
(2022) 12 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.166 Of 2019

Jagtar Singh

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 23-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 376, 376(2)(f), 506
Protection Of Children From Sexual Offences Act, 2012 — Section 2(d), 4, 5(f), 5(j)
(ii), 6
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 12 SHI CK 0070

Hon'ble Judges : Sabina, J;Sushil Kukreja, J

Bench : Division Bench

Advocate : N.K. Thakur, Karan Veer Singh, Divya Raj Singh, Ashwani Sharma

Final Decision : Dismissed

Judgement

Sabina, J

1. Appellant has filed the appeal, challenging the judgment of conviction and sentence dated 19.03.2019, passed by learned Special Judge, Sirmour at Nahan, District Sirmour, H.P., in Sessions Trial No.29-ST/7 of 2019, whereby, he has been convicted and sentenced as under:-

Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 376 of Indian Penal Code, 1860.

:

To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo further imprisonment for a period of one year.

2. Prosecution case was set in motion on the basis of the statement of the prosecutrix/victim, wherein, she alleged that she had taken 10th Class

Examination. Her parents were doing agriculture work. They were three brothers and one sister. In September, 2015, after school hours, Jagtar Singh (appellant), her English teacher, handed over to her some packet and told her to keep the same in his room. Whatever had been given to her by her teacher was wrapped in a newspaper. However, when she reached the room, the appellant was already present in the room and on her reaching the room, he told her to keep the packet in his room. The moment she entered the room, the appellant bolted the door from inside. She raised alarm, but appellant told her that she should not raise alarm otherwise he would kill her.

Thereafter, appellant made her lie on his bed and committed a wrong act with her. She tried to get up but he caught hold of her from her arms and after some time he left her. The appellant had told her that she should not tell about the incident to her parents otherwise he would kill her and would not give her school certificate. Thereafter, she reached home and did not narrate the incident to anybody. After two months, her health deteriorated and in the month of December she was taken to Nahan Hospital by her uncle Bansi Lal and sister Raksha Devi. Thereafter, the Doctor told her that she was anemic, but after a few months her abdomen started swelling and she suspected that there might be a child in her womb. She did not inform the Doctor in this regard. She had not had her period for the last 6-7 months. Appellant had committed sexual intercourse with her in September, 2015 and due to this reason she had become pregnant. She got recorded her statement to the effect that her medical examination be got conducted and necessary action be taken against the appellant.

3. On the basis of the statement of the prosecutrix/victim, formal FIR No.15 of 2016, dated 01.04.2016, was registered against the appellant at Police Station Rainuka, District Sirmour, H.P., under Section 376, 506 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC" in short) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "Act" in short).

4. After completion of investigation and necessary formalities, Challan was presented against the appellant. Charges were framed against the appellant under Section 5(f) of the Act and under Sections 376, 506 IPC.

5. Appellant did not plead guilty to the charges framed against him and claimed trial.

6. In order to prove its case, prosecution examined fifteen witnesses during trial. Appellant when examined under Section 313 of Code of Criminal Procedure, 1973, after the closure of prosecution evidence, prayed that he was innocent and a false case had been registered against him with a view to oust him from the School. Appellant did not examine any witness in his defence.

7. Learned counsel for the appellant has submitted that no reliance could be placed on the Birth Certificates of the prosecutrix/victim placed on record. As per the Birth Certificates Ex.PW-1/B & Ex.PW-3/A, the date of birth of the prosecutrix/

victim in both the certificates was 07.12.1999 and date of registration was 06.12.1999. The certificate Ex.PW-1/B was issued on 04.04.2016. The certificate was apparently false as registration could not have been done before the birth of the prosecutrix. There was unexplained delay in lodging the F.I.R. Parents of the prosecutrix/victim had not been examined during trial in support of the prosecution case nor any class -fellow of the prosecutrix/ victim had been examined in support of her case. The prosecutrix/victim was aged more than 16 years and at the most could be said to be less than 18 years. Appellant has already spent seven years in custody and in case the testimony of the prosecutrix/victim was believed, then the sentence of the appellant was liable to be reduced to the period already undergone by him.

8. Learned Additional Advocate General, on the other hand, has submitted that the prosecutrix/victim, a minor, while appearing in the witness-box, has duly supported the prosecution case. Moreover, as per the report of the Forensic Science Laboratory, appellant was the biological father of the male child delivered by the prosecutrix/victim.

9. As per the prosecution story, appellant had raped the prosecutrix/victim. Appellant was admittedly English Teacher in the School where the prosecutrix was a student. Prosecutrix/victim while appearing in the witness-box, has categorically deposed that in the year 2015 she was a student of 10th Class and the appellant was her English Teacher. Appellant had given her something wrapped in a newspaper and had told her to keep the packet in his room. When she went to drop the packet in the room of the appellant, he was already there inside the room and he bolted the door from inside. She made hue and cry but appellant threatened her that he would kill her. Thereafter, appellant laid her on the bed and did wrong act with her and told her not to disclose the incident at her residence. Out of fear, she does not disclose the incident to anybody. However, after two months her health started deteriorating and she was taken to the hospital by her uncle & father and she was informed that she was anemic. Her abdomen had started swelling. After 6-7 months, she came to know that she was pregnant. On inquiry by her mother, she had told her that something was moving in her abdomen. When her sister did pregnancy test, it turned out to be positive. Thereafter, the matter was reported to the police and she was medically examined. On 09.05.2016, she had delivered a male child at Nahan Hospital.

10. Thus, the prosecutrix/victim while appearing in the witness-box, has categorically deposed with regard to the fact that she had been raped by the appellant.

11. As per report of the Forensic Science Laboratory Ex.PY, appellant was the biological father of the child delivered by the prosecutrix/victim and the prosecutrix/victim was the biological mother of the said child. Thus, from the report of the Forensic Science Laboratory, it stands established on record that the appellant was the father of the child delivered by the prosecutrix.

12. The question that arises for consideration is as to whether the appellant was guilty of offence of rape. Prosecutrix/victim in her testimony has duly deposed with regard to the fact that she had been raped by the appellant. Offence in the present case had allegedly taken place in the year 2015. At the relevant time, as per Section 376(2)(f), whoever being a teacher commits rape of a woman, then he was liable to be punished with rigorous imprisonment for a term which shall not be less than ten years but 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.

13. So far as POCSO Act is concerned, as per Section 5(f), whoever being staff of an educational institution, commits penetrative sexual assault on a child in that institution, is said to have committed aggravated penetrative sexual assault. As per Section 5(j)(ii) of the Act, whoever commits penetrative sexual assault on a child, which in case of female child, makes the child pregnant as a consequence of sexual assault, is said to commit aggravated penetrative sexual assault. At the relevant time, the punishment for aggravated penetrative sexual assault was 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. As per the definition of child under Section 2(d) of the POSCO Act, "child" means any person below the age of eighteen years.

14. Ex.PW-1/B is the Date of Birth Certificate of the prosecutrix/victim and a perusal of the said certificate reveals that her date of birth has been written as 07.12.1999.

However, the date of registration has been given as 06.12.1999 and the certificate was issued on 04.04.2016.

15. As per Ex.PW-3/A, the Date of Birth Certificate attached at the time of admission of the prosecutrix/victim in the School, the date of birth of the prosecutrix/victim has been written as 07.12.1999 and the date of registration was 06.12.1999. Leaving aside the Date of Birth Certificates Ex.PW-1/B and Ex.PW-3/A, in the School record, the date of birth of the prosecutrix/victim has been entered as 07.12.1999. The said record was proved on record by PW-3 Hari Chand. There is nothing available on record to the contrary.

16. Learned counsel for the appellant has submitted that in the application Ex.PW-3/A-1, in the column of date, it has been initially written as unknown and later the same was over-written with date 01.09.2005. However, after carefully perusing the said document, we are of the opinion that inadvertently Naiya Ram, father of the prosecutrix, had signed in the column of date and due to this reason there is a cutting on his signatures in the column of date and thereafter the date has been written as 01.09.2005. Signatures of Naiya Ram also exist in the column of signature of father or guardian. On the reverse side of the said document, the date of birth of the prosecutrix/victim has been given as 07.12.1999. In Ex.PW-3/A, School Leaving Certificate, the date of birth of the

prosecutrix/victim has been mentioned as 07.12.1999. Even if document Ex.PW-1/B is ignored, then from the School record, it is evident that the date of birth of the prosecutrix/victim was 07.12.1999. The incident in the present case had taken place in September 2015. Thus, at the time of incident, the prosecutrix/victim was aged less than 16 years.

17. Assuming that the age of the prosecutrix/victim was between 16 years to 18 years, even then the said fact would not advance the case of the appellant as the offence committed by the appellant would fall within the definition of Section 376(2)(f) IPC and Section 5(j)(ii) punishable under Section 6 of the Act. Although, the trial Court has ordered the conviction of the appellant under Section 6 of the Act by treating it as a case falling under Section 5(f) of the Act, but in our opinion the case would fall within the definition of Section 5(j)(ii) read with Section 6 of the Act. The offence in the present case was not committed in the School but was committed by the appellant in his rented premises, as is evident from the cross-examination of the prosecutrix/victim. On account of sexual assault committed by the appellant, victim/child had become pregnant. Merely because the learned trial Court has considered wrong provision, cannot be said to be fatal to the prosecution case as in any case sentence has been ordered under Section 6 of the Act. With regard to offence falling under Section 5(j)(ii) of the Act also, punishment has been provided under Section 6 of the Act.

18. Learned counsel for the appellant has also argued to the effect that there was delay in lodging the F.I.R. In the present case, the victim was less than 16 years of age at the time of incident and has been raped by none other than her teacher. The position occupied by the appellant was of trust and it was expected that he would protect her from any person who wanted to sexually abuse her. However, the protector himself, in the present case, has betrayed the trust and has sexually assaulted the prosecutrix/victim, resulting in her pregnancy. It appears that out of fear the prosecutrix/ victim did not inform her family members about the incident. It is only when the prosecutrix/victim became pregnant that the need arose for her to inform about the offence committed by the appellant to her parents. Apparently when the prosecutrix/victim reached advanced stage of pregnancy, she informed about the offence committed by the appellant to her family members. Moreover, as per the report of the Forensic Science Laboratory, appellant is the father of the child delivered by the prosecutrix/victim. Keeping in view the age of the prosecutrix/victim and the relationship between the parties, the consent of the prosecutrix/victim, if any, was irrelevant. So far as the offence under Section 376 (2)(f) IPC and Section 5(j)(ii) read with Section 6 of the Act are concerned, the consent of the prosecutrix/victim (child) is not material.

19. Learned counsel for the appellant has also laid much stress on the fact that PW-5 Raksha Devi was not the sister of the prosecutrix/victim. In this regard, learned counsel has made a reference to Ex.PW-1/A, wherein, Raksha Devi has been described as daughter of Godu Ram and not daughter of Naiya Ram.

20. PW-5 Raksha Devi while appearing in the witness-box, has disclosed herself to be daughter of Naiya Ram. In her cross-examination, she has stated that she is grand-daughter of Godu Ram. Hence, it is probable that in Ex.PW-1/A, Parivar Register, Raksha Devi was, though, required to be described as daughter of Naiya Ram, but has been described as daughter of Godu Ram. In any case, even if the testimony of PW-5 Raksha Devi is ignored, the prosecution case stands duly established from the testimony of the prosecutrix/victim, which is duly corroborated by scientific evidence. The fact that the parents of the prosecutrix/victim have not been examined or her other class -fellows have not been examined, does not render the prosecution story doubtful. The statement of the prosecutrix/victim, being natural, inspires confidence. The testimony of prosecutrix/ victim could not be shattered during her cross-examination with regard to offence committed by the appellant. The prosecutrix/victim, who was aged less than 16 years, has delivered a child on account of sexual assault committed by the appellant and as per the report of the Forensic Science Laboratory, appellant is the biological father of the child delivered by the prosecutrix/victim.

21. Since in the present case, the minimum punishment provided with regard to the offence committed by the appellant is ten years, there is no force in the argument raised by the learned counsel for the appellant to the effect that sentence qua imprisonment of the appellant be reduced as in the present case only minimum sentence has already been imposed on the appellant by the trial Court.

22. In the facts and circumstances of the present case, learned trial Court had, thus, rightly ordered the conviction and sentence of the appellant vide the impugned/order. No ground for interference is made out.

23. Accordingly, the appeal is dismissed.

24. Pending miscellaneous application(s), if any, shall also stand disposed of.