

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

241

2024:PHHC:008185-DB

MRC-6-2022 and

CRA-D-159-2023

Date of Decision: 18.01.2024

State of Haryana

.....Appellant(s)

Versus

Jaspal Singh @ Kala

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Pawan Girdhar, Addl. A.G., Haryana.

Dr. Anju Sharma, Advocate,
for the respondent (in MRC-6-2022)
for the appellant (in CRA-D-159-2023).

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of the criminal appeal filed by the sole appellant and the reference which has been submitted to this Court by the Additional Session Judge, (Fast Track Special Court), Sirsa keeping in view the death sentence awarded to the convict subject to the confirmation under Section 28(2) and Section 366 Cr.P.C. in FIR No.124 dated 28.09.2020 lodged under Sections 376(2)(n), 376(f), 376AB, 506 IPC and under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'), P.S. Women Sirsa. Vide the impugned judgment dated 23.11.2022, the Special Court held that the prosecution has been able to prove its case beyond reasonable doubt against the accused, who is the father of the victim, who was around 12 years old on the date of the incident on the intervening night of 26/27th September, 2020 having been born on 18.08.2008

and also under Section 506 IPC.

2. The matter was put up on the quantum of sentence on the next day and placing reliance upon various judgments and keeping in view the fact that the violator of the minor girl was the guardian himself and, therefore, no liberal attitude should be taken and the incident had taken place within the house, the sentence of death was awarded under Section 6 of POCSO Act and for 7 years apart from the fine imposed under Section 506 IPC to the tune of Rs.50,000/- which was to be disbursed to the victim as compensation under Section 357 Cr.P.C. A recommendation was also given under Section 357A Cr.P.C. to the District Legal Services Authority, Sirsa for awarding compensation of Rs.5,00,000/- to the victim.

3. The reasoning which prevailed to record the conviction and the passing of the extreme order of death penalty was that the factum of the aggravated penetrative sexual assault having been done was proved from the statements of the PW-1- the victim, PW-7-the mother Gurmeet Kaur, PW-5 Sukhdeep Kaur, the neighbourer. Thus, the appellant was held guilty of having committed the aggravated penetrative sexual assault/rape on the intervening night on the cot in his own house and the material witnesses having withstood lengthy cross examination and their statements remaining unshaken and consistent at all stages prevailed with the Trial Court. The medical evidence in the form of the examinations of the victim and the witnesses and the statement given by her and the fact that there were blood stains present on the *pajami* and there was a small tear present alongwith bleeding were the grounds which the Trial Court kept in mind. The DNA report also having supported the said charge as such with human semen being

the blood sample of the accused was reasoning given keeping in view the provisions of Section 29 of the POCSO Act and the appellant having failed to rebut the presumption. It was also noticed that no defence evidence as such had been led and neither any plausible defence had been put to the main witnesses, the victim, the mother, the neighbourer and to the Investigating Officer. The factum of the birth certificate having been proved by the concerned witness appearing for the Municipal Council, Sirsa and which had matched with the school record as such to show that her age was 12 years having been born on 18.08.2000 and, therefore, she was a child under Section 2(d) of the POCSO Act and her statement had been recorded under Section 164 Cr.P.C. also wherein she had, at the initial stage also, stated the manner in which the violation has taken place was the reason as such which had prevailed with the trial Court.

4. Keeping in view the conviction recorded, we are of the considered opinion that the following two questions of law would arise for consideration:-

- (i). Whether the conviction is liable to be sustained?
- (ii). Whether the sentence of death as such is liable to be affirmed?

5. In our considered opinion, regarding the first issue, counsel for the appellant has not been able to convince us regarding the factum of the crime having been not committed and the minor discrepancies which have been sought to be highlighted, which are without any basis. The prosecution has proved the charge beyond a shadow of doubt and there is no such inordinate delay which would go on to show that the appellant was falsely implicated which is the case as such held out that the mother was having an

extra marital affair with the ex-Sarpanch and that the child in question was having an affair with someone which had been objected to.

6. The sequence of events would go on to show that PW-14-Sunita Rani, the Investigating Officer got information that the crime had been committed against the child and had been asked to proceed at the spot and had met the victim and her mother at the bus stand, Bhangu alongwith the neighbourer Sukhdeep Kaur. The legal aid counsel had been accordingly asked to come at the spot, who had reached the spot, the victim had got her statement recorded which was read over to her and the victim had signed in Hindi and her mother had affixed the right thumb impression on 28.09.2020 (Ex.P-13). The offence under Sections 376, 376(2)(f)(n), 376AB and 506 IPC and under Section 6 of the POCSO Act having been made out, the information was sent to the police station for registration of the case in the FIR at 4.50 p.m. A perusal of the statement (Ex.P-1) would go on to show that specific averments were made that on the said night of 26/27.09.2020, the father had turned out the mother from the house after quarreling with her and the minor had been picked up from the cot on which she was sleeping with her brother and violated on another cot after taking off her lower clothing on two occasions and threatened that she would be killed if she states the incident to anyone. The father, having gone away from the house in the morning and on account of having severe pain in the stomach, she had told about the occurrence to her mother a day later and who had taken her to the Sarpanch, who had made a phone call to the police station. The statement is also duly signed by the legal aid counsel, though not examined as a witness.

In the statement also, there is mention that quarrel used to take place in the

6.38 p.m. on 28.09.2020 and the police made a request for the medical to be conducted by the Medical Officer, General Hospital, Sirsa on the said day itself (Ex.P-22).

7. The MLR dated 28.09.2020 (Ex.P-6), which was done in the presence of the mother, showed the presence of a tear on the *pajami* and the discharge and the blood stain apart from the fact that there was also a tear present at 6.00 o'clock on the vaginal wall and there was bleeding. The factum of assault by the father is also mentioned and told to the Medical Officer PW-4 Dr. Manisha which is incorporated which was duly proved by examining her and she had submitted her affidavit in affirmative which is to be read as part of examination-in-chief. In cross examination, the only infirmity which they could point out was that the victim as such deposed about the assault by her father earlier also 4-5 years ago for 2-3 times. The victim was also taken to get her statement recorded under Section 164 Cr.PC. on 29.09.2020. Before the Chief Judicial Magistrate, Sirsa, wherein she had repeated the version which she had already given to the police wherein there is mention of a upper room and the mother being hit with a brick. The Magistrate had also noticed that being a child she could not specify regarding the words of 'rape' and 'assault' but had defined them in her own language. The arrest of the appellant was made on the same day (Ex.P-16) by the Investigating Officer namely Sunita Rani PW-14 from the bus stand being produced by the Member, Panchayat and thereafter taken to the place of occurrence wherein, the demarcation had been done and thereafter produced before the hospital authorities for medical examination. The said investigating officer had earlier also got recovered the bed sheet on

for which the DNA report has also come (Ex.P-30) wherein the factum of the allelic pattern of the bed sheet matched with the blood sample taken of the accused.

8. The namesake of the first investigating officer namely Sunita Rani PW-14 had collected the birth certificate (Ex.P-8) and the copy of the birth register (Ex.P-10) from the Municipal Council, Sirsa which had been proved by the Clerk Sandeep Kumar PW-6. The date of birth has, thus, been proved to be 18.08.2008 and the birth certificate mentions the name of the appellant i.e. Jaspal Singh, being father of the victim and the name of the mother is Gurmeet Kaur which was registered on 26.08.2008, which is 8 days after the date of birth itself. The date of birth as such has co-related to the entry also made in the school register which was further proved by examining the head teacher PW-17 Bihari Lal of the Government Girls Primary School, Bhangu from whom the birth certificate (Ex.P-32) had also been proved and the admission form Ex.P-33, thus, completing the chain of circumstances of the victim being a minor. The same also goes on to show that the admission was made on 24.03.2013 in the school, seven years before the incident and the parents' name also matches and the evidence has been duly corroborated by the medical experts as such and the factum that the girl was examined at the earliest point of time would go on to show that the violation had taken place and in the absence of any delay.

9. There is no reason as such to doubt the sterling quality of the statement of the witness who had the onerous task of deposing against her father at the young age. The victim having, at the initial stage, deposed before the Magistrate on 29.09.2020 also as per the statement under Section

the Investigating Officer which was done on the very next date after her medical examination on the 28.09.2020 by filing an application (Ex.P-24).

10. The appellant has, as such, not been able to put forth any line of defence which was clear from the statement under Section 313 Cr.P.C. also wherein the only plea taken is that he had been falsely implicated in the present case and the police had lodged a false case against him and obtained his signatures on some blank papers on printed performa which was converted into a disclosure statement and a demarcation memo. No such defence was also taken that his wife was having an affair with the ex-Sarpanch as such due to which he has been falsely implicated which is now sought to be argued. The neighbourer Sukhdeep Kaur PW-5 has also deposed regarding the factum that she was in good terms for the last 15 years with the mother and she had telephonically informed the Sarpanch regarding the incident in question and denied the suggestion that she had any personal rivalry with the accused or she has deposed falsely. Similar is the statement of the mother Gurmeet Kaur PW-7 that Jasbir Singh, Sarpanch had made a phone call to the police officials and no suggestion has been put to her that she was having an affair with the said ex-Sarpanch, whose help she has sought. She has duly explained that the sitting Sarpanch Manga Singh was not hearing her out and she never went to him and had gone to the house of the ex-Sarpanch. She has also stated that her mother-in-law had supported her who stated that if the accused had committed the wrong act, he should face the consequences and also stated that the mother-in-law had also accompanied her to the police station alongwith Jasbir Singh, the ex-Sarpanch. She denied the factum that the victim had any illicit relations with

11. The contention raised by counsel for the appellant that there are contradictions that in the statement of the victim which was firstly recorded on 28.09.2020 (Ex.P-1) and the statement given on the next date before the Chief Judicial Magistrate under Section 164 Cr.P.C. on 29.09.2020 (Ex.P-3) and the statement of the mother PW-7 Gurmeet Kaur that the mother had been given beating at 4.00 a.m. and returned to the house at 6.00 a.m. are of no consequence. This Court cannot lose sight of the fact that firstly the child as such has been violated who is barely 12 years old and had to face the situation which would be unwarranted for a minor child and who apparently belongs to a poor strata of society who was coping with incidents of domestic violence between her parents to the extent that the appellant as such used to beat the mother after taking liquor. The factum that the mother PW-7 Gurmeet Kaur has thumb marked on her statement would as such go on to show that she was illiterate and not able to sign whereas the victim was barely studying in the 7th grade at the time of her deposition and has signed in vernacular. Even when she had to depose as such in the Court against her father, she had broken down and after being made comfortable, she could continue with her deposition while repeating the incident which had happened to her. The stand is consistent that there was a delay of one day before she had the courage as such to inform the mother when she had come back in the morning. The deposition would go on to show that there is only one room in the house, which would be clear from the site plan as such.

11.A It is settled principle that such minor inconsistencies which are sought to be highlighted as such cannot go on to shatter the case of the prosecution which has proved the charge without an iota of a doubt by

has been duly proved. The argument that the DNA test as such was of sample taken from the bed sheet which was in the said house as such, thus, even if to be ignored on the ground that since the appellant was married and the wife was present at home, is not such an argument keeping in view the fact that there were blood stains found present on the lower clothing (*pajami*) of the minor which was also torn and bleeding was found present on her medical examination after a day. She had not even attained menarche (the first occurrence of mensuration) and was not even fully developed physically and her breast development was on stage 3 of tanner staging and, therefore, the argument that she was having independent relationship with someone else is not liable to be accepted. Merely because there is an improvement that she was also assaulted earlier 4-5 years ago, would not improve the case of the appellant in any manner.

12. Resultantly, we are of the considered opinion that the findings which have been recorded are on the basis as the prosecution has proved its case regarding the conviction which are not liable to be interfered with. The appellant has not been able to even get a single person to depose in his favour regarding his false implication, as neither his brother who had adopted one child of the appellant has stepped forward nor his mother has come forward, leave alone any independent person. Therefore, the conviction is upheld keeping in mind the provisions of Section 29 of the POCSO Act.

Quantam of Sentence

13. The second question which arises is that whether the death sentence is liable to be sustained in the facts and circumstances of the case.

No doubt that the act as such is horrific and there can be no sympathy shown

which was given in adoption to his brother. Section 5 of the POCSO Act defines aggravated penetrative sexual assault whereas sub-clause (n) provides that whoever being relative of a child through blood and who is living in the same or shared household commits penetrative sexual assault on such child would come within the definition. Section 5(n) reads thus:-

“5. Aggravated penetrative sexual assault.-

(a) to (m) xxx xxx xxx

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or”

14. Section 6 of the POCSO Act provides that the punishment for aggravated penetrative sexual assault which is defined under Section 2(m) of the POCSO Act shall not be less than 20 years but which may extend to imprisonment for life. The said Section further defines that the said imprisonment for life is to mean imprisonment for the remainder of natural life of that person and the third contingency is that the punishment can be of death. The liability to pay fine is also provided which is under sub-Section (2) to be just and reasonable and to be paid to the victim to meet medical expenses and for the rehabilitation of the victim. Section 6 of the POCSO Act reads thus:-

“[6. Punishment for aggravated penetrative sexual assault.- (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to

imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]”

15. It is not disputed that the principle of 'the rarest of the rare cases' is to be applied when the sentence of death is to be awarded which was laid down by the Constitution Bench of the Apex Court in ***Bachan Singh vs. State of Punjab, AIR 1980 SC 898*** where the constitutional validity of providing the death sentence as such under Section 302 IPC was the subject matter of consideration. The appellant's death sentence was confirmed by the High Court on account of the three murders committed and the fact that he was already previously convicted for murder and he had served out the life sentences in the earlier cases. Resultantly, the challenge as such was repelled to the constitutionality of Section 354(3) Cr.P.C. also. The factum of aggravating circumstances and the mitigating circumstances were duly discussed.

16. In ***Machhi Singh and others vs. State of Punjab, (1983) 3 SCC 470***, a three-Judge Bench as such examined the issue that the collective conscience of the community, if is shocked, and the murder is extremely brutal, grotesque, diabolical and revolting and committed in a dastardly manner, the principle of 'the rarest of rare cases' would be attracted. The Court was dealing with the loss of 17 lives in the series of 5 incidents in 5 different villages in one night and resultantly while examining each individual person's role also went on to uphold the death penalties of some of

17. Another three-Judge Bench, in ***Swamy Shraddananda vs. State of Karnataka, (2008) 13 SCC 767***, the Apex Court was considering the reference of the trial Court whereby the death sentence had been imposed upon the appellant. Keeping in view the law laid down, the Apex Court substituted the death sentence awarded by the trial Court after noting that on the earlier occasion, two of the Judges hearing the case as such had differed on the death penalty which had been imposed and resultantly directed that the imprisonment would be for life and the convict was not to be released from prison for the rest of his life.

18. In ***Mohd. Mannan @ Abdul Mannon vs. State of Bihar, (2019) 16 SCC 584***, keeping in view the provisions of Section 354(3) Cr.P.C., keeping in mind that the case falls within the category of 'the rarest of rare cases', the brutality and the heinous nature of the crime and the gruesome manner in which it was committed was held not to be the sole criteria. The Court was also to take into consideration the criminal state of his mind, social and economic background while awarding death sentence which is an exception. Thus, the principle which has been laid down by the Apex Court is that the snuffing out the life of the person under Section 354(3) Cr.P.C. is not to be taken lightly.

19. As noticed, the appellant herein apparently belongs to the marginalized part of the society and was doing labour work and did not have any criminal background and he could not bring up one of the children who has also been given in adoption to his brother would also go on to show that it might have been for the purposes of not being able to maintain the child on account of not having substantial means, which only goes on to substantiate

second contingency.

20. In *Lochan Shrivastava vs. State of Chhattisgarh, 2022 (1) RCR (Criminal) 328*, another three-Judge Bench commuted the death penalty to life imprisonment for the rest of the life upholding the conviction under Section 363, 366, 376(2)(i), 377, 201 and 302 read with Section 376A IPC and Section 6 of the POCSO Act. In the said case, the victim as such was three years old and the appellant as such was the neighbour who was a resident of the same building. The case was also based on circumstantial evidence and the conviction was accordingly upheld while dealing with the issue of capital punishment. It was noticed that the appellant was a young man of 23 years and there were no criminal antecedents and it was the first offence committed which is heinous but he was not a hard core criminal and, therefore, the possibility of being reformed and rehabilitated and foreclosing the option of a lesser sentence was kept in mind.

21. In *Manoharan vs. Inspector of Police, (2019) 7 SCC 716*, where two innocent children aged 7 years and 10 years had lost their lives and also been seriously abused, the death sentence which had been confirmed by the High Court was modified by a three-Judge Bench of the Apex Court keeping in view the aggravating and mitigating circumstances wherein there was a cleavage of opinion to the extent that the majority opinion confirmed the death sentence whereas there was a minority view that it was not a rarest of rare case and by coming to the conclusion that it did not fall within the category of 'the rarest of rare cases'.

22. In *Pappu vs. State of Uttar Pradesh, (2022) 10 SCC 321*, another three-Judge Bench of the Apex Court, while dealing with the murder

awarded was liable to be commuted into imprisonment for life with the stipulation that the appellant shall not be entitled to pre-mature release or remission before actual imprisonment for a period of 30 years while noting that the appellant was known to the child, whom she used to address as an uncle. In *Kashi Nath Singh @ Kallu Singh vs. The State of Jharkhand*, (2023) 7 SCC 317, for the rape and murder of a 14 years old girl, the death penalty as such was converted into a fixed term sentence for 30 years without any benefit of remission keeping in view the fact that he was 26 years of age.

23. Keeping in view the above principles laid down in the above authorities, we are of the considered view that the appellant, who was aged 53 years at the time when charge was framed against him on 10.03.2021, would deserve the sentence provided under the second option under Section 6 of the POCSO Act, which would extend to imprisonment for life for the remainder of his natural life keeping in view the fact that the crime as such was committed by the natural guardian i.e. father himself within the confines of the house.

24. In such circumstances, we decline the reference i.e. MRC-6-2022 as such regarding the sentencing to death and modify the same and thus partly allow the criminal appeal i.e. CRA-D-159-2023 by converting the death sentence to sentence without remissions for the remainder of the life as provided under Section 6 of the POCSO Act.

(G.S. SANDHAWALIA)
JUDGE

18.01.2024
shivani

(LAPITA BANERJI)
JUDGE