



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

(201)

CRA-D-864-DB-2014 (O&M)

Decided on: 03.02.2026

Ravinder

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MR.JUSTICE RAMESH CHANDER DIMRI**

Present:- Mr.Raghav Garg, Amicus Curiae.

Mr.Randeep S.Dhull, Advocate,
for the appellant.

Mr.Dhruv Dayal, Addl.A.G., Haryana.

Ramesh Chander Dimri, J.

1. Through the present appeal, the appellant/convict challenges the judgment of conviction dated 17.04.2014 and order of sentence dated 18.04.2014 passed by learned Additional Sessions Judge, Sonapat in Sessions Case No.34 of 2014 titled as “*State Vs. Ravinder*”, arising out of FIR No.509 dated 13.11.2013 under Section 376 of the Indian Penal Code, 1860 (for brevity, ‘IPC’) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity, ‘POCSO Act’), registered at Police Station Civil Lines, Sonapat through which, he was held guilty under Section 376(2)(i) IPC as well as Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for life with a direction to pay a fine of Rs.25,000/- (Rupees

Twenty five thousands only) under Section 376(2)(i) IPC. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for a period of three years.

2. Prosecution case as unfolded by the police proceedings Ex.PW12/A is that on 13.11.2013, an intimation was received in Control Room, Sonapat that 'A' (real name withheld) daughter of 'B' (real name withheld) resident of 'X' (name of the local area withheld), Old DC Road, Sonapat, is admitted to General Hospital, Sonapat in a rape case and for conducting the proceedings, an Investigating Officer be sent. On getting the said intimation, PW-12, PSI Vikrant, with others, reached the said hospital and obtained Ruqa with MLR Ext.PW-14/B of 'A'. He also obtained opinion of the concerned Doctor about the victim. The Doctor referred her to PGIMS, Rohtak. When the said PSI was ready to leave for the said hospital, mother 'C' (real name withheld) of 'A' met him at main gate of General Hospital, Sonapat and got recorded her statement Ex.PW7/B to the said PSI. After true translation, relevant portion of said statement is reproduced as under:

“Stated that I am resident of the above said address and have 4 children; My eldest daughter is 'D' (real name withheld) aged 12 years. Second one is a son namely 'E' (real name withheld) aged 9 years. Third one is daughter namely 'F' (real name withheld) aged 7 years and Fourth is my youngest daughter 'A' who is aged about 3 years. Today on 13.11.13, my husband 'B' had gone for a labour work. At about 11.00 am, after leaving my children 'E', 'F' and 'A' at home, I had gone for work at house of "G" (real name withheld). When at about 1.30 p.m, I returned to my home, I saw that my youngest daughter 'A' is weeping bitterly. I asked my daughter 'F' as to why 'A' is crying so bitterly today. Then my daughter 'F' told me that at about 12.30 pm, father of "H" (real name withheld) namely Ravinder who was residing in the nearby

rented premises had taken 'A' with him. She had been crying since when she returned from him. I took my daughter 'A' on roof and asked her the reason of crying. Then my daughter 'A' pointed towards her vaginal portion and told me that she was feeling pain there. I removed pyjama of 'A' and found that some bleeding was present in her vagina and oil had also been applied there. Then, I took my daughter 'A' to GH Sonapat for treatment. Ravinder who is our neighbour has committed rape upon 'A'. Legal action be taken against Ravinder."

3. On the basis of said statement, PW12, PSI Vikrant, sent police proceedings, Ex.PW12/A to Police Station, Civil Lines, Sonapat for registration of the case. FIR, Ex.PW-3/A, was registered thereon. PW12, PSI Vikrant, commenced investigation. Statements of witnesses were recorded. The place of occurrence was inspected. 'A' was medico-legally examined from General Hospital, Sonapat. Parcels in respect of the said examination were taken in police possession. Appellant Ravinder was arrested on 13.11.2013. He was medico-legally examined. Parcels in respect of his examination were taken into police possession. He got the place of occurrence identified. Statement of 'A' under Section 164 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') was tried to be got recorded on 15.11.2013. Case summary of 'A' was collected from PGIMS, Rohtak on 27.11.2013. Scaled site plan Ex.PW-12/B of the place of occurrence was prepared. On completion of investigation, final report under Section 173 Cr.P.C. was presented before the concerned court.

4. On receipt of said report, learned Magistrate, after complying with the provisions contained in Section 207 Cr.P.C., committed the case to the court of Sessions. After such commitment, learned Sessions Court heard the prosecution and appellant on the issue of framing of charges. Charges under

Section 376(2)(i) IPC and Section 6 ofPOCSO Act were framed vide order dated 08.01.2014. However, appellant pleaded not guilty to the said charges and claimed trial.

5. In support of its case, prosecution examined the following witnesses:-

Sr.No.	Witness	Name
1	PW-1	Inspector Pardeep Kumar (Final report witness)
2	PW-2	HC Inderpal (Draftsman)
3	PW-3	SI Virender Singh (FIR registration witness)
4	PW-4	EHC Rajpal (MalkhanaMoharrar)
5	PW-5	HC Sanjay (witness who remained associated in investigation with PW12 P/SI Vikrant)
6	PW-6	Constable Vikram (case property carrier)
7	PW-7	‘C’ (complainant)
8	PW-8	‘E’ (Brother of ‘A’)
9	PW-9	‘F’ (Sister of ‘A’)
10	PW-10	Dr.Har Preet Kaur (witness who medico-legally examined ‘A’ in PGIMS, Rohtak)
11	PW-11	HC Yudhvir Singh (Special report carrier)
12	PW-12	PSI Vikrant (Investigating Officer)
13	PW-13	Dr.Payal Garg (witness who medico-legally examined ‘A’ in GH Sonapat)
14	PW-14	Dr.Vineet Gupta (witness who medico-legally examined the appellant)

6. In addition to the examination of the said witnesses, the prosecution also proved and relied upon the following documents:

Sr.No.	Exhibit	Documents
1	PW2/A	Site plan of theplace of occurrence

2	PW3/A	Copy of the First Information Report dated 13.11.2013
3	PW3/B	Endorsement on police proceedings Ex.PW12/A
4	PW5/A	Recovery memo dated 13.11.2013 of parcels
5	PW5/B	Disclosure statement of the accused
6	PW5/C	Demarcation memo of the place of occurrence
7	PW7/A	Recovery memo of the parcels
8	PW7/B,	Statement of 'C' wife of 'B'.
9	PW10/A	Case summary of 'A'.
10	PW12/A	Police proceedings dated 13.11.2013
11	PW12/B	Rough site plan of the place of occurrence
12	PW13/B	Medico Legal Report of 'A'
13	PW14/B	Medico Legal Report of the appellant
14	PX	Forensic Science Laboratory report
15	PY	Application for getting fitness of 'A'

7. On completion of prosecution evidence, learned trial court recorded statement of the appellant under Section 313 Cr.P.C. wherein he claimed innocence and false implication. Despite availing an opportunity to lead defence, he did not examine any witness. However, he proved document, Ex.DA (statement of 'E' under Section 161 of the 1973 Code) in his defence.

8. Learned trial court thereafter considered the facts, circumstances, evidence on record and affording due hearing to the parties, passed impugned judgment of conviction dated 17.04.2014 and order of sentence dated 18.04.2014 in the aforesaid terms. Aggrieved therefrom, appellant has preferred the present appeal.

9. We have heard Shri Raghav Garg, Amicus Curiae and Shri R.S.Dhull, learned counsel for appellant as well as Shri Dhruv Dayal, Additional Advocate General, Haryana, on merits of the appeal. With their able assistance, we have carefully perused the record.

10. Learned Amicus Curiae and learned counsel for appellant have argued that prosecution has failed to prove the charges for which appellant has been held guilty and that prosecution case suffers from several infirmities. 'A' and 'B' were not joined in investigation and were also not examined before the Court. No independent person from the neighbourhood was joined/examined. No blood was found on the vaginal swabs of 'A' as well as strands of pubic hair of the appellant or their clothes. Non-detection of blood falsifies the version put-forth by 'C' who claimed that blood was oozing from vaginal parts of 'A'. No injury was found on the private parts of 'A'. The case in question was not at all a case of complete penetration. There was no evidence on record to conclude that 'A' was subjected to rape. There is no direct evidence on record to connect the appellant with the charges in question. Therefore, the appellant ought to have been acquitted of the charges framed against him in the case in question.

11. On the other hand, learned counsel for the State has argued that deposition of 'C', instant lodging of FIR as well as medico-legal examination of 'A', besides, other evidence on record establishes the commission of offences in question by the appellant beyond a shadow of doubt. Therefore, arguments raised on behalf of the appellant have no substance. Dismissal of appeal is sought.

12. We have heard learned counsel for parties and have carefully scrutinized the record with their able assistance.

13. In respect to power of an Appellate Court against a judgment of conviction, Hon'ble the Supreme Court, in **Brathi @ Sukhdev Singh Vs. State of Punjab, (1991) 1 SCC 519**, has observed and held as under:-

*“8. We shall now examine whether the approach made by the High Court in judging the guilt of the appellant on the premise that the acquitted person also participated in the offence has introduced any error. The powers of the appellate court in dealing with an appeal against an order of conviction are defined under section 386(1)(b) of the Code of Criminal Procedure, 1973 corresponding to section 423(1)(b) of the Code of 1898. In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. In **Sunder Singh's case (supra)**, this Court has held that the provisions of section 423(1)(a) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are accused. In considering the evidence as a whole, the appellate court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellant counsel to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the accused person his constructive criminality.”*

14. Similar was the view expressed by Hon'ble the Supreme Court, in **Lal Mandi Vs. State of West Bengal, (1995) 3 SCC 603.**

15. In the present case, charge under Section 376(2)(i) IPC and Section 6 of POCSO Act was framed against the appellant. Therefore, it is to be seen as to whether prosecution has proved commission of said offences against the appellant beyond a shadow of reasonable doubt. Section 375 IPC is reproduced as under:

“375. Rape.—*A man is said to commit "rape" if he—*

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

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

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

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— *A medical procedure or intervention shall not constitute rape.*

Exception2.— *Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.*”

16. Section 376 (2)(i) IPCas it then existed is reproduced as under:

“Punishment for rape.-

(1) xxx xxx xxx xxx

(2) *Whoever-*

(a) to (h) xxx xxx xxx

(i) commits rape on a woman when she is under sixteen years of age; or

(j) to (n) xxx xxx xxx

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the

remainder of that person's natural life, and shall also be liable to fine."

17. In ***State of H.P. Vs. Shree Kant Shekari***, (2004) 8 SCC 153, Hon'ble the Supreme Court, in respect of an offence of rape and/or sexual violence, observed and held as under:

*"3. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in **Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty** (AIR 1996 SC 922), the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution') The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."*

18. Hon'ble the Supreme Court in ***Aman Kumar & another Vs. State of Haryana***, (2004) 4 SCC 379 observed as under:

"6. The offence of rape occurs in Chapter XVI [IPC](#). It is an offence affecting the human body. In that Chapter, there is a

separate heading for "Sexual offences", which encompass [Sections 375, 376, 376A, 376B, 376C and 376D](#). "Rape" is defined in [Section 375](#). [Sections 375 and 376](#) have been substantially changed by [Criminal Law \(Amendment\) Act, 1983](#), and several new sections were introduced by the new Act, i.e. 376A, 376B, 376C and 376D. The fast sweeping changes introduced reflect the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape or Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co.Litt. 123 b); or, as expressed more fully, 'rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will'. (Hale P.C. 628) The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape: (1 Hen. 6, 1a, 9 Edw. 4, 26 a (Hale P.C.628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephens Criminal Law, 9th Ed.,p.262). In "Encyclopaedia of Crime and Justice" (Volume 4, page 1356), it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsburys' Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order."

19. It is to be noted that appellant has also been charged under Section 6 of POCSO Act. The said section deals with an offence of aggravated penetrative sexual assault and reads as under:-

“6. Punishment for aggravated penetrative sexual assault.—
Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

20. Section 3 of POCSO Act, defining penetrative sexual assault is reproduced 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.”

21. Sub-section (m) of Section 5 of POCSO Act, which defines penetrative sexual assault on a child below twelve years as an offence of aggravated penetrative sexual assault, is reproduced as hereunder:-

“5. Aggravated penetrative sexual assault.—
(a) to (l) xxx xxx xxx xxx

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

(n) to (u) xxx xxx xxx xxx
is said to commit aggravated penetrative sexual assault.”

22. Section 29 of POCSO Act prescribes presumption in respect of the offences mentioned in the same. The said section reads as under:-

*“29. **Presumption as to certain offences.**—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.”*

23. It is to be noted that before said presumption is raised, prosecution is bound to establish the fundamental facts constituting such offences. It is only thereafter that presumption prescribed in Section 29 of POCSO Act can be raised against the appellant thereof. The said presumption can be rebutted by discrediting the prosecution witness through cross-examination and demonstrating the gaps in prosecution version about improbability of the incident or by leading defence evidence.

24. Applying the above observations and principles to the present case, it is to be noted that in support of the version in statement dated 13.11.2013, Ex.PW7/B of PW7 ‘C’, prosecution has examined three material witnesses, i.e. PW7 ‘C’, PW8 ‘E’ and PW9 ‘F’. PW7 ‘C’ deposed about the case in question in the following terms:-

“ ‘A’ (real name withheld) is my youngest daughter. She is three years old. In the morning of 13.11.2013, my husband and myself had left home for our respective jobs. I had left my daughter ‘A’ with my elder children ‘E’ and ‘F’. At about 2.00

p.m. I came back home and found my daughter 'A' to be crying bitterly. I asked her the reason for her crying, but she kept on weeping. I asked my other children as to whether 'A' had been by anybody and my elder children told me that before my reaching home, the accused present in court today namely Ravinder who is residing in my neighbourhood had taken 'A' with him. Due to continuous weeping of my daughter, I took her on the roof of my house and asked her as to whether she was feeling pain anywhere and then she pointed out towards her private parts. I took off her underwear and found her to be bleeding and oil was also found to be applied on her private parts....."

25. Prosecution also examined PW8 'E', aged 9 years, the brother of the victim. Learned trial court has recorded its satisfaction in respect to the said child witness being a competent one in terms of Section 118 Indian Evidence Act. PW8 'E' deposed in his examination-in-chief as under:-

"We are the four sisters and brothers. 'A' is my youngest sister. She is three years old. Accused Ravinder present in court resides nearby our house. Some months ago, on one day, myself, my sister 'F' and 'A' were present at home. My parents had gone for their work. We were playing at home. During the noon time the accused Ravinder had come to our house and had taken my sister 'A' with him. She came back home after half an hour. She was brought back by the accused present in the court. She was crying at that time. I had asked her as to why she was crying and she told us that she was feeling pain. At about 2.00 p.m. my mother had come back from her work. I had told my mother that 'A' was crying ever since she had come back home. My statement was recorded by the police."

26. Prosecution also examined 'F' as PW9 i.e., daughter of PW7 'C' and sister of the victim. In respect to this witness as well, learned trial court has recorded its satisfaction regarding PW9 being a competent witness. After

considering the answers given by PW9 to the questions posed by learned trial court, it was concluded that she is a competent witness. PW9 in her examination-in-chief as under:-

“We are four sisters and brothers. ‘D’ is my eldest sister. The name of my brother is ‘E’. ‘A’ is my youngest sister. She is aged about five years. Both of my parents do labour work. Many days back my brother, ‘E’ myself and my sister ‘A’ were present at home. My parents had gone for their work. The accused present in court had taken my sister ‘A’ to his house. His house is situated in front of my house. My sister was brought back home by the accused present in the court after about half an hour. I do not know the name of the accused. (The witness however, pointed towards the accused). My sister was crying at that time. My mother had come back home at about 2.00 p.m. The police had come to our home and had made enquiries from me.”

27. It is well established from the evidence on record that appellant had come to the place of occurrence on 13.11.2013 and taken the victim ‘A’ to his house and brought her back to the same place. It is to be reiterated at this stage that the victim in this case was about three years old at the time of incident. There is no dispute in this respect. Argument raised by learned counsel for appellant and learned Amicus curiae that there is false implication of the appellant because of the previous quarrel with father of the victim i.e., husband of PW7 ‘C’ and that identity of the perpetrator of the crime has not been established, is devoid of merit and is not substantiated by any evidence on record. It is to be noted that all the witnesses especially PW8 and PW9, who are natural witnesses at the relevant time have specifically identified the appellant to be person who took away the victim and thereafter returned her to the same place and that she was crying when she was left by the appellant.

Argument raised on behalf of the appellant that residence of the victim is in a heavily populated area therefore, it is opposed to probability that no one else saw the appellant taking the victim away, is of no avail in view of categorical and consistent testimonies of PW8 and PW9. In this factual matrix, non-examination of any other person is clearly irrelevant and unnecessary.

28. Learned counsel for appellant is unable to point out any evidence/material on record, which would create a dent on the testimonies of PW7, PW8 and PW9. All the abovesaid witnesses have withstood lengthy cross-examination and defence was unable to elicit anything in its favour. Evidence of the said witnesses inspire confidence and cannot be ignored only on the ground that they are related to the victim. They are the most natural witnesses in the given circumstances. Furthermore, no evidence on record has been pointed out to indicate that there is any previous quarrel of appellant with husband of PW7 i.e., father of the victim as was sought to be argued. No such plea was raised by appellant in his statement under Section 313 Cr.P.C. neither was any evidence led in this respect. He only stated that he was falsely implicated in this case and he was present alongwith wife and children in his room.

29. Medical evidence on record also cements the prosecution version. PW13, Dr. Payal Garg, posted at Government Hospital, Sonapat who conducted medico-legally examination of victim 'A' on 13.11.2013 stated in her affidavit PW13/A that she was posted as Medical Officer at General Hospital, Sonapat on 13.11.2013 and she conducted medical examination of victim 'A', three year old child. Patient was brought by her mother with alleged history of sexual assault at around 12.00 noon near her house. She stated that no external mark of injury was seen, while redness on labia majora

was present; whitish liquid discharge was seen coming through introitus. It was found that child had passed urine, hymen was not intact and in her opinion possibility of sexual intercourse could not be ruled out. The child was referred to PGIMS, Rohtak for P/V under general anesthesia. PW13, handed over the copy of MLR; a sealed bag with eight seals containing vial with two vaginal swabs (blood stained) and brown colour Pyjama(i); a sealed envelope with six seals containing copy of MLR, requisition letter to FSL and sample seal used with a separate sample seal were also handed over by her to the police. In her cross-examination, PW13, affirmed her opinion that victim was subjected to forcible sexual intercourse and that when she started examining the child, semen was coming out of the child's vagina. PW13, further stated that it was shocking for her to see a three year old female child in such a condition.

30. PW10 Dr. Harpreet Kaur, Medical Officer, PGIMS, Rohtak verified that on 13.11.2013, she examined the victim, a female child aged three year old, under anesthesia, brought with alleged history of rape by her neighbour. She found no active bleeding, but abrasions over labia majora were present; hymen was torn and she also found first degree perineal tear and that her findings were suggestive of coital act. Necessary treatment was afforded to the child, who was discharged on 14.11.2013. In her cross-examination, PW10 stated that injuries were fresh in nature. There was no internal injury on the vagina of the victim. PW14 Dr. Vineet Gupta, examined the appellant and affirmed his opinion that there was nothing to suggest that he was not capable of performing sexual intercourse. As per FSL report, Ex.PX, human semen was detected on the vaginal swabs, trouser as well as Ex.4 i.e., the sheet stated to be recovered from the scene of crime. Blood was detected on Ex.1a i.e., Pyjama of the victim as well as Ex.1(b) i.e., vaginal swabs.

31. Keeping in view the aforesaid medical evidence, argument raised by learned counsel for appellant that clothes of the victim were not found to be smeared with blood and that the underwear which the mother i.e., PW7, had taken off, is not sent for FSL examination proves false implication of appellant, is totally devoid of any merit. Vaginal swabs of the victim as well as the Pyjama of the victim were sent for forensic examination and as per FSL report, Ex.PX, blood was detected thereon. Therefore, the said argument is not substantiated from the record in any manner and is devoid of any merit hence, rejected. Similarly, argument raised on behalf of appellant that due to absence of any external injury on the victim, appellant is entitled to benefit of doubt is equally devoid of any merit. Redness of labia majora, rupture of the hymen coupled with the FSL report in conjunction with ocular version clearly cement the prosecution case against the appellant. Factum of DNA test not being conducted in this case pales into insignificance in view of the overwhelming evidence on record proving guilt of appellant beyond reasonable doubt.

32. Another argument raised on behalf of the appellant that victim in this case is not examined, therefore, trial is vitiated, is yet again devoid of any merit. It is matter of record and undisputed that the victim was only three years old at the time of incident. Learned trial court in this respect has correctly observed that the child was not in a position to depose before the court; even her statement under Section 164 Cr.P.C. could not be recorded, therefore, non-examination of the victim cannot detract from the prosecution case. Non-examination of father of the victim can also not come to the aid of appellant in any manner. His non-examination does not in any manner discredit the version of the prosecution. It is vehemently argued by learned counsel that penetrative sexual assault is not established on record. However, this is

falsified by the evidence on record which clearly indicates to the contrary and in favour of the prosecution version. As noted in the earlier paras, vaginal swabs collected by PW13 Dr. Payal Garg contain blood as well semen. Moreover, definition of the offence in question in the wake of the evidence proved on record, fully and completely proves the commission of offence by appellant beyond any reasonable doubt.

33. Learned trial court, in our considered opinion, has correctly convicted the appellant for the offences in question and sentenced him appropriately vide impugned judgment of conviction and order of sentence, which call for no interference. Judgment of conviction dated 17.04.2014 and order of sentence dated 18.04.2014 passed by learned Additional Sessions Judge, Sonapat are thus upheld.

34. No other argument has been addressed.

35. Keeping in view facts and circumstances as above, this appeal is dismissed being devoid of any merit.

36. Application for suspension of sentence is rendered infructuous and is disposed of, accordingly.

37. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

February 3, 2026
Sailesh/ 'om'

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	No