



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

CRA-D-836-DB-2017 (O&M)

Reserved on: May 25, 2026

Date of Pronouncement: May 29, 2026

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Subegh Singh

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr.Brijesh Nandan, Advocate
for the appellant.

Mr.Sidharth Attri, AAG, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal is to the judgment dated 12.12.2016 passed by learned trial Court, whereby, appellant-Subegh Singh was convicted for the commission of offence under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and he was sentenced undergo rigorous imprisonment for a period of 12 years and fine of Rs.10,000/- was also imposed, in default whereof, to further undergo rigorous imprisonment for a period of six months.

The essential facts, to be noticed, are as on following page:-



That, a case was registered, at the instance of complainant Raj Kaur. As per the statement recorded by Raj Kaur, on 12.06.2016, in the morning at about 7.00 a.m., her younger daughter/victim child had gone from the house for playing. When she did not return back home, Raj Kaur and her husband Charanjit Singh had proceeded in search of their daughter. The complainant heard cries of her daughter/victim child, from the house of Subegh Singh. In the meantime, their neighbour Roor Singh had also come. They all opened the door of the house of Subegh Singh, while giving pushes and saw Subegh Singh committing rape upon the victim child. They had rescued the victim child from the clutches of the appellant and raised hue and cry, as a result whereof, people of the neighbourhood gathered. Upon hearing about the occurrence, Subegh Singh was beaten by the people, who had gathered, at the spot and injuries were also caused to him.

On these allegations, FIR was registered and investigation was initiated. On that very day, Subegh Singh was arrested. He was subjected to potency test at Civil Hospital, Amritsar. Even, medico-legal examination of the child was conducted. Swabs taken during the medico-legal examination were despatched to Chemical Examiner, Kharar for detection of spermatozoa. The statement of the victim child under Section 164 Cr.P.C. was recorded. On completion of the investigation, challan was presented.

In pursuance of the commitment proceedings, on the basis of the report under Section 173 Cr.P.C. and the documents annexed thereto, charge was framed against the appellant-Subegh Singh under Section 6 of the POCSO Act and in the alternative, under Section 376 IPC.

In an endeavour to establish its case, the prosecution examined



as many as 13 witnesses, besides adducing documentary evidence.

On closure of the prosecution evidence, the statement of the appellant under Section 313 Cr.P.C. was recorded, wherein, he had taken the plea, which is herein reproduced in verbatim:-

“I am innocent and have been falsely implicated in the present case. Raj Kaur, Roor Singh and Charanjit Singh all are relatives. I purchased a plot from Roor Singh and Roor Singh wanted to take back this plot from me. Roor Singh and his son Kala gave me severe bearings and after that they in connivance with Raj Kaur and Charanjit Singh, they have planted present false case against me. I have not committed any offence.”

However, the appellant did not lead any evidence in defence.

In view of the submissions made by the Public Prosecutor as well as learned defence counsel, learned trial Court had formulated point for determination, which is reproduced, as herein:-

“1. Whether 12.6.2016 at about 7.00 A.M. in the area of Naushera Colony, Amritsar, accused Subegh Singh committed aggravated penetrative sexual assault upon the victim child punishable U/s 6 of the Protection of Children from Sexual Offences Act, 2012?

Or in the alternative

Whether the accused is liable to be convicted Under Section 376 IPC for having committed rape upon the victim child?”

On appraisal of the evidence, learned trial Court had held the appellant guilty and convicted him for the commission of offence under Section 6 of the POCSO Act and sentenced him to undergo rigorous imprisonment, as noted in the earlier portion of the judgment.



Being aggrieved, the appellant/convict has filed the present appeal.

Rival parties heard.

At the very outset, learned counsel for the appellant had emphatically submitted that in order to secure verdict of conviction of the appellant, it was incumbent upon the prosecution to establish the guilt of the accused, beyond shadow of reasonable doubt. However, it is pointed out that there are various flaws, coming forth, in the version put forth by the prosecution, which negates the prosecution version and renders the same doubtful. In fact, learned counsel for the appellant submitted that a false case has been planted upon the appellant, on account of dispute with RoorSingh, from whom, the appellant had purchased the plot and said Roor Singh was seeking return of the same.

It is further submitted that the victim child has not been examined, which as such, raises question mark about taking place of the sexual assault. Furthermore, the testimony of PW-1 Raj Kaur, complainant, PW-3 Charanjit Singh, father of the victim and PW-2 Roor Singh, are not above board. Further, the report of Chemical Examiner has not been proved, which is a strong missing link and these flaws, when considered in unison, highly improbabilizes the sexual assault of the victim child by the appellant and the plea of false implication, as such, gains strength.

In refutation, learned State counsel submitted that the prosecution has successfully established the guilt of the appellant, beyond shadow of reasonable doubt. Complainant Raj Kaur, at whose instance, the prosecution proceedings were initiated, while in the witness box as PW-1,



had categorically deposed about the victim child to be her daughter, who is 5 years old and about the manner, in which the victim child was recovered from the house of the appellant. She proved her statement Ex.P1, which forms the basis of the prosecution version. Her testimony is in consonance with the prosecution version, which further gains strength from the testimonies of PW-3 Charanjit Singh and PW-2 Roor Singh, who were also present, at the time, when the victim child was recovered from the house of the appellant. Further, they had also deposed about the condition of the ravished child and also about the appellant to be present in the house, at the relevant time.

It is submitted that the evidence has been meticulously appraised by learned trial Court. So far as, plea of false implication is concerned, learned State counsel submitted that the same is quite vague and no evidence has been led to substantiate the said plea.

Keeping in view the nature of accusations against the appellant, the assessment of the age of the victim child, is of paramount consideration. In regard to the same, suffice to consider the testimony of PW-1 Raj Kaur, complainant as well as PW-3 Charanjit Singh, who are parents of the victim child and also of PW-6 Ramandeep Kaur, ANM, who had produced the original birth register of the year 2012, Block Verka and deposed that as per the record, the date of birth of victim child is **03.04.2012** and it was registered on **26.04.2012**. The certificate was prepared by her being a Local Registrar, Birth & Death-cum-ANM, which is Ex.P8 and attested copy of birth register is Ex.P9.

Even at every stage of preparation of documents, during the



investigation, the concerned persons like the Judicial Magistrate PW-13, who had recorded the statement under Section 164 Cr.P.C. as well as Dr.Swati Tyagi PW-5, who had medico-legally examined the victim, observed about age of the victim, to be 5 years, which fact, as such, is also spelt out from the birth record, as proved. Thus, it stands established that the victim was '**child**', as defined under Section 2(d) of the POCSO Act.

Keeping in view the age of the victim, the evidence, brought on record, ought to be appraised.

In a criminal trial, however, intriguing may be the facts and circumstances of the case, the charges made against the accused, must be proved beyond all reasonable doubts and requirement of proof cannot lie in the realm of surmises and conjectures.

To establish the sexual assault upon the victim child, the star witness examined is the mother of the victim i.e. PW-1 Raj Kaur, at whose instance, the case was registered. This witness has categorically deposed in consonance with the prosecution version, about the victim child having gone away from the house for playing, on the date of occurrence and not having returned back.

She further deposed about herself and her husband Charanjit Singh, having proceeded for the search of their daughter. She also deposed that while passing near the house of Subegh Singh, she heard cries of her daughter from that house. Roor Singh, their neighbour, also came there. They gave pushes to the door of the house of the appellant and went inside. She further deposed that panty of her daughter was removed and appellant-Subegh Singh was committing rape upon her. Her daughter was in bad



condition as blood was oozing out from her private part. Many people had gathered there and Subegh Singh was subjected to beating by the people of neighbourhood. Further, she proved her statement Ex.P1 and identified her thumb impressions upon the same and also deposed about Charanjit Singh and Roor Singh, to have also thumb-marked the statement.

Both, PW-3 Charanjit Singh, father of ravished child and PW-2 Roor Singh, deposed specifically about the same manner of going away of the victim from the house and also about the manner of her being retrieved from the house of the appellant and further about the condition of the victim child, at the time of her rescue from the clutches of the appellant.

All the said witnesses were subjected to lengthy cross-examination, but nothing material elicited out, to dislodge the prosecution version.

Much emphasis has been laid upon the victim child, having not been examined and in this context, it has been vehemently submitted that witnesses PW-1, PW-2 and PW-3, could not be believed. However, this contention is bereft of merits.

One has to consider, under what circumstances, the victim has not been examined. It is evident from the record that in fact, the victim child had come to the Court to appear as prosecution witness, but however, preliminary enquiry was conducted by the Court to formulate the opinion, about the capacity of the child, to depose as witness, But considering the answers, coming to the questions put, precisely, in view of the age of the victim, she was discharged.

Considering the age of the victim child, her non-examination, as such, will not in any manner, belie the prosecution version, more



particularly, considering other material witnesses, having examined and also the medical evidence, coming on record.

PW-13 is the Judicial Magistrate, who had recorded the statement of the victim child under Section 164 Cr.P.C., which is Ex.P19. In the said statement, not in clear and specific words, but by virtue of gestures and answers to the questions, the child was able to convey the role assigned to the appellant.

The medical evidence also gave additional credence to the prosecution version. PW-5 Dr.Swati Tyagi, had conducted medico-legal examination of the victim child, on the date of occurrence and she had stated about the injuries over the genitalia, which were as herein given:-

- “1. Reddish colour bruise surrounding the introitus, widely open to about 2 to 2.5 cm dilated. Clotted blood present. Medical side of both the thighs are blood stained.*
- 2. A tear at the 6 o'clock position over posterior fourchette present. Vaginal dilated. Hymen rupture.”*

Further, she proved the MLR. It is evident that parineal musculature and sphincters were relaxed. Labia majora and minora were separated and blood stained. Also, the said witness gave provisional opinion about genital injuries to be present and physical injuries to be absent, but they were suggestive of a recent forceful penetration of vagina. On the basis of clinical examination, she had opined that there is very high possibility of sexual intercourse.

Learned counsel for the appellant had assiduously argued that there were no physical injuries present, which also belies the prosecution



version. However, the fact of absence of physical injuries, in itself, is no ground to doubt the prosecution version. The over-powering position of the appellant, who was about 58 years old, at the relevant time and considering the age of the victim child, one cannot expect any kind of physical resistance, on the part of the child and more particularly, considering the genital injuries, the submission aforesaid, is not tenable.

Much emphasis had also been raised upon the report of the Chemical Examiner, having not been procured.

Very true, as per the evidence brought on record, the samples taken were sealed and sent to Chemical Examiner. Considering the testimony of the doctor, who conducted the medico-legal examination of the victim as well as testimony of PW-9 HC Santosh Kumari and PW-11 MHC Rasminder Singh, who is the carrier of the parcels and who deposited the parcels in the office of Chemical Examiner, it is also evident that the said report of Chemical Examiner has not been procured. This in itself, is omission, on the part of the investigating agency, at first instance and then the prosecuting agency, but however, it is not a ground to prove innocence of the appellant.

When there are strong piece of evidence, deduced from the evidence, brought on record, which logically and rationally point towards the guilt of the accused, this lapse, on the part of the investigating agency, about non procuring the report of Chemical Examiner, *ipso facto*, cannot be of any benefit, as such, to the appellant.

One has to take into consideration that charge is of aggravated penetrative sexual assault, on account of the victim child, to be below 12



years. Penetrative sexual assault has been defined in Section 3 of the *ibid* Act, which reads as herein given:-

“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.”

Considering the definition aforesaid and also taking into consideration the material oral evidence as well as the medical evidence, brought on record, more particularly, the testimony of the doctor, who had medico-legally examined the child, while considering the clinical examination, stated about the presence of genital injuries and also stated about the same to be suggestive of recent forceful penetration of vagina, the lapse of procuring the report of Chemical Examiner, in any manner, cannot be of any help to the appellant. In view of Section 29 of the POCSO Act, wherein, a presumption is to be raised against the person prosecuted for committing or abetting or attempting to commit any offence under Section



3, 5, 7, and 9 of the said Act, onus was upon him to prove the contrary. No evidence, as such, has been led to rebut this presumption.

Although, a plea of false implication has been raised, on account of Roor Singh, having a dispute with the appellant, with regard to the purchased plot by the appellant from Roor Singh, but however, the said plea, as such, do not stand established. Pertinently, the plea so taken in the statement under Section 313 Cr.P.C., is quite vague, which has already been reproduced in the earlier portion of the judgment.

The witnesses of the prosecution, while facing cross-examination, admitted about the purchase of the plot from Roor Singh by the appellant and the agreement is coming forth as Mark-‘A’ and even if, it is considered, then also, it is pertinent to mention that no evidence has been led to substantiate the plea of dispute. In the statement under Section 313 Cr.P.C., no particulars, as such, have been given, as to when this dispute (if any) had arisen. Although, in this statement, it is also stated that Roor Singh and Kala had given him severe beatings, but this is also quite vague a plea taken. No particulars, as such, as to when the alleged beatings were given, has been stated.

Further also, no evidence of any kind has been led to substantiate about any further steps taken by the appellant, after any such dispute having taken place. No evidence in defence, has been led. Thus, the plea of false implication, so taken is quite vague, which also does not stand substantiated.

The degree of care and caution required to be taken in evaluation of evidence, vis-a-vis, the sexual offences, has been emphasized,



time and again by the Hon’ble Courts.

Considering the same, on appraisal, the testimonies of the material witnesses, examined in the case in hand, inspire confidence and further stand corroborated from the medical evidence, brought on record. Thus, considering the same, learned trial Court has correctly held the appellant guilty and convicted him for the commission of offence under Section 6 of the Protection of Children from Sexual Offences Act and has adequately sentenced him.

In the light of the aforesaid, the appeal sans merit and the same is hereby dismissed.

The pending misc. applications, if any, shall stand disposed of.

(ARCHANA PURI)
JUDGE

May 29, 2026
Vgulati

(RAMESH KUMARI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No