

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

Criminal Appeal No.3143-SB of 2009

Date of Decision: 13.8.2015

Pappu alias Surinder Kumar

..Appellant

Vs.

State of Haryana

..Respondent

Present: Mr. Jagdish Rai, Advocate as Amicus Curaie.

Mr. Deepak Gupta, Advocate.

Mr. Arun Luthra, AAG, Haryana.

Jitender Chauhan, J.

This appeal has been preferred by the accused appellant against the judgment of conviction passed by the Additional Sessions Judge vide which he was convicted under section 376 of the Indian Penal Code, vide judgment dated 26.05.2009. The trial court sentenced the accused appellant to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, or in default of payment thereof to further undergo SI for a period of six months.

The brief facts as reflected by the trial Court in Para No.2 reads as under:

Briefly stated the facts of the case are that on 6.2.2008, Assistant Sub Inspector Ranjit Kumar alongwith Constable Gulshan Kumar was present at the gate of Police Station City Panipat, mean

while the prosecutrix PW2 got recorded her statement to the effect that her parents are residing in Moti Nagar, Karnal and she has been residing with her grand mother Raj Rani since her childhood and is a student of the 9th class in S.D.Girls School under the Quila. In her neighbour Pappu son of Banarsi Dass Khatri resident of Insar Bazar is residing and is working as an electrician. About one month back, Pappu told her that she had written some letter to some boy and the same is in custody and he would defame her through this letter. The daughter of Pappu is her friend and she used to go to the house of said Pappu. There was holiday in their school on that day. Pappu called her in his house and asked to remove her clothes, but she refused to do so, then Pappu asked her that if she would not remove the clothes he would put himself fire by sprinkling petrol and then Pappu himself removed her clothes. He told her to lay on the *takhatposh* (wooden bed) and forcibly made her to lay down on that wooden bed and committed sexual intercourse with her. When she started weeping then he used to gag her mouth and used to threaten her to defame. He had committed sexual intercourse with her 6-7 times during that month. If she did not go to him, then he used to come to her school and she did not disclose this episode to anyone. She further deposed that on 4.2.2008 at 3.30 p.m., Pappu took her with him forcibly and committed rape upon her and she started weeping. Then she disclosed this episode to her grand mother, who further disclosed the same to her parents. She further stated that the accused had committed rape upon her by alluring her. The said

statement Ex.PN was sent to the police station on the basis of which DD entry No.29 was made in the D.D.Register. The prosecutrix was medicolegally examined by PW1 Dr.Archana Paliwal and after examination, an envelope sealed with four seals, a sample seal, a Medico Legal Report copy, a request letter, a box sealed with four seals, a sample seal, a Medico Legal Report copy, a request letter, a box sealed with four seals containing two vaginal swabs and two vaginal smears, a pulinda sealed with four seals containing underwear Exhibit P1, Pajami Exhibit P2, salwar Exhibit P3 duly signed were taken into possession vide recovery memo Exhibit PO. On 7.2.2000, accused was medico legally examined by Dr.Sanjiv Gupta PW7 on application Exhibit PL. On 8.2.2008, an application Exhibit PE/1 was moved before PW13 Sh.Sanjay Sandhir, learned Judicial Magistrate Ist Class, Panipat and the statement of the prosecutrix under Section 164 of Code of Criminal Procedure was recorded. On 15.2.2008, photo copies of the ration card and the birth certificate of the prosecutrix were taken into possession vide memo Exhibit PF. On 29.2.2008 middle examination certificate of the prosecutrix was also taken into possession vide memo Exhibit PG. Site plan Exhibit PQ was prepared by PW Sub Inspector Ranjit Kumar. On 10.3.2008, he got prepared the scaled site plan Exhibit PS from constable Jagbir Singh PW11 and recorded the statements of witnesses. After completion of usual investigation, report under Section 173 Cr.P.C. of the Code of Criminal Procedure was prepared by Sub Inspector/SHO Vijender Singh.

After supplying the copies of the challan and the documents sent with it to the accused free of costs, learned Chief Judicial Magistrate, Panipat committed the case to the court of Sessions vide order dated 23.4.2008 and the same was initially assigned to the court of Smt.Ritu Garg, learned Additional Sessions Judge, Panipat and thereafter to this Court.

Charge under Section 376 IPC was framed against the accused to which the accused pleaded not guilty and claimed trial.

Feeling aggrieved against the conviction and sentence as described in para no.1 of the judgment, the appellant has filed this criminal appeal, which was admitted on 23.12.2009 and recovery of fine was stayed during the pendency of this appeal.

This appeal appeared in the Regular List of this Bench. It was being listed daily, but none came to argue the case. Ultimately the Court has no option, but to appoint Mr Jagdish Rai, Advocate as Amicus Curaie to assist this Court on behalf of the accused-appellant.

It is contended on behalf of the appellant that there is unexplained delay in lodging the first information report; that the age of the prosecutrix could not be proved; there are discrepancies in the statements of the witnesses; that there was no external injury on any part of the prosecutrix; that the prosecutrix was a consenting party; that she was used to sexual intercourse and that the statements recorded under section 164 of the Code of Criminal Procedure is a result of tutor. It has been further contended that the prosecution has failed to

prove any commission of crime by the appellant. At the end, it is contended that the punishment awarded is on the higher side.

The learned Amicus Curaie referred to judgments in *Aasu Vs State of Haryana 2011(2) Recent Criminal Reports (Criminal) 512; Sunil Vs State of Haryana 2010(1) Recent Criminal Reports (Crl) 166 and Alamelu and another Vs State 2011(2) SCC 385.*

On the other hand, the learned State counsel contended that the prosecution has fully proved its case against the accused appellant beyond reasonable doubt by producing the prosecutrix; her statement is corroborated by medical evidence PW1 Dr Archana Paliwal, Medical Officer. Then there is statement of PW3 Ram Bharti mother of the prosecutrix proving the age of the prosecutrix. The learned State Counsel contended that the prosecution has fully proved its case against the accused appellant beyond reasonable doubt.

I have heard the learned amicus curaie(here-in-referred to as “the learned AC”) and the learned State Counsel and have carefully gone through the judicial record with their able assistance.

In this case, the aged of the prosecutrix has been proved to be about fourteen years two months and sixteen days on the date of the commission of the offence. Ex PT proves her date of birth as 18.10.1995. The best evidence the mother of the prosecutrix has been produced to prove the age of the prosecutrix. There is nothing to rebut the date of birth of the prosecutrix. The contention of the learned AC is

therefore repelled that the prosecution has failed to prove the age of the prosecutrix.

Secondly, the learned AC contended that there was no external injury on any part of the body of the prosecutrix which could suggest that the prosecutrix was subjected to rape. The learned AC contended that the learned trial court wrongly relied upon the statement of the doctor to the effect that possibility of sexual assault cannot be ruled out. The learned AC contended that the opinion formed by the trial court is based on mis appreciation of medical evidence.

This argument of the learned counsel does not cut much ice. In this case a minor girl aged about fourteen years was raped under threat that the accused would circulate her love letters written to a boy. It is important to mention here that the daughter of the accused and the prosecutrix were close acquaintance to each other. The accused-appellant has taken undue benefit of their association. Absence of marks of any external injury on the body of the prosecutrix merely suggest want of resistance on the part of the minor hapless girl which is wholly inconsequential when the girl was being raped by a close known of the family. The statement of the prosecutrix is consistent with the medical evidence. There is no inconsistency in the statements of the prosecutrix in her statements recorded under section 161 Cr.P.C, under section 164 Cr.P.C and recorded in Court on oath.

Thirdly, there is no delay in lodging the first information report.

Lastly, she was raped on 4.2.2008. Her grand mother asked as to where

she had gone, then she told the whole occurrence to her grand mother. On 5.2.2008, her mother in law telephoned to PW3 Rani Bharti the mother of the prosecutrix to come to Karnal. She came and all the neighbours had gathered in their house. Accused was confined to his own house by the crowd. The prosecutrix told her grand mother that the accused had been raping her earlier also. They immediately brought the matter to the notice of the police and the police took action on the statement of the prosecutrix. It has come in evidence that the prosecutrix aged about fourteen years and her grand mother were residing together and there was no other male member in the family to lodge the report with the police. The delay to lodge the first information report has been satisfactorily explained by the prosecutrix and her mother.

The defence taken by the accused that his house is adjoining to the back of the house of the prosecutrix in the middle of the market. The parents of the prosecutrix wanted to purchase their house from the accused but he refused to sell it, therefore, the accused had been roped in this case falsely.

The defence plea taken by the accused is clearly an after thought and unbelievable. It is absurd to suggest that the family of the girl would falsely involve the accused appellant in a rape case by introducing their fourteen years minor daughter. The family had no ill motive to falsely implicate the accused in this case.

From the careful analysis of the prosecution evidence, this court is of the opinion that the prosecution has fully proved its case beyond a reasonable shadow of doubt against the accused appellant by leading a cogent and trust worthy evidence i.e. the statement of the prosecutrix which is duly corroborated by the medical evidence and the statement of the mother of the prosecutrix. The statement of the prosecutrix is wholly reliable and she withstood the lengthy cross examination. The learned trial court has correctly appreciated the evidence on record and no other view is possible. There is no reason to interfere in the well reasoned judgment of conviction.

There is no force in the contention of the learned Amicus Curiae that the punishment is on the higher side. The accused deserves no leniency. He has raped a hapless girl under threat, who was of the age of his daughter.

The prosecutrix used to visit the house of the accused to meet his daughter. The accused has betrayed the confidence of the society. Thus the accused appellant was adequately punished. There is no circumstance in favour of the appellant for taking a lenient view in the matter of sentence.

In view of the above discussion, this appeal fails and is dismissed.

13.8.2015
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(JITENDRA CHAUHAN)
JUDGE