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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2950-SB-2015

Reserved on: 18th September, 2024

Pronounced on: 20th September, 2024

Kuldeep

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ranbir Singh, 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 16.05.2015 passed by learned Additional Sessions Judge, Hisar in FIR No. 150 dated 14.04.2013 registered under Section 506 of IPC and Section 6 of the Protection of Children against Sexual Offences Act, 2012 (hereinafter the ‘POCSO Act’) at Police Station Barwala, Hisar, whereby the appellant was sentenced as under:

Offence	Sentence
Section 506 IPC	Rigorous imprisonment for 2 years and a fine of Rs. 2,000/-, in default of which simple imprisonment for 1 month.
Section 6 of the POCSO Act	Rigorous imprisonment for 10 years and a fine of Rs. 10,000/-, in default of which simple imprisonment for 6 months.

2. The facts, tersely put are that on 13.04.2014, the complainant moved a written complaint before the police wherein she alleged that she is a labourer by occupation and has three daughters. On 11.04.2013, at about 10 AM upon returning home from work, she found that her husband – appellant was engaged in penetrative sexual assault of their minor daughter/victim, who was 8

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years old at the time of the occurrence. As soon as the complainant raised an objection, the appellant assaulted her and fled away from the house. Subsequently, the victim narrated her ordeal to the complainant. The complainant called the appellant but the latter threatened to kill her and victim if she disclosed the crime to anyone else. On the basis of this written complaint, the FIR (supra) was registered. The appellant was arrested on 18.09.2013. 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. Initially, a case under Section 506 IPC and Section 12 of the POCSO Act was registered against appellant-accused, vide order dated 18.12.2013, to which the appellant pleaded not guilty and claimed trial. However, the learned trial Court amended the charge vide order dated 16.04.2015 and the accused was then charged under Section 506 IPC and Section 6 of the POCSO Act, accordingly.

4. The prosecution examined as many as 11 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 and claimed innocence, however, no witness was examined by the accused in his defence.

5. After taking into account all the material on record, the appellant-accused was convicted by the learned trial Court vide judgment dated 16.05.2015.

6. Learned counsel for the petitioner assails the judgment of conviction on the ground that the learned trial Court mechanically decided the case without due application of mind and recording any reasoned and concrete observations.

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There was a delay of three days in the registration of the FIR which was not satisfactorily explained by the prosecution. As such the possibility of manipulation and a tutored complaint cannot be ruled out. Moreover the statement of the victim was not recorded under Section 161 Cr.P.C. by the investigating agency. This caused great prejudice to the appellant as he was unable to contradict the victim from her earlier statements during the course of the trial. Furthermore, there are lot of contradictions and improvements in the version put forth by the prosecution, resulting in the prosecution failing to prove the case of the appellant beyond the shadow of reasonable doubt. Lastly, the prosecution did not examine any independent or disinterested witness, which is bound to be looked at with suspicion.

7. Learned State counsel opposes the appeal filed by the appellant on the ground that the charges for the offences punishable under Section 506 IPC and Section 6 of the POCSO Act have 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. It is true that there was a delay of 3 days in the registration of the FIR, however, a perusal of the trial record indicates that sufficient reasons have been provided so as to justify the said delay. Although the FIR was registered on 14.04.2013, the matter was reported to the police on 13.04.2013. Moreover, on the day of the incident, the appellant had threatened the complainant of dire



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consequences if she disclosed the offence to anyone. Yet just after two days of the incident, the complainant/mother of the child/victim got courage and she informed her parents and other relatives of the incident and on the same day a written complaint was moved before the police. This has been the consistent view of the prosecution since the beginning of the proceedings. The explanation is not an after-thought. Nothing has been brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered.

9. Mere delay in lodging the FIR cannot be a ground by itself to acquit the appellant. A three Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan vs. Narayan 1992(3) SCC 615***, speaking through Justice A.M. Ahmadi, observed as follows:

"True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police..."

Reliance in this regard can also be placed on the judgments of the Hon'ble Supreme Court rendered in ***State of Rajasthan vs. N.K. 2000(5) SCC 30*** and ***Karnel Singh v. State of M.P. (1995)5 SCC 518***, among others.

10. Additionally, there is clinching medical evidence supporting the case of the prosecution. The MLR (Ex.P5) has been duly proved on record by PW4, namely, Dr. Manjula, who medico legally examined the victim on 13.04.2013 at about 10:30 PM. As per the medical report, redness, tenderness and loosening of anal sphincter was present on the person of minor victim which clearly points towards aggravated penetrative sexual assault on the child/victim.

Dr. Vimal Jain, who was examined as PW-11, had medico legally examined the appellant and proved his MLR (Ex.P11). As per his medical opinion, there was



nothing to suggest that the appellant could not perform sexual intercourse. A study of the FSL report (Ex.P15), also corroborates the case of the prosecution as the report states that human semen was detected on the jeans worn by the child/victim at the time of the incident.

11. Lastly, the submission advanced with respect to the material contradictions and improvements in the testimonies of the prosecution witnesses, 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 one year from the date of the occurrence. Also, the victim was only 8 years old at time of the incident and therefore, some minor additions and omissions are bound to occur. Be that as it may, the evidence on record is sufficient to affirm the guilt of the accused on the charge framed against him beyond the shadow of resonable doubt.

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.

(HARPREET SINGH BRAR)
JUDGE

Reserved on: 18th September, 2024
Pronounced on: 20th September, 2024
Ajay Goswami

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