she was sexually exploited by accused. She duly identified accused facing trial in this case. She confirmed that her mother knocked at the door from outside and then the door was opened by accused who ran away from there by pushing her mother aside. During cross-examination her version remained consistent and she vividly remembered the occurrence and manner in which she was sexually assaulted by appellant/convict whom she identified.

Learned counsel for appellant/convict referred to discrepancy that child victim stated that she had gone to school and after returning, she played for some time and then went to sleep, whereas, complainant as PW2 stated that child had not gone to school. Aforesaid discrepancy pointed out by learned counsel for appellant/convict is not material to the facts of present case as occurrence had taken place in the house of complainant at about 04:15 pm where present appellant/convict along with Fariyad was working as Carpenter. Careful perusal of statements of victim 'M' as PW1 and of her mother 'A' as PW2 show that their version remained consistent in examination-in-chief as well as their cross-examination. Said Fariyad also stepped into witness box as PW13 and deposed that accused Jawdeen was working in adjacent room whereas he was operating machine and did not hear any sound. Testimony of PW13 corroborates the version of complainant that 'Arra' machine (for cutting wood) was operational at the relevant time thus drowning the sound of victim. He further confirmed that mother of victim came to him and inquired about the victim who was sleeping in room.

He also narrated that Jawdeen ran away from the room. This witness

truthfully stated that no occurrence took place in his presence while narrating that appellant ran away from the spot. Father of victim examined as PW3 supported the prosecution version and confirmed that he was informed about the occurrence telephonically.

15. Intimation of commission of offence was given immediately by parents of the victim. It is to be noted that time of lodging FIR is mentioned as 4 am on 23.04.2018. It is the case of complainant that they were made to wait at the police station during the night and action was taken only in the morning. At this stage, it is relevant to refer to testimony of PW12 L/SI Saroj Bala, who clearly stated that on 23.04.2018 she was posted at Police Station Sector 37, Gurugram. She received a telephonic message from Police Station Women Manesar Gurugram at about 3 am upon which she reached at said police station within 15-20 minutes. This fact also lends credence to version of complainant. Thus prompt action was taken by complainant leaving no scope for embellishments and concoctions.

16. On the other hand, appellant/convict was medically examined by Dr. Yogender, Medical Officer PW10 of Government Hospital, Sector-10, Gurugram on police request Ex.P13 and his MLR is Ex.P12 according to which *there was nothing to state his incapability to perform sexual intercourse*. Therefore, we do not find any force in arguments advanced by learned counsel for appellant/convict.

17. The investigation carried out by L/SI Saroj Bala PW12 and L/SI Meena PW11 is duly proved on record. Appellant/convict surrendered on 17.06.2018 and he was arrested in this case. Learned counsel for appellant/convict raised an argument that there was no sexual assault, at the most it was a case of simple assault.

Penetrative sexual assault is defined under Section 3 of POCSO

Act, 2012, which runs as under :-

“3. Penetrative sexual assault - A person is said to commit "penetrative sexual assault" if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

Aggravated penetrative sexual assault is defined in Section 5 of aforesaid Act. Relevant clause of Section 5(m) runs as under :-

“5. Aggravated penetrative sexual assault -

xxx xxx xxx

(m) whoever commits penetrative sexual assault on a child below twelve years; or ”

is said to commit aggravated penetrative sexual assault punishment for commission of offence of aggravated penetrative sexual assault is provided in Section 6 POCSO Act, 2012”

Therefore, considering the aforesaid provisions, it is clear that appellant/convict Jawdeen sexually exploited child victim ‘M’ when she was sleeping alone in the room. The victim has given full account of the occurrence and the manner in which she was sexually exploited. Argument advanced by learned counsel for appellant/convict that it was a simple case of assault in view of the medical evidence on record does not hold any

ground. 'Dr. Sumedha, Medical Officer, Government Hospital, Gurugram PW8 medically examined child victim on 23.04.2018 at 08:15 am. Medical Examination Report of victim 'M' is Ex.P9. Report of FSL is Ex.PX, according to which semen could not be detected on exhibit-1 (Pants) and exhibit-2 (Vaginal swab). During medical examination, no external injury was seen at private parts. Hymen was intact but redness was present. The doctor gave her opinion that possibility of sexual intercourse cannot be ruled out. The medical record of the victim does not help the case of appellant. Keeping in view the definition of penetrative sexual assault and aggravated penetrative sexual assault, it is duly proved as per the evidence on record that the appellant/convict is rightly held guilty and sentenced under Section 6 of POCSO Act, 2012. The argument that there was no penetration, which would have been evident only if there was some injury on the person of the child/victim, is devoid of any merit in the given factual matrix.

18. Learned counsel for appellant/convict Jawdeen raised the issue that house of complainant is situated in a busy area. The family of Irfan was residing on first floor and children were present there. Therefore, it was not possible for appellant/convict to commit this offence. We have considered the stand taken by learned counsel for appellant/convict. It has come in statement of child victim that she was sleeping in the room alone. Her father had gone out for work, whereas her mother had also gone out. Accused Jawdeen entered the room when she was alone and bolted the door from inside. When she was being sexually assaulted, her mother reached there and started knocking at the door. On this, accused opened the door and managed to escape. This fact is confirmed by victim 'M' testifying as PW1 and her mother 'A' as PW2. Fariyad PW13 also confirmed that Jawdeen had run away from there. Running of 'Arra machine' is also confirmed by PW13.

There was no occasion for appellant to have run away from the spot in case no such occurrence had taken place. There is no reason whatsoever to disbelieve the testimony of aforesaid witnesses. Therefore, stand taken by learned counsel for appellant/convict is far from convincing.

19. Learned counsel for appellant/convict further raised defence that appellant/convict Jawdeen was falsely implicated in this case as there was dispute regarding money. Complainant as PW2 during her cross-examination admitted that payment of earlier work of doors was partially given by them to the Contractor and there was balance payment. They again rejoined to complete wooden work. It has come in evidence that work was still going on when the said occurrence took place. In the grounds of appeal raised by learned counsel for appellant/convict, it was alleged that complainant owed some money to father of appellant/convict. No specific stand is taken by appellant/convict when his statement was recorded under Section 313 Cr.P.C. and neither is there any evidence on record to prove such a stance. Therefore, defence raised by learned counsel for appellant/convict is baseless and totally unsubstantiated by any evidence.

20. Therefore, considering the evidence led by prosecution, learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, Gurugram rightly came to conclusion that guilt of appellant/convict for the commission of offence punishable under Section 6 of POCSO Act, 2012 was duly proved on record. Appellant/convict sexually exploited minor victim 'M' who was seven and a half years of age. Child victim was timely rescued by her mother. Considering the gravity of offence, quantum of sentence imposed upon appellant/convict by learned trial Court does not require any interference.

21. Resultantly, we do not find any reason to interfere in the

judgment of conviction dated 24.02.2021 and order of sentence dated 02.03.2021 passed by learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, 2012, Gurugram. Same is accordingly, upheld.

22. Appeal preferred by appellant/convict Jawdeen is accordingly, dismissed.

23. Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

April 4, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No