



CRA-D-895-2019 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-D-895-2019 (O&M)
Reserved on:01.07.2024
Pronounced on:17.07.2024

Suraj ... Appellant

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Anoop Singh Sheoran, Advocate for the appellant.
Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

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SUKHVINDER KAUR, J.

1. The present appeal has been filed by the sole accused/appellant – Suraj against his verdict of conviction and order of sentence dated 28.08.2019 passed by ld. Special Judge, Rewari, whereby the appellant has been convicted and sentenced as follows:

Sr. No.	Offence under sections	Imprisonment RI for	Fine	In default of payment of fine RI for
1.	Sections 376(3) IPC and 4 of POCSO Act	20 years	Rs.20,000/-	2 months
2.	Section 363 IPC	3 years	Rs.2000/-	7 days
3.	Section 366 IPC	5 years	Rs.5000/-	15 days
4.	Section 506 IPC	2 years	Rs.2000/-	7 days

All the substantive sentences were to run concurrently and the period of detention already undergone by the convict during the

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investigation, inquiry or trial was ordered to be set off against the sentence of imprisonment imposed upon him as per provisions of Section 428 Cr.P.C.

2. The factual scenario as unfolded by the prosecution is that complainant – mother of the prosecutrix filed a complaint Ex.P25 before the SHO, Police Station Model Town, Rewari on 09.10.2018 alleging that she was living as a tenant in the house of Hukam Chand in Uttam Nagar since one month. Her daughter/prosecutrix, aged about 13 years, was a student of 7th class. On 10.05.2018 at about 10:00 AM, she went to the neighbouring shop to purchase soap but she did not return home. She enquired about her at the said shop but her whereabouts could not be known. She also searched for her with their friends and relatives but she could not be traced. She was having a mobile phone containing Sim No.80593-62167 which was reporting to be out of coverage area. Victim was wearing a purple coloured salwar suit. It was prayed that her missing daughter be traced.

3. On the basis of the aforesaid complaint, FIR No.0162 dated 10.05.2018 under Sections 363/366-A IPC was registered at Police Station Model Town, Rewari. Investigation was started. School leaving certificate of the prosecutrix was obtained, as per which her date of birth was 10.08.2005. Prosecutrix was recovered on 13.05.2018 from Muradabad, UP. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded and she was also got medico legally examined at Government Hospital, Rewari. She was produced before CWC for counselling. Thereafter offences under Section 4 of the POCSO Act and Section 506 IPC were added. On 14.05.2018, accused Suraj was arrested from Muradabad, UP. He was got medico legally



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examined. During investigation, the complainant also produced her caste certificate and thereafter offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was added in the FIR. Statements of the witnesses were recorded. After completion of investigation, challan was presented in Court on 19.07.2018.

4. After finding a prima facie case against the accused, he was charge sheeted under Sections 363/366/376(3) and 506 IC, Section 4 of the Protection of Children from Sexual Offences Act and Section 3(2) (va) of the SC/ST Act to which he did not plead guilty and claimed trial.

5. Learned trial Court culled out the following points for determination:

- “1. Whether the prosecutrix was minor at the time of occurrence;*
- 2. Whether the accused had abducted/kidnapped the minor prosecutrix out of lawful guardianship;*
- 3. Whether the accused had committed aggravated penetrative sexual assault/rape with the minor prosecutrix;*
- 4. Whether the accused had threatened the prosecutrix with dire consequences.”*

6. In order to prove its case, prosecution examined PW1 Sushil Kanta, Head Teacher, Government Primary School, Dhisa Ki Dhani, District Rewari, who deposed that as per the school record, prosecutrix had studied upto 5th class in their school and her date of birth was 10.08.2005.

7. PW2 Sandeep Kumar, Principal, Satish Public School, Delhi Road, Rewari also brought the school record as per which the prosecutrix was admitted in their school in 6th class on 21.04.2018 and her date of birth



was recorded as 10.08.2005.

8. PW3 HC Charan Singh No.646 SP office, Rewari, prepared the scaled site plan of the place of occurrence Ex.P5 on the pointing of the victim.

9. PW4 Dr. Baljeet Yadav, Medical Officer, Government Hospital, Rewari conducted medico legal examination of Suraj S/o Banwari and produced on record his MLR Ex.P7. PW4 stated that after general physical examination of the accused, nothing was suggestive that he was incapable of performing sexual intercourse.

10. PW5 Dr. Renu Verma, Medical Officer, Civil Hospital, Rewari medico legally examined the prosecutrix on 13.05.2018 at Government Hospital, Rewari and in her affidavit Ex.PW5/A stated that no fresh external or internal injury was seen, hymen was ruptured 'old healed' and possibility of forceful penetration could not be ruled out, although no semen had been detected.

11. PW6 Janak Singh, Clerk Office of Tehsildar, Rewari brought the scheduled caste certificate of the victim Ex.P17.

12. PW7 ASI Rajesh Kumar No.18, Police Station Model Town, Rewari is a formal witness, who tendered into evidence his affidavit Ex.PW7/A.

13. PW8 ASI Randhir Singh No.401, Police Station Model Town, Rewari is the Investigating Officer of this case. He has stated that on 10.05.2018, mother of the victim came present in their police station and presented a complaint on the basis of which, he recorded FIR Ex.P17. On



12.05.2018, he along with maternal uncle of the victim and LC Manjeeta Singh went to Muradabad, UP. After receiving the information that accused was resident of Muradabad, UP, they visited the house of the accused but he could not be found. They searched for accused and victim. On 13.05.2018, the victim was seen standing outside police post Asiana by her maternal uncle and she was taken in custody. They made inquiry from victim who disclosed about the incident. Thereafter, they left for Rewari along with victim and he handed over the victim to LASI Kamlesh. On 14.05.2018, he accompanied LASI Kamlesh, victim and her maternal uncle to Muradabad. He along with local police reached at the house of the accused and he was arrested. Victim demarcated the place of occurrence vide memo Ex.P20 and the accused also demarcated the place of occurrence vide memo Ex.P22.

14. PW9 LC Santosh No.563, Police Station Model Town, Rewari is also a formal witness, who also tendered in evidence his affidavit Ex.PW9/A.

15. PW10 EHC Ram Avtar No.239, Police Station Model Town, Rewari accompanied LASI Kamlesh and accused Suraj to Civil Hospital, Rewari where the accused was medico legally examined by the doctor.

16. PW11 Nitu Saini, Counsellor District Child Protection Unit, Rewari has stated that victim, aged about 13 years was produced before her on 15.05.2018 for counselling and she was accompanied by her mother. She counselled her and her report is Ex.P24 which bears her signatures.

17. PW12 is the complainant in the present case and is the mother of the victim. She stated that she belongs to *dhanak* caste which is a



scheduled caste. She was living with her family in the house of Hukan Chand at Uttam Nagar, Rewari for the last one month prior to the occurrence. She has one son and one daughter. Her daughter was aged about 13 years and was studying in 7th class in Bal Bharti School. On 10.05.2018 at about 10:30 AM, her daughter had gone to grocery shop near their house, for purchasing soap, but she did not return home. She along with her relatives searched for her everywhere but could not trace her. She reported about her disappearance at PS Model Town, Rewari and gave complaint Ex.P25 to the police. Later on her daughter was recovered and she was brought by the police and handed over to her after recording her statement and conducting of medical examination.

18. PW13 Rajesh Kumar No.49/RWR, Rewari City Traffic Rewari is a formal witness, who has tendered into evidence his affidavit Ex.PW13/A.

19. PW14 LC Manjeeta Singh accompanied the police party on 13.05.2018 when victim was recovered while standing outside police post Asiana, Kath road Muradabad, U.P. and was taken into custody vide recovery memo Ex.P19 and on the same day medico legal examination of the victim was got conducted at Government Hospital, Rewari.

20. The most material witness of the prosecution is the prosecutrix herself, who has stepped into the witness box as PW15. She stated that on 10.05.2018 at about 10:00 AM, she had gone to the grocery shop to purchase soap, where she met accused Suraj, who was already standing there. He asked her to accompany him. On her refusal to do so, he threatened to kill



her and also threatened that he would commit suicide. He told her that he would take her to Dharuhera but instead of that he took her to Muradabad to his house where he forcibly committed rape upon her. She raised alarm but nobody came to her rescue. On 11.05.2018, her maternal uncle along with police party came to the house of the accused and brought her back to Rewari. Thereafter, she was taken to Government Hospital, Rewari for her medico legal examination. MLR Ex.P10 bears her signatures and then the counselling officer had recorded her statement. Her statement under Section 164 Cr.P.C. was also got recorded before the Magistrate which is Ex.P15/A and bears her signatures at point 'A'. Then police party took her to place of incident at Muradabad. She got the spot demarcated vide memo Ex.P20. She identified the accused present in the Court.

21. PW16 ACP Satya Pal, Head Quarter, Gurugram has stated that after addition of offence under the SC/ST Act, file was handed over to him for further investigation and he had recorded statements of the witnesses under Section 161 Cr.P.C.

22. PW17 LASI Kamlesh Kumari No.709, PS Bawal, got recorded statement of the victim under Section 164 Cr.P.C. on 13.05.2018 and also got her medico legally examined on the said date. After these proceedings, she handed over the victim to her mother vide *hawalgi* memo Ex.P26. On 14.05.2018, she arrested the accused from Muradabad, U.P. After visiting the place of occurrence, she prepared rough site plan Ex.PW17/D and also got prepared scaled site plan Ex.P5 by HC Charan Singh. She also got medico legally examined accused/Suraj at Government Hospital, Rewari.



23. PW18 Lala Ram is the maternal uncle of the victim. He has stated that on 13.05.2018, he along with ASI Randhir Singh had gone to Muradabad from where her niece was recovered vide memo Ex.P19. On 14.05.2018, he along with ASI Kamlesh, ASI Randhir and victim went to Muradabad, where victim demarcated the place of occurrence vide demarcation memo Ex.P20.

24. PW19 Sh. Amandeep, SDJM, Bawal has stated that on 13.05.2018, the police had moved an application Ex.PW17/A for recording of statement of the prosecutrix under Section 164 of Cr. P.C. and on the same day, he had recorded statement of the prosecutrix Ex.PW15/A and in this regard, he had passed order Ex.PW19/A.

25. After closure of evidence of the prosecution, statement of the accused under Section 313 Cr.P.C. was recorded, wherein he pleaded innocence and false implication. However, no evidence in defence was led by the accused.

26. Learned counsel for the appellant contented that in the complaint Ex.P25, complainant had neither named the accused/Suraj nor is there any whisper about even a suspicion regarding his involvement in her daughter going missing. He further contended that there are glaring discrepancies in the statement of the prosecutrix as she failed to disclose in which vehicle she was allegedly taken to Muradabad by accused Suraj. She was not able to tell at what time they reached Muradabad and after how many days she returned to her house from Muradabad. He has argued that even as per medical examination of the prosecutrix, no internal or external



injury was detected on the person of the prosecutrix, which again belies the allegation of rape. As per Ex.P16, no semen has been detected. Learned counsel urged that entire story of the prosecution had been concocted just to extract money from the accused. He submitted that judgment of conviction passed by learned trial Court is illegal, unjustified and deserves to be reversed and that accused should be acquitted of the charges against him.

27. On the other hand, learned State counsel contended that sufficient evidence has been produced on record by prosecution to establish the guilt of accused beyond reasonable doubt and that accused has been rightly convicted by the trial Court.

28. We heard learned counsel for the appellant as well as learned State counsel and have thoroughly perused the record of the case.

29. First of all, it was incumbent upon the prosecution to prove the age of the victim. In view of the invocation of Section 6 of the POCSO Act to prove the same prosecution has examined PW1 Sushil Kanta, Head Teacher, Government Primary School, Dhisa Ki Dhani, District Rewari and PW2 Sandeep Kumar, Principal, Satish Public School, Delhi Road, Rewari, who have produced the school record to prove that date of birth of the prosecutrix was 10.08.2005 and as such on the date of incident i.e. on 10.05.2018, the prosecutrix was aged about 13 years of age. Mother of the prosecutrix while appearing as PW12 has also stated that her daughter/ prosecutrix was 13 years old. The prosecutrix herself while appearing in the Court has disclosed her age as 13 years. This evidence has remained unchallenged and unrebutted. Contention regarding age of the prosecutrix



was not even raised by learned counsel for the appellant/accused while addressing arguments. Hence, as per Section 2(d) of the POCSO Act, the prosecutrix/victim is established to be a child.

30. It is a trite law that testimony of a victim in a case of sexual offence is vital and if found worthy of credence, reliable and pristine, requires no corroboration. The Court may however seek corroboration from other evidence in a given case. In the instant case, perusal of testimony of PW15/prosecutrix reveals that the minor victim has given a consistent and graphic narration of the occurrence. She remained consistent in her statement on all the material points. Though she was cross-examined at length but her testimony could not be shattered during her cross-examination. Learned trial Court has duly recorded its satisfaction about competence of the victim to depose, after putting requisite questions to her. It is only after noting that victim was able to give rational answers to the questions put to her, that learned trial Court recorded its satisfaction that the witness had fairly satisfactory level of understanding and she could give rational answers to questions put to her. Thereafter her statement was recorded. The so called discrepancies sought to be pointed out by learned counsel for applicant/appellant are irrelevant and immaterial in as much as the victim remained consistent in her testimony with regard to the fact that accused had forcibly raped her and her statement inspires confidence. So though, PW15 is a child witness she has correctly been held to be a credible and reliable witness who has faithfully narrated the occurrence in a consistent manner. Learned counsel for the applicant/appellant was unable to



point out anything on record which impinges upon her credibility.

31. Furthermore, version of prosecutrix has been duly corroborated by PW12, who is mother of the victim and also the complainant in the present case. The defence has failed to bring on record any enmity of the complainant or her daughter with the accused. No motive has been attributed for false implication of the accused in the present case. No reasons are forthcoming as to why the complainant would put her minor daughter to disrepute by fabricating a false case. Reliance in this respect can be placed upon **Wahid Khan Vs. State of Madhya Pradesh, 2010 (2) SCC 9**, wherein the Hon'ble Apex Court has held as under:

“It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.”

32. Testimony of prosecutrix is also duly corroborated by the medical evidence placed on record. PW5 Dr. Renu Verma who had medico legally examined the prosecutrix had clearly opined that possibility of sexual act with the victim could not be ruled out, although, no semen had been



detected.

33. We do not find any substance in the contention of learned counsel for the appellant that sexual assault upon the victim is not proved because as per FSL report Ex.P16, human semen was not detected in Ex.P1A to P1E. Perusal of statement of PW5 Dr. Renu Verma reveals that she had stated that as per examination hymen was 'ruptured old healed'. She specifically stated that possibility of penetrative sexual assault could not be ruled out. Mere absence of semen in the given factual matrix is not a ground to disbelieve the prosecution version.

34. Section 3 of the POCSO Act which defines penetrative sexual assault reads 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. ”

35. Reading of the aforesaid Section shows that ejaculation of semen is not necessary pre-requisite for the purpose of proving penetrative



sexual assault. In this context reliance can be placed upon **Tamil Nadu Vs. Ravi @ Nehru, 2006 (3) RCR Criminal 500**, wherein the Apex Court has held as under:

"14. We may also notice the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads thus: "Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."

36. In the light of the above, evidence on record clinchingly proves that there had been a penetrative sexual assault committed by the accused against the victim minor girl of 13 years.

37. Learned counsel for the appellant has tried to dilute the credibility of statement of the victim by pointing out that while appearing in the Court, she had stated during her cross-examination that her brother Rahul along with Suraj had gone to Delhi for shopping. She could not say



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whether Suraj ever had a meal in their house, which falsifies her statement that accused/Suraj was not known to her prior to the incident. However, this is irrelevant and immaterial because even if it is presumed that prosecutrix was a consenting party even then her consent is immaterial, she being a minor at the time of the occurrence.

38. No other glaring discrepancies have been pointed out by counsel for the appellant which are material and go to the root of the prosecution case so as to cast a doubt thereon.

39. For the reasons recorded hereinabove, we find no merit in this appeal which is accordingly dismissed while affirming the judgment and order dated 28.08.2019 passed by learned Special Judge, Rewari.

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

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

17.07.2024
harjeet

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |