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

**CRA-S-2378-SB of 2014
Date of Decision:29.09.2018**

Ram Kumar

...Appellant

Versus

U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Anju Sharma, Advocate
for the appellant (Legal Aid Counsel.)

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep S. Wasu, APP-U.T. Chandigarh.

ANIL KSHETARPAL, J.(oral)

Custody certificate has been filed, which is taken on record.

Accused-appellant has been convicted under Section 10 of Protection of Children from Sexual Offences Act 2012 and sentenced to undergo rigorous imprisonment of 5 years. Appellant has also been held guilty and convicted for offences under Sections 354-A and 451 of Indian Penal code.

Facts as noticed by the learned Additional Sessions Judge, Chandigarh are extracted as under:-

“Brief facts of the prosecution case are that complainant Babli wife of Sanjay Singh got recorded her statement to the effect that she lives along with her family at House No.600 Village Daria, UT, Chandigarh. She has three children out of which one is a boy and two are girls. Today

her elder daughter Ragini and her son Shubham had gone to school. Her younger daughter (name with-held to protect the identity of the girl and hereinafter referred as Victim) aged 10 years was at home. Around 10.00 am she left for market Daria for some personal work after leaving the victim at home. When she came back after about half an hour, her daughter came running to her crying and weeping and took her into her embrace. On asking her about the matter, she told her that a man named Ram Kumar who worked in a factory of Gazzak in their neighbourhood forcibly made his entry into their house and he outraged her modesty and forcibly touched her private parts. She had come crying outside her house. After reaching her house she caught hold of the accused who told his name Ram Kumar son of Mool Chand on her enquiry.”

Prosecution in order to prove its case examined the victim as PW1, her mother (author of the FIR) as PW2 and Investigating Officer as PW3, class teacher Chand Ram as PW4. Statement of the accused was recorded under Section 313 Cr.P.C. wherein he claimed that he has falsely been implicated and sought trial. Learned Additional Sessions Judge after appreciating the evidence has found appellant to have committed the offence and therefore sentenced him as noticed above.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the trial Court as well as record. Learned counsel for the appellant has raised following arguments:-

Before conviction under Section 9 (m) of the aforesaid Act, it was incumbent on the prosecution to prove beyond reasonable doubt that the child (victim) was below 12 years. “Sina qua non” for conviction is that the age of

the child should be below 12 years. Counsel for the appellant has submitted that in the present case apart from evidence of date of birth given at the time of admission in the Government School of 01.04.2010 and affidavit given by the parents, no other evidence has been produced. She submitted that in absence of date of birth certificate, it was incumbent on the prosecution to get ossification test carried out so as to finally determine the age. She further submitted that the date of birth as disclosed by the parents at the time of admission in the school cannot be made solitary basis to convict the appellant under Section 9 (m) of the Act. She further submitted that there are material contradictions and the incident as projected by the prosecution has not taken place. She submitted that mother of the child (victim) when appeared as PW2 stated that the father of the child works in the same factory where the accused is working, whereas on the other hand when child was examined as PW1, she has stated that her father is unemployed who is looking for some work. She further submitted that no medical examination of the victim was got done by the prosecution which also leads to inference that the case set up by the prosecution is false. She further submitted that there is more probability of false implications as mother of the victim had borrowed some amount from the accused and therefore he has been falsely implicated.

On the other hand learned State Counsel has drawn attention of the Court to the statement of the victim who has appeared as PW1 and proved the case. He further submitted that the victim has withstood the cross-examination and counsel appearing for the accused could not impeach her statement. He further submitted that in the year 2010 when child was admitted in Government School there was no reason for the parents to give wrong date of birth. He further submitted that the medical examination in the

present case was not necessary as neither any injury was caused to the victim nor there was any allegation of any act pursuant to any furtherance of sexual assault.

This Court has considered the submissions of learned counsel for the parties.

As regard the age of the victim, it is to be noticed that the victim was admitted in school w.e.f. 01.04.2010. At that time parents disclosed the date of birth of the victim as 02.06.2004. Parents also submitted an affidavit verifying the date of birth of victim to be 02.06.2004. In 2010, there was no reason with the parents to give wrong date of birth of the victim as the incident in question took place on 19.12.2013. Still further victim appeared in evidence as PW1 and her mother appeared in evidence as PW2, counsel appearing for the appellant did not cross examine both the witnesses on the aspect of correctness of the date of birth in the school. Further Chand Ram, teacher from the Government High School, Daria, Chandigarh, has proved the date of birth from the school record. In such circumstances it cannot be held that prosecution failed to prove age of the victim. Although, learned counsel appearing for the appellant has stated that since date of birth certificate issued by the Registrar of Deaths and Births has not been produced, it was incumbent on the prosecution to get ossification test. Further, it is well-known that ossification test is not always accurate and there is possibility of variation as it is only an opinion of the doctors determined on the basis of age of the bones.

In the present case since school admission record has been produced and there is no cross examination of either of the victim or of her mother on this aspect of the matter, this Court does not find substance in the

arguments of learned counsel for the appellant.

Next arguments of learned counsel for the appellant is with regard to contradiction between the statement of the victim and her mother with respect to status of working of the father. No doubt when mother appeared as PW2, she stated that her husband is working in a factory where accused is also stated to be working whereas when victim appeared as PW1 she stated that her father is unemployed who is looking for some work.

In the considered view of this Court, such minor contradiction in the statement which is not connected with the offence committed would not be any help to the appellant. A child of 10 years age cannot be expected to know when his father started working and when he was looking for some work. It has been specifically stated by her that his father was not at home at the time of incident.

Next arguments of learned counsel for the appellant also does not have substance because apart from a suggestion given to the mother with regard to borrowing of the amount from the accused, no evidence has been produced. The suggestion given to the mother has been denied. No defence evidence has been led. When accused was examined under Section 313 of Cr.P.C., he did not even utter a single word on this aspect. Merely because counsel for the appellant in the Trial Court has given suggestion to the mother of the victim with regard to borrowing of the amount, the Court cannot record a finding that appellant has been falsely implicated so as to avoid repayment of the amount.

Learned counsel for the appellant further submitted that mother of the victim has appeared as PW2 and has admitted that she was not eye witness to the incident. Hence conviction of the appellant is based only on

the basis of hearsay.

In the considered opinion of this Court the arguments is factually incorrect. The conviction of the accused is based on the statement of the victim child who has supported the prosecution and has withstood the cross examination by the counsel for the appellant-accused. Once evidence of the child victim could not be impeached by the counsel and the child has courageously withstood the cross examination, there is no reason to disbelieve the victim.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

September 29, 2018
shweta

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No