

CRA-D-41-2019 (O&M)

2025:PHHC:031622-DB



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

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Date of Decision: February 28, 2025

Nitin

.....Appellant

Versus

State of Haryana

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Manoj Tanwar, Advocate for the appellant.

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

LISA GILL, J.

1. This appeal has been filed by appellant, Nitin, challenging judgment dated 05.11.2018 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri whereby he has been convicted for the offences punishable under Sections 377, 506 of Indian Penal Code (for short – ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short – ‘POCSO Act’) and order of even date, whereby he has been sentenced as under:-

Offence u/s	Sentence
377 IPC	Rigorous imprisonment for 10 years and fine of Rs.10,000/-. In default of payment of fine, to undergo rigorous imprisonment for two years.
506 IPC	Rigorous imprisonment for 05 years and fine of Rs.5,000/-. In default of payment of fine, to undergo rigorous imprisonment for one year.
6 of POCSO Act	Rigorous imprisonment for 12 years and fine of Rs.50,000/-. In default of payment of fine, to undergo rigorous imprisonment for two years.

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2. All the sentences have been ordered to run concurrently.
3. Brief facts as per prosecution version are that telephonic message was received on 07.12.2017 by ASI Virender Singh, PW6 from Holy Child Public School, Rewari regarding carnal intercourse committed on a student by a teacher of the school. PW6, alongwith ESAI Ram Niwas, reached the said school where PW4 i.e. father of victim, submitted a written complaint Ex.PD, wherein it is stated that complainant's son was studying in 7th standard at Holy Child Public School, Rewari. He had gone to Shiv Om Public School, Radaur, Yamunanagar from 07.09.2017 to 12.11.2017 for a Gymnastics sports event. His teacher – present appellant had accompanied the children. It is stated that appellant continuously committed carnal intercourse (also termed bad act) with his son from 07.11.2017 to 12.11.2017 and threatened child of dire consequences in case victim revealed the same to anyone. Child – victim who was frightened, started displaying timid behaviour, then he refused to go to school, upon which complainant asked his wife to try and probe about the matter from the victim. When victim's mother inquired in an affectionate manner from the victim, he disclosed the commission of offence by appellant, upon which, school authorities were apprised. Strict action against appellant was sought for having committed carnal intercourse (bad act) with the complainant's son. Zero FIR dated 07.12.2017, Ex.PF was registered at Police Station Rewari and FIR No. 194 dated 08.12.2017, Ex.PH was registered at Police Station Radaur. Statement of victim under Section 164 Cr.P.C., Ex.PB was recorded on 08.12.2017, relevant portion of which reads as under:-

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“ In previous month on 7th day I had come to Radaur, Yamuna Nagar, Hari Om Shiv Om Public School for playing gymnastic games. The day on which I reached at Radaur, since that day Nitin Sir committed bad act with me and told me that it increases strength. He also told me to take his penis in my mouth. On 06.12.2017 Nitin Sir also tried to commit bad act with me. On this I told the whole thing to my friend. He told me to tell the whole thing to my family members. Thereafter, I told the whole thing to my family.”

4. Counselling of child was carried out. Counselling report is available on record as Ex.PC. Appellant was arrested on 08.12.2017 by ASI Suresh Kumar, PW13. Victim was medico legal examined by Dr. Sunil Kumar PW10. MLR, Ex.PL was prepared. As per opinion, Ex.PN1 by PW10, Sunil Kumar, possibility of anal intercourse could not be ruled out. Medical examination of appellant was also carried out by Dr. Sunil Kumar, PW10 who opined that there is nothing to suggest that appellant is incapable to perform sexual intercourse. Documents Exs.P1 to P31, handed over by the Principal of school were taken in possession vide memo Ex.PA. Site plan, Ex.PL was prepared. Ex.P32 date of birth certificate of the minor, Ex.P33 and Ex.P34 i.e. daily class attendance record of the minor for the months of October, November 2017, Teachers' Attendance Register of appellant for the months of September, October, November and December 2017, Exs.P35 to P38, were taken in police custody vide memo Ex. PJ. Date of birth of child as per certificate was 22.08.2005.

5. After investigation, final report/challan was presented by SI Gurmail Singh, PW11. Due compliance of Section 207 Cr.P.C. was carried out. Charge for offences punishable under Sections 377, 506 IPC and Section

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6 of POCSO Act were framed on 08.02.2018 to which appellant pleaded not guilty and claimed trial. Prosecution examined as many as 13 witnesses to prove the case against appellant. Incriminating evidence against appellant was put to him and in his statement under Section 313 Cr.P.C. appellant pleaded innocence and false implication. It is stated that no such incident, as alleged, had occurred and that complainant lodged false complaint against him because victim could not get any rank in the National Gymnastics Meet at Radaur. Victim had been tutored by the complainant to depose falsely against him. However, no evidence was led in defence.

6. Learned trial Court on considering the evidence on record, facts and circumstances, concluded that prosecution had successfully proved its case against appellant beyond reasonable doubt, thus, appellant was convicted for the offences punishable under Sections 377, 506 IPC and Section 6 of POCSO Act and sentenced as detailed in the foregoing paras. Aggrieved therefrom, present appeal has been filed.

7. Learned counsel for appellant submits that evidence against appellant is extremely weak and is riddled with inconsistencies and improbabilities and is clearly insufficient to sustain his conviction. It is submitted that there was unexplained delay of one month in reporting the matter to police. This delay is inexplicable and shakes the very foundation of prosecution case. Furthermore, friend of minor victim, in whom the victim had confided has not been examined. Learned counsel contended that there is material improvement by the victim insofar as his statement under Section 164 Cr.P.C. and testimony before learned trial Court is concerned. It is improbable that commission of such offence would have been possible by appellant

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because as many as 24 students including the minor child were lodged in a single room. It is opposed to all probabilities that victim would not have raised hue and cry at that very point of time. Medical evidence does not corroborate the ocular version. No injuries were found on the person of the victim. It was urged that victim was regularly going to school even after returning from the Meet, which casts a doubt on the prosecution case. It was submitted that evidence on record lends credence to the defence of the appellant that father of victim was annoyed, as victim did not secure a good rank in the Meet at Radaur, therefore, had proceeded to falsely implicate him. It was, thus, prayed that this appeal be allowed and impugned judgment and order dated 05.11.2018 be set aside.

8. Learned counsel for State refutes the arguments as raised on behalf of appellant while submitting that there is clear cut, cogent evidence on record which clearly establishes commission of offence as alleged. Victim has given a consistent version right from the very beginning. Mere fact that other children of tender age were not examined cannot detract from the evidence on record. The so-called delay has been sufficiently explained and is, thus, irrelevant in the given facts and circumstances. There was no occasion for false implication of appellant as there is nothing on record to indicate that complainant had any enmity with the appellant. Dismissal of appeal was sought.

9. We have heard learned counsel for parties and have carefully scrutinized the record.

10. Allegation levelled against the appellant is that he committed carnal intercourse with victim aged 12 years from 07.11.2017 to 12.11.2017,

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when he alongwith other students and appellant had gone for National Gymnastics Meet at Hari Om Shiv Om Public School at Radaur. Factum of child having gone for Gymnastics Meet with the appellant is a matter of record and not denied. PW1 Sunaina Malik, Principal of Hari Om Shiv Om Public School, Radaur has proved the holding of National Gymnastics competitions from 07.11.2017 to 12.11.2017 as well as participation of appellant and victim in the same. She duly identified the appellant in Court. In fact, the appellant has also admitted his presence alongwith the victim and other students during said days for Gymnastics Meet. He, however, denied commission of offence as alleged. Perusal of statement of victim under Section 164 Cr.P.C. as well as his testimony before Court as PW3, reveals that he has given a consistent version throughout. Merely because other child (who is also of tender age) in whom the victim purportedly confided has not been examined, does not in any manner detract from his credibility. Argument raised on behalf of appellant that delay in lodging the complaint is fatal, is devoid of any merit in the given facts and circumstances. Child – victim was merely 12 years old and it cannot be held against him for keeping mum, firstly during the period in question and thereafter as well. It was the change in his behaviour which gave an indication of some problem being faced by him which was ultimately revealed by the victim to his mother upon coaxing. Immediate action was taken thereafter with the parents contacting the school authorities forthwith. Thus, it cannot be said that there is any delay in lodging of FIR. Even if it be presumed that some delay occurred, the same is succinctly explained and is not fatal to the prosecution case. Age of victim has been duly proved and is in fact not in dispute.

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11. Learned counsel for appellant vehemently argued that there were no injuries on the person of the victim and that by itself proves the prosecution story to be false. In the given facts and circumstances as are narrated in foregoing paras, this argument is totally devoid of any merit, hence rejected. Apart from the fact that absence of injuries by themselves cannot render the prosecution version to be false, opinion of Dr. Sunil Kumar, PW10 is categoric and specific.

12. Defence, as projected by the appellant, is not substantiated by any evidence on record. There is no evidence that complainant had any enmity with appellant. Plea that complainant was annoyed at the victim not having secured any rank in the National Gymnastics Meet, leading to false implication of appellant, is again devoid of any merit, hence rejected. It is not possible that for such reason the complainant would have put his child through this kind of trauma by raising such false allegations. Prosecution has successfully proved its case against appellant, who being a teacher, a mentor, expected to guide, teach the child, help build his character and personality, completely betrayed the trust reposed in him by the student as well as the student's parents.

13. Learned counsel for appellant was unable to point out any infirmity, illegality and irregularity in impugned judgment and order dated 05.11.2018 which calls for interference by this Court. Same is, accordingly, upheld.

14. Appeal is, accordingly, dismissed being devoid of any merit.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

February 28, 2025
Rts

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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No