

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal S-1233-SB of 2009

Date of Decision : December 9, 2015

Ram Karan		Appellant
	Versus	
State of U.T. Chandigarh		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Amaninder Preet, Advocate
as Legal Aid Counsel for the appellant.

Mr. A.S.Sullar, Addl. P.P. for U.T.Chandiarh.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing offences punishable under Sections 342 and 376 IPC on the allegations that at about 7.00 a.m. on 31.8.2003, he committed rape upon the prosecutrix aged seven years. Vide impugned judgment and order dated 20/22.4.2009, the learned Additional Sessions Judge, Chandigarh, convicted the appellant under Section 376 IPC and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two years. He was also convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three months. Both the sentences were ordered to run

concurrently. The period of sentence already undergone by him during the trial of the case was ordered to be set off against the substantive sentence of imprisonment as per the provisions of Section 428 of the Code of Criminal Procedure.

The prosecution case, in nutshell, is that on 31.8.2003, complainant-Gurnam Kaur came across ASI Ram Phal, who along with fellow officials was on law and order duty in the market of village Maloya, U.T., Chandigarh and got recorded her statement to the effect that she was having two children. Her elder child was a daughter, aged about seven years while younger to her was her son who was aged about six years. On that very day, at about 7.00 a.m., she found her daughter crying in the room. The complainant inquired from her as to what had happened, to which, the daughter replied that the appellant who lived in the adjoining house had called her for watching a religious movie on the Television and after taking her inside the room, subjected her to rape. The complainant went to the house of the appellant, but he managed to escape from there. On the basis of the statement made by the complainant on the aforementioned lines, FIR No. 404 dated 31.8.2003 under Sections 376 and 342 IPC was registered against the appellant at Police Station, Sector 39, Chandigarh.

At the trial of the case, the prosecution examined Constable Gurvinder Singh as PW1, who deposed about the arrest of the appellant on 7.9.2003; MMHC Ram Karan as PW2, who deposed

about the case property being retained by him and, thereafter, sent to CFSL; Dr. Veena Sarna as PW3, who testified that she medico-legally examined the prosecutrix on 31.8.2003; Gurcharan Singh, Master as PW4, who deposed that as per the school record, the date of birth of the prosecutrix was 30.12.1995; complainant-Gurnam Kaur as PW5, who testified about the prosecutrix disclosing to her that it was the appellant who had subjected her to rape; the prosecutrix herself as PW6; Dr. Rajwinderjit Singh as PW7, who stated that he medico-legally examined the appellant on 8.9.2003 and as per his observations, there was nothing to suggest that he was incapable of performing sexual intercourse; SI Ram Phal as PW8; Inspector Hardev Singh as PW10; Constable Het Ram as PW11 and Constable Yash Pal as PW13, who deposed about the various steps taken by them during the investigation of the case and Dr. Sanjiv, Senior Scientific Officer & Head of Department, Department of Biology, CFSL, Chandigarh as PW12, who proved his report Ex.PN.

When the appellant was examined under Section 313 Cr.P.C. he claimed innocence and pleaded false implication as there was some property dispute which the parents of the prosecutrix had with him. In defence, he examined Ashok Kumar as DW1, who testified that no such incident as alleged by the complainant had taken place in the houses situated close to his house; Sher Singh, Panch of village Chatauli as DW2, who deposed about the land dispute between the parties and, Babli, sister of the appellant and real Bua of

the prosecutrix as DW3, who testified that she had adopted the prosecutrix when she was one and half year old and when she turned six, her real mother asked her to transfer the land in the name of the prosecutrix but when she refused, the complainant falsely implicated the appellant.

The trial Court, after going through the testimonies of the witnesses and hearing learned counsel for the parties, believed the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above. Hence, the present appeal.

Having heard learned counsel for the parties and scanning the evidence with their able assistance, this Court finds that the prosecutrix while appearing before the trial Court as PW6 had categorically deposed that she was at that time ten years of age and it was the appellant who had called her to his house on the pretext of making her see a religious movie and, thereafter, subjected her to rape. Her testimony is duly corroborated by her mother PW5 Gurnam Kaur, who testified that she had found the prosecutrix crying in the room and when she made an inquiry, she learnt from the prosecutrix that she had been raped by the appellant. PW3 Dr. Veena Sarna, has testified that on 31.8.2003, she had medico-legally examined the prosecutrix but did not find any evidence of any external injury on her breasts, thighs, abdomen, perineum or on other parts. She also testified that on local examination, she noticed that pubic and axillary hair were not developed, there was no mark of injury and hymen was

intact. She had taken vaginal swabs and sent the same for examination. She further deposed that the vaginal examination was not possible as hymen was intact. However, she opined that possibility of the sexual intercourse could not be ruled out. The argument of the defence counsel is that as the hymen was intact, it cannot be said that the prosecutrix had been subjected to sexual intercourse. However, merely because the hymen was found intact, it cannot be said that the prosecutrix had not been subjected to sexual intercourse. The vaginal swabs taken by PW3 Dr. Veena Sarna, were examined in the Forensic Science Laboratory by PW12 Dr. Sanjiv, Senior Scientific Officer, CFSL, Chandigarh who in his report Ex.PN, stated that seminal fluid was detected on the swabs Ex.P3. The presence of seminal fluid on the swabs by itself is sufficient to show that the prosecutrix had been subjected to sexual intercourse.

It is not in dispute that the prosecutrix was a young girl of 7/8 years at the time of the occurrence and when she appeared before the trial Court as PW6, she had stated her age as ten years. No material has been brought by the defence on the record to show that the prosecutrix was a girl of mature age. Half hearted attempt has been made by the defence to show that the appellant has been falsely implicated on account of dispute which he had with the parents of the prosecutrix. However, on going through the testimonies of the three witnesses produced by the appellant in his defence, this Court finds that no reliance can be placed upon the testimonies of these

witnesses. At no stage of the investigation did any of the three defence witnesses had come up to assert that the appellant has been falsely implicated in the present case.

In view of the above, no case is made out for upsetting the finding of conviction recorded by the trial Court.

As regards the quantum of sentence of imprisonment, it may be noticed that after being convicted and sentenced by the trial Court, i.e. on 22.4.2009, the appellant remains in custody. Even during the trial of the case, he had remained behind the bars for a period of three months and four days. As per the custody certificate produced by the learned Additional Public Prosecutor, it is made out that the appellant has also earned remission of two years and six months. Upto 9.12.2015, the appellant has undergone an actual sentence including remission of nine years, four months and twenty four days.

When the appellant was examined by the trial Court under Section 235 Cr.P.C., he had pleaded that he was a poor person and only bread earner of his family. His family consisted of his wife and two minor daughters.

Section 376(2) of the Indian Penal Code, as it stood on the date of commission of the crime, provided for imposing minimum sentence of ten years, in case the rape is committed on a woman under twelve years of age. However, proviso to Section 376(2) IPC permitted the Court to impose a sentence of imprisonment for a term of less than ten years, in case there are any adequate and special

reasons. The appellant has been facing the agony of criminal prosecution for the last more than twelve years. At the time of framing of the charges, the age of the appellant was recorded as twenty three years. The appellant is not shown to be involved in any other criminal case. Out of the sentence of ten years imposed upon him, he has already undergone total period of about nine and half years. As mentioned above, the appellant has since got married and sired two daughters. It is the appellant alone who can earn their daily bread. For these reasons, this Court finds it to be a fit case to award sentence of imprisonment for a term of less than ten years upon the appellant.

Resultantly, the conviction of the appellant for the offences under Sections 376 and 342 IPC is upheld. However, his sentences of imprisonment on both the counts are reduced to the one already undergone by him. The sentences of fine along with their default clauses are maintained.

The appeal is, accordingly, disposed of.

December 9, 2015
amit rana

(T.P.S. MANN)
JUDGE