

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**Cr. Appeal No.311 of 2021**  
**Reserved on: 04.01.2023**  
**Pronounced on:06.01.2023**

Ghan Shyam .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

**Coram:**

**Hon'ble Ms. Justice Sabina, Judge.**  
**Hon'ble Mr. Justice Sushil Kukreja, Judge.**

Whether approved for reporting?

For the appellant : Mr. Rajiv Rai, Advocate.

For the respondent : Mr. I.N. Mehta, Senior Additional  
Advocate General.

**Sabina, Judge.**

**J U D G M E N T**

Appellant has filed the appeal, challenging the judgment/order of conviction and sentence dated 23.07.2021, passed by the Additional District & Sessions Judge, Fast Track Special Court Solan, District Solan, H.P., in Sessions Trial No.21-S/7 of 2020/2017, whereby, he has been convicted and sentenced as under:-

<i>Under Section 6 of the Protection</i>	<i>:</i>	<i>To undergo rigorous imprisonment for a</i>
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<i>of Children from Sexual Offences Act, 2012 .</i>		<i>period of 10 years and to pay fine of Rs.25,000/-.</i>
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2. Prosecution case was set in motion on the basis of the statement of complainant Hem Lata (PW-2), mother of the victim. As per the complainant, the victim was her youngest child and was a student of 2<sup>nd</sup> Class. Her husband (appellant) was not doing any work and remained under intoxication. The victim had told her that she had been suffering pain in her private part for the last 3½ years. Complainant had also got medicines for her daughter in this regard. When the victim was aged about five years, she had told the complainant that her father used to take her in the room and did wrong acts with her. Complainant remained busy in her household work and remained quite on account of fear of her husband. Last month, victim had told the complainant that her father had beaten her and taken her in a room. About three months back when she was giving bath to the victim, she saw that she was bleeding from her private part. She had also taken the victim to the Doctor and had taken medicines, but despite taking medicines victim had not

been cured. About 2-3 days prior to lodging of the FIR while the complainant was giving bath to her daughter, she again saw her daughter was bleeding, as the father of the victim had done a wrong act with her.

3. On the basis of the statement of the complainant, formal F.I.R. No.219 of 2016, dated 24.09.2016, was registered at Police Station Sadar, Solan, District Solan, H.P., under Section 376 of 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). During investigation, the statement of the victim was recorded under Section 161 of Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr. PC” in short) as well under Section 164 Cr. PC. The victim was got medically examined.

4. After completion of investigation and necessary formalities, *Challan* was presented against the appellant.

5. Charge was framed against the appellant under Section 6 of the POCSO Act. Appellant did not plead guilty to the charge framed against him and claimed trial.

6. In order to prove its case, prosecution examined nineteen witnesses during trial. Appellant when examined

under Section 313 Cr. PC, after the close of prosecution evidence, prayed as under:-

*“I am innocent. False case has been made against me due to strained relations with my wife on account of my drinking habit and she wants to separate from me.”*

7. Appellant did not lead any evidence in his defence.

8. Learned trial Court ordered the conviction and sentence of the appellant as mentioned in Para-1 of the judgment. Hence, the present appeal by the appellant.

9. Learned counsel for the appellant has submitted that the victim had not supported the prosecution case during trial. Even, when the statement of the victim was recorded under Section 164 Cr. PC, she had only stated to the effect that her father had slapped her. Appellant had been falsely involved in this case by his wife as he was having strained relations with her. Medical evidence also did not support the prosecution case. Hence, the appellant was liable to be acquitted of the charge framed against him.

10. Learned Senior Additional Advocate General, on the other hand, has opposed the appeal and has submitted that, although, victim has not supported the prosecution case, but

the same was been duly established from the other evidence available on record. The victim was a young girl and may not have been able to depose correctly about the facts. The statement of the mother of the victim inspired confidence and established the prosecution case.

11. In the present case, the victim is aged about 7 years and appellant is none other than her father. As per the prosecution story, appellant had sexually assaulted his daughter aged about 7 years.

12. PW-6 Dr. Deepti Parmar, deposed that on 24.09.2016, she had medically examined the victim with the alleged history of sexual abuse. She had observed as under:-

*“Patient was conscious, co-operative, well oriented to time, place and person.*

*On examination, no external injuries present on the body.*

*Menarche not attained.*

*GPE – Normal.*

*Examination of genitalia:-*

*(1) External genitalia-*

*(I) Pubic hair not developed.*

*(ii) Labia majora – No signs of any injury, oedema, discharge present.*

*Labia minora – No signs of any injury, oedema, discharge present.*

(iii) *Posterior introitus – Not admitting one figure.*

(iv) *Hymen – Torn.*

(2) *Internal Genitalia – P/S and P/V examination could not be done as instruments could not be negotiated.”*

13. Victim while appearing in the witness-box as PW-1, did not support the prosecution story and stated that her father had never indulged in any wrong act with her nor she had made any statement to the police.

14. PW-14 Upasna Sharma, deposed that in the year 2016 she was posted as Judicial Magistrate, Court No.1, Solan. On 26.09.2016, she had recorded the statement of the victim. She proved the statement of the victim Ex.PW-14/C as well as the statement of the complainant Ex.PW-14/D.

15. A perusal of the statement of the victim Ex.PW-14/C, recorded under Section 164 Cr. PC, reveals that the victim had stated that her father had only slapped her and had not done anything else. Thus, the stand of the victim in her statement under Section 164 Cr. PC as well as during trial was consistent to the effect that her father had not indulged in any wrong act with her.

16. Complainant Hem Lata while appearing in the witness-box as PW-2, has deposed as per the contents of the F.I.R. In her cross-examination, she deposed that she was having cordial relations with the appellant. Her parents-in-law were residing separately in the same house and her father-in-law was bearing their household expenses. She also stated that her husband was habitual to taking drinks prior to her marriage. She also stated that she had seen the appellant doing wrong acts with her daughter under the influence of liquor but had not reported the matter anywhere. Appellant indulged in domestic violence under the influence of liquor, but she had not reported the incident to the police or the local Panchayat.

17. Thus, so far as the complainant is concerned, her stand is that the appellant had been sexually assaulting his daughter (victim). As per this witness, the victim had disclosed to her at the age of 5 years that the appellant was indulging in wrong acts with her. However, the complainant never reported the matter to the police immediately on coming to know that her daughter was being sexually assaulted by the appellant. The conduct of the complainant in not reporting the matter to the police immediately, renders

her testimony doubtful, especially when the victim has not supported the prosecution case during trial. Moreover, PW-2 complainant, has stated in her cross-examination that the appellant indulged in domestic violence. Then, in such a situation, especially where the victim has not supported the prosecution case during trial, it is probable that the complainant has lodged the F.I.R. against her husband (appellant) on account of domestic violence meted out to her.

18. Another fact, which is relevant, is that the scientific evidence (medical examination) of the victim also does not support the prosecution story. As per PW-6 Dr. Deepti Parmar, there were no signs of physical violence on the body of the victim. Vaginal swabs and slides were sent for chemical examination. As per the report of the Forensic Science Laboratory Ex.PW-19/G, human blood and semen were not detected on the *underwear, vaginal swab, vaginal slides, pajami & frock* of the victim.

19. As per the report of the Forensic Science Laboratory Ex.PW-19/G, human semen was detected on the bed sheet, but as per Forensic Science Laboratory report Ex.PW-19/H, the bed sheet had yielded degraded DNA that



did not show amplification, therefore, no DNA Profile could be generated from the said exhibit.

20. As per the medical examination of the victim, her hymen was torn but there was no sign of any injury or oedema on the external genitalia of the victim. The vagina was not admitting one finger.

21. Thus, in the present case, victim has not supported the prosecution case during trial nor the scientific evidence corroborates the prosecution case.

22. PW-3 Guddi Devi, deposed that she was working as Mid-Day-Meal Helper at Government Primary School, Nohra Khandol. In the year 2016, victim was a student of 2<sup>nd</sup> Class and during school hours she used to observe that the victim remained quite and scared. On inquiry made from the mother of the victim, it transpired that the father of the victim was doing wrong acts with her. In her cross-examination, she deposed that the appellant had not molested anyone in her presence. She admitted that the appellant was a drunkard and troubled his family and parents for the last many years. Thus, so far as the statement of PW-3 Guddi Devi is concerned, she has deposed as per information given to her by the mother of the victim and not by the victim herself.

23. PW-7 Rajat Sharma, deposed that the appellant was his father and the victim was younger daughter of the appellant. He came to know from his mother that something wrong had happened with his sister and his mother made reference of involvement of her father. His mother had told him that the victim complained of pain in her private part. In his cross-examination, he deposed that no one from the village had ever complained with regard to the act and conduct of the appellant. Appellant used to take drinks and created nuisance after consuming alcohol. His mother and grand-father had reported the matter to the local Panchayat against the appellant for creating nuisance at home. Thus, so far as the PW-7 Rajat Sharma is concerned, he has also deposed with regard to the facts narrated to him by his mother (complainant) and not by the victim herself.

24. Thus, in the present case, we are only left with the testimony of the complainant PW-2 Hem Lata, mother of the victim, who has supported the prosecution case during trial while appearing in the witness-box. As per the prosecution witnesses, appellant is a drunkard and creates nuisance at home under the influence of liquor. It has also been admitted by complainant PW-2 that the appellant indulged in domestic

violence. Since in the present case, the victim has not supported the prosecution case and the scientific evidence also does not corroborate the prosecution case, it would not be safe to base conviction of the appellant only on the basis of the testimony of PW-2 Hem Lata (complainant), as the possibility that she might have falsely involved the appellant in this case on account of domestic violence meted out to her, cannot be ruled out.

25. It is a settled proposition of law that prosecution is required to establish its case against an accused beyond the shadow of reasonable doubt. Whenever doubt arises in the prosecution case, benefit of the same has to be extended to the accused.

26. After considering the entire evidence on record, we are of the opinion that in the present case, the prosecution story is rendered doubtful. Hence, the appellant is liable to be acquitted of the charge framed against him by giving him benefit of doubt. Accordingly, the appeal is allowed. Impugned judgment and order of conviction passed by learned Additional District & Sessions Judge, Fast Track Special Court Solan, District Solan, H.P., in Sessions Trial

No.21-S/7 of 2020/2017, dated 23<sup>rd</sup> July, 2021, are set aside.

Appellant is acquitted of the charge framed against him.

27. Appellant who is in custody, be set at liberty forthwith, if not required in any other case.

28. In view of the provisions of Section 437-A Code of Criminal Procedure, 1973, appellant is directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount before the Registrar (Judicial) of this Court, which shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

29. Office is directed to prepare/issue the release warrants of the appellant, forthwith.

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

**( Sabina )  
Judge**

**January 06, 2023  
(Yashwant)**

**( Sushil Kukreja )  
Judge**