

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2773-SB of 2012
Date of Decision: December 23, 2015

Sapat

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarfraj Hussain, Advocate
for the appellant.

Mr.P.K.Jhanda, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 09.05.2012 and order of sentence dated 11.05.2012 passed by learned Addl. Sessions Judge, Nuh, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 376(2) (g) IPC.

The brief facts of the prosecution case are that on 24.03.2010, complainant Istar along with his daughter prosecutrix, came present in the police station and presented an application. The complainant alleged that he was a labourer. On 24.03.2010 at about

5.00 P.M., his neighbour namely Sapat and Jakir @ Kolhu allured his daughter and took her to their house. Both of them committed rape upon her. On hearing the cries of the girl, complainant reached at the spot. Sapat and Jakot @ Kohlu fled away from the spot. On the basis of the statement of the complainant, FIR was registered. Investigation was conducted. Statements of witnesses were recorded. Since accused Jakir @ Kohlu was juvenile, his challan was separated. After necessary investigation, challan was presented against the appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 376(2)(g) IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Istar, complainant, who deposed as per prosecution version. PW-2 Dr.Asha, Medical Officer, who medico legally examined prosecutrix deposed that on examination, hymen was found torn and fresh blood was coming out. PW-3 Head Constable Surender Singh, formal witness, who joined the investigation deposed that he lifted blood-stained earth from the spot. PW-4 Hari Chand, Head Teacher, Govt. Primary School, Bhakdoji stated that the date of birth of Jakir @ Kohlu is 02.09.1995. PW-5 Dr.Sita Ram mainly deposed regarding medico legally examining accused Sapat. PW-6 Subat deposed that on 24.03.2010, he was present in his house. He heard cries of child from

the house of Hamida. He along with brothers Istar and Jamshed rushed to the place. When they were entering in the house of Hamida, accused Jakir and Sapat were seen coming out from the house. They went inside and prosecutrix was found bleeding from his private part. They brought the baby in the police station. Thereafter, Istar took her to Mandi Khera hospital for medico legal examination. He further deposed that they went back to house from police station. The prosecutrix told them that Jakir and Sapat had raped her. This witness also identified the accused. PW-7 prosecutrix aged about 6 years also deposed that about one year ago, accused Sapat and Jakir @ Kohlu committed rape upon her without her consent. She further deposed that accused Sapat is present in the Court who committed rape upon her. PW-8 Head Constable Rajesh Kumar, formal witness, tendered into evidence his affidavit Ex.PH. PW-9 Jamshed, brother of the complainant, also deposed as per prosecution version. PW-10 Naresh Kumar, Draftsman, deposed regarding preparing of scaled site plan. PW-11 ASI Raj Kumar, Investigating Officer, deposed regarding the investigation conducted by him in the present case. PW-12 Constable Rajender Singh, formal witness, tendered into evidence his affidavit Ex.PW12/A. PW-13 Inspector Bhagat Ram mainly deposed regarding preparing of report under Section 173 Cr.P.C. PW-14 SI Satpal Singh deposed regarding arrest of the accused etc.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. He denied the correctness of

the evidence and pleaded himself as innocent. He further pleaded that he has been falsely implicated by the police in this case.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that accused-appellant is innocent and has been falsely implicated in the present case. The prosecutrix herself admitted that there is dispute between accused and her family before the occurrence. The prosecutrix also admitted that there was a quarrel between his father and accused family before the occurrence. He further argued that as there was dispute between the accused-Sapat and father of the prosecutrix, therefore, the accused-appellant has been falsely implicated in this case. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. The testimony of prosecutrix, who is aged about 6 years along with other eye witnesses, is duly supported and corroborated by medical evidence. There is nothing to disbelieve the statements of the PWs. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that

prosecutrix was aged about 6 years at the time of occurrence and she deposed in the Court that accused Sapat and co-accused Jakir @ Kohlu who was juvenile, have raped her. The testimony of prosecutrix is duly supported and corroborated by the complainant and other eye witnesses, who on hearing the cries, went to the place of occurrence where they saw accused along with co-accused coming out of the house and the prosecutrix was found bleeding. There is no unnecessary delay in reporting the matter to the police and the prosecutrix was got medico legally examined. The medical evidence has duly supported and corroborated the prosecution version. There is nothing on the record to show that accused-appellant has been falsely implicated in the present case. Why a minor child of 6 years of age, would depose falsely against the accused. Though it is in the cross-examination of the prosecutrix that there was dispute between the accused and father of the prosecutrix but even this plea has not been taken by the accused-appellant in his statement recorded under Section 313 Cr.P.C. There is nothing in the cross-examination of the witnesses which may make their statements unreliable. No material contradictions and no material improvements have been pointed out in the statements of the witnesses by learned counsel for the appellant. Otherwise also, a suggestion was given to the prosecutrix that there was dispute between the accused-appellant Sapat and father of the prosecutrix but nothing has been explained as to what was the dispute between them. No defence evidence has been produced by the accused-appellant to prove any dispute.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. The trial Court has correctly convicted and sentenced the appellant while appreciating the evidence in right perspective. The judgment of conviction dated 09.05.2012 and order of sentence 11.05.2012 passed by learned Addl. Sessions Judge, Nuh are correct, as per law and do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

December 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE