

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-263-SB of 2011

Date of Decision : September 23, 2015

Ashok Taneja

...Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. V.N. Sharma, Advocate
for the appellant.

Mr.Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was tried for committing offence punishable under Section 376 of the Indian Penal Code. Vide judgment and order dated 17.1.2010, learned Additional Sessions Judge, Amritsar convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month. The period of detention already undergone by him during the course of trial of the case was ordered to be set off against the substantive sentence of imprisonment.

The case of the prosecution was described by the trial Court in para 2 of the impugned judgment as follows :-

“On 25.3.2009, complainant, prosecutrix,

daughter of Ashok Taneja (accused), resident of mohalla Gandhi Nagar, Gali No.1, Dera Baba Nanak Road, Ajnala, made statement before ASI Darshan Singh of Police Station Ajnala, to the effect that she is the resident of the aforesaid address and doing dress designing course at Guru Nanak Dev University, Amritsar. Her father Ashok Taneja had been threatening her and had been forcibly committing rape upon her for the last 8/9 years. A few days earlier she saw news on television where a daughter has made complaint against her father, who, had been committing such acts upon her, and that, changed her mind and she took a courage to inform her mother Preeti Taneja, who, further told about this to her (complainant's) brother Atul Taneja. Thereafter, this incident was also brought to the notice of her maternal uncles namely Dr. Brij Mohan, Dr. Parkash Mitter and another uncle (Masar) Vinod Arora. They all brought her to Police Station, Ajnala, where, her aforesaid statement was recorded."

Further case of the prosecution was that on the basis of statement made by the prosecutrix, FIR No.43 dated 25.3.2009 under Section 376 IPC was registered against the appellant at Police Station Ajnala. During the investigation of the case, ASI Darshan Singh inspected the place of occurrence, prepared rough site plan, got the prosecutrix medico-legally examined, recorded the statements of the witnesses, arrested the appellant and got the appellant medically examined. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was presented. Following

commitment of the case, the appellant was charged for the aforementioned offence, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the prosecutrix as PW1, who testified that she was doing the Dress Designing Course from Guru Nanak Dev University, Amritsar and the appellant never committed rape with her. He also never attempted to set her ablaze by pouring kerosene on her body. As she did not support the prosecution case, she was declared hostile and cross-examined by the learned Additional Public Prosecutor but stated that she did not make statement Ex. P1 to the police. However, she admitted her signatures on statement Ex.P1. She further testified that her statement Ex.P2 was recorded before the Magistrate at Ajnala but the said statement was made under police pressure. She further admitted her signatures on said statement and also on her medico-legal report Ex.P3.

PW2 Dr. Jaswinder Kaur, Medical Officer, Civil Hospital, Amritsar testified that in 26.3.2009, when she was posted in the department of Gynae, a Medical Board was constituted by Dr. S.K. Kapoor, Senior Medical Officer, Civil Hospital, Amritsar for conducting medico-legal examination of the prosecutrix. Accordingly, she, alongwith Dr. Rupam Pasricha and Dr. Harsh Bala, medico-legally examined the prosecutrix, who was conscious, co-operative and well oriented. There was history of repeated sexual assault since childhood.

There was no history of fresh external injury mark on the person of prosecutrix. She further stated that on examination, secondary sex characters were found developed. Breast was developed, areola was brown in colour, axillary and pubic hair were present. She further stated that per vagina examination, hymen was torn, margin healed, non-oedomatous and not bleeding. She further stated that vaginal swabs were taken from lower and upper vagina and sent to the Chemical Examiner for confirmation of spermatozoa. She further stated that the vagina admitted two fingers. After the receipt of report of the Chemical Examiner, the Medical Board gave the final opinion Ex.P6 which was sent to Police Station Ajnala. As per final opinion and report of the Chemical Examiner spermatozoa were detected in the contents of Ex.I (swabs from lower vagina) whereas no spermatozoa was detected in the contents of Ex.II (swabs from upper vagina). It was further opined by the Board of Doctors that the prosecutrix was subjected to sexual intercourse.

The mother of the prosecutrix was examined by the prosecution as PW3 and she stated on oath that the prosecutrix was her daughter while the appellant was her husband. Her daughter did not disclose to her that the appellant was committing rape with her for the last eight/nine years. She did not support the case of the prosecution and, accordingly, declared hostile. Even in her cross-examination by the learned Additional Public Prosecutrix, she did not support the prosecution case.

Atul Taneja, son of the appellant, while stepping into the witness box as PW4, did not support the case of the prosecution and turned hostile.

PW5 Rajesh Bajaj and PW6 Rajiv Bajaj, cousins of the prosecutrix, testified that on 25.3.2009 their maternal uncle Parkash Thukral informed them that the appellant had been committing rape upon his daughter for the last eight/eight years. Accordingly, all the relatives gathered at the house of Brij Mohan Thukral and Vijay Thukral at Chowk Meeran Kot where the prosecutrix and her mother were present, who disclosed to them about the above said occurrence. All the relatives, thereafter, accompanied the prosecutrix to Police Station Ajnala for lodging the report with the police.

PW7 Dr. Sukhraj Singh, Medical Officer, Civil Hospital, Ajnala testified that on 26.3.2009, he medically examined the appellant and found that there was nothing to suggest about the appellant being incapable of doing the sexual act.

Brij Mohan, maternal uncle of cousins of the prosecutrix appeared in the witness-box as PW8, but did not support the case of the prosecution and turned hostile. Parkash Mitter Arora, another maternal uncle of the cousins of the prosecutrix, stepped into the witness-box as PW9 and stated that he knew the appellant, who was his brother-in-law whereas the prosecution was daughter of the appellant. He further stated that on 25.3.2009, his brother Brij Mohan came to his residence and told him that the appellant had been

committing rape with his daughter. He further stated that he fell upset and informed his close relatives. On the same day, Rajesh Bajaj and Rajiv Bajaj came to him and expressed that the appellant had done bad act by committing rape upon his daughter. He further deposed that his younger brother Brij Mohan was also present there. Then all of them went to the house of Brij Mohan where the prosecutrix and her mother were present. They asked the mother of the prosecutrix about the appellant committing rape upon her daughter for the last eight/nine years but she told them that they were under pressure due to which they could not disclose the said fact earlier and this thing was going on for the last eight/nine years. Accordingly, they went to Police Station Ajnala to lodge the report.

HC Gulshanbir Singh, who appeared in the witness-box as PW10 deposed about the deposit of various articles in the Malkhana and, thereafter, being sent through HC Inder Singh for depositing the same in the office of the Chemical Examiner.

PW11 ASI Darshan Singh deposed about recording the statement of the prosecutrix and on its basis FIR being registered at Police Station Ajnala by ASI Baldev Singh. He further deposed about visiting the place of occurrence, preparing rough site plan, taking the prosecutrix to Civil Hospital, Ajnala from where the prosecutrix was referred to Civil Hospital, Amritsar, getting the prosecutrix medico-legally examined and recording supplementary statement of the prosecutrix. He also deposed about arresting the appellant on

26.3.2009 and getting him medically examined. He further deposed about producing the prosecutrix before the Sub Divisional Judicial Magistrate, Ajnala on 27.3.2009 for recording her statement under Section 164 Cr.P.C.

Shri B.S. Deol, Sub Divisional Judicial Magistrate, Ajnala appeared in the witness-box as PW12 and deposed that on 27.3.2009 he recorded statement of the prosecutrix under Section 164 Cr.P.C.

When examined under Section 313 Cr.P.C., the appellant denied the prosecution allegations. He stated that he was innocent and had not committed any offence. His relations with his in-laws were not cordial and for that reason, false case had been registered against him. However, in defence, the appellant did not lead any evidence.

The trial Court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on going through the record of the case, this Court finds that though the prosecutrix, who appeared as PW1, her mother, who appeared as PW3, her brother Atul Taneja as PW4 and her maternal uncle PW8 Brij Mohan did not support the case of the prosecution and turned hostile yet on closer scrutiny of their respective statements, it is made out that the prosecutrix admitted her signatures on statement made before ASI Darshan Singh on the basis of which the FIR was registered. She also admitted her signatures on statement made before the Magistrate under Section 164 Cr.P.C. Her explanation that she had given

statements under police pressure cannot be accepted as no material has come on the record that any of the police official was inimical disposed of towards her and her family members. Moreover, at the time of reporting the matter to the police, the prosecutrix had stated that she was doing Dress Designing Course from Guru Nanak Dev University and aged about twenty/twenty one years. Being an educated woman, she could understand the things and would not have put her signatures on dotted lines. On the other hand, the prosecutrix, being daughter of the appellant had every reason to defend him during the trial of the case by denying whatever was stated by her against him while lodging the FIR and while making statement under Section 164 Cr.P.C. Similar was the position with her mother, her brother and her maternal uncle Brij Mohan who were closely related to the appellant. At the same time, there is consistent evidence available on the record by way of the testimonies of PW5 Rajesh Bajaj and PW6 Rajiv Bajaj, cousins of the prosecutrix, who have testified that on being informed by their maternal uncle Parkash Thukral that the appellant had been committing rape upon the prosecutrix who was his daughter, for the last eight/nine years, they gathered at the residence of PW8 Brij Mohan Thukral at Chowk Meeran Kot where the prosecutrix and her mother were also present who disclosed to them about the entire occurrence. Even Parkash Mitter Arora another uncle of the cousin of the prosecutrix, while appearing in the witness-box as PW9 supported the testimonies of PW5 Rajesh Bajaj and PW6 Rajiv Bajaj.

It was the case of the prosecutrix in her statement Ex.P1 that she was being subjected to rape by her father for the last eight/nine years. As her age at the time of making statement Ex.P1 was mentioned as twenty/twenty one years, she was about twelve/thirteen years old when she must have been first sexual ravished by the appellant who was none-else than her father.

From the medical evidence available on the record, report Ex. P6 of the Chemical Examiner and the opinion Ex. P7 of the board of doctors headed by PW2 Dr. Jaswinder Kaur, it is duly established that the prosecutrix had been subjected to sexual intercourse. Merely because there was no injury found on the person of the prosecutrix at the time of her medico-legal examination is not sufficient to hold that she had willingly consented for sexual intercourse. No sane girl would succumb to the lust of her father for sex. Moreover, she used to be sexual ravished by her father when she had just become teenager.

The defence has tried to point out certain discrepancies and contradictions in the statements of the various witnesses of the prosecution but, to my mind these do not go to the root of the case. Rather, such like discrepancies and contractions do appear in the testimonies of truthful witnesses.

The defence plea that the appellant did not have cordial relations with his in-laws is neither here nor there. No material has been brought on the record to indicate as to how the relations between the parties were not cordial. Moreover, no person would like to put the

honour of his or her daughter at stake by coming up with false allegations of such relative of theirs being sexually ravished

In view of the above, no case is made out for interfering in the impugned judgment of conviction passed by the trial Court.

As regards the quantum of sentence, it may be noticed that the appellant is behind the bars since 26.3.2009. He has already undergone an actual period of about six and half years out of the sentence of ten years imposed upon him. During his examination under Section 313 Cr.P.C. before the trial Court, the appellant had pleaded that he was the only earning member of his family and his children were young. Taking into consideration the totality of the circumstances, this Court is of the view that adequate and special reasons exist for awarding sentence of imprisonment less than the minimum prescribed, i.e. ten years for the offence under Section 376 IPC.

Resultantly, the conviction of the appellant under Section 376 IPC is upheld. The sentence of imprisonment is reduced from ten years to rigorous imprisonment for seven years. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

September 23, 2015
satish

(T.P.S. MANN)
JUDGE