

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

CRA-S-No.3542-SB of 2013 (O&M)
DATE OF DECISION : 9th DECEMBER, 2015

Patwinder Singh

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

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Present : Mr. S. P. S. Sidhu, Advocate for the appellant.

Mr. Deep Singh, Assistant Advocate General, Punjab.

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ANITA CHAUDHRY, J. (ORAL)

1. The appellant was convicted for attempted rape and sentenced to five years' rigorous imprisonment along with fine of ₹10,000/-. In default of payment of fine the convict was further ordered to undergo rigorous imprisonment for three months.
2. Feeling dissatisfied with the impugned judgment of conviction and sentence passed under Section 376 IPC read with Section 511 IPC, the present appeal has been filed.
3. The prosecution case, as it emerges from the evidence on record can be stated thus. The prosecutrix, aged 12 years, left home to take tuitions in village Duneke, Patwinder Singh who was working as a *Granthi* in a nearby *Gurudwara* and offered a drink at his house before she attended her tuitions. The accused took her to a

room on the first floor and made the child sit on the bed. He bolted the door from inside and tried to remove the cloths of the victim. The child resisted and she suffered bruises and scratches on her hand. There were bruises on her neck. The victim started crying and on hearing her screams her father and uncle reached the spot and pushed open the door and saw the accused trying to commit rape. On seeing them the accused pushed them aside and jumped from the first floor of the building to escape. The police was called and the incident was narrated and she was taken to the Civil Hospital, Moga. Vaginal swabs were taken and sent to the Chemical Analyst.

4. Dr. Daizy Sood, PW-2 had medically examined the prosecutrix and had found the following injuries:

- i. An abrasion of ½ cm over dorsum of right hand.
- ii. An abrasion of 0.2cm over dorsum of left hand.
- iii. A scratch mark over left side on neck.

5. The accused was arrested and was also subjected to medical examination and Dr. Sanjeev Kumar Jain PW-1 has noted the following injuries:

- i. Lacerated wound 1.3cm x 0.4cm on front of proximal phalanx of left ring finger. History of injury 4 days back.
- ii. Lacerated wound 1 cm x 0.3cm on base of left little finger on lateral aspect.
- iii. Abrasion 2.5cm x 1cm on front of right knee. Scab present.

iv. Abrasion 3cm X 1cm on front of right leg at junction of upper and middle 1/3rd. Scab present.

v. Swelling 8cm x 8cm on front of left leg near tibial tuberosity over swelling are scab abrasion 1 cm x 1cm.

6. The trial Court on considering the evidence convicted and sentenced the accused to the sentence mentioned as aforesaid.

7. The counsel appearing for the appellant had urged that the Court below has not analyzed the evidence in the proper perspective, if evidence of the victim and the Doctor's evidence is read it clearly rules out that there was no attempt of rape and at the most it could be said to be a case which would fall under Section 354 IPC and there was no attempt to have intercourse which is *sine qua non* for the offence.

8. Per contra, the counsel appearing for the State submits that the trial Court had examined the evidence minutely and the medical evidence nails the accused and the vaginal swabs were taken which show the presence of spermatozoa, which means there was ejaculation and the version of the prosecutrix alone can form the foundation of conviction.

9. The statement of the prosecutrix in the instant case regarding the incident is self-explicit and comprehensive and no material could be extracted in the cross-examination. There is no dispute regarding the identification of the accused. The prosecutrix was 11 years old at the time of incident. She was going for her

tutions late afternoon when the accused, who is a *Granthi* in the Gurudwara, met her and lured her to his apartment and took her to the first floor when his family was not there. There are injuries on the body of the child. After the arrest of the accused, injuries were found on his body which links him to the incident. The complainant had stated that the accused on seeing them had jumped from the first floor of the house. The FSL report is against the accused. The *sine qua non* of the offence of rape is penetration and not ejaculation and when there is ejaculation without penetration it constitutes attempt of committing rape. The instant case would fall clearly under Section 376 IPC read with Section 511 IPC. The statement of the prosecutrix gets support from her father's statement. The conviction of the accused for the offence aforesaid cannot be faulted with.

10. Insofar as the sentence is concerned. Learned counsel for the appellant has urged that the accused was married and had two children and was not involved in any other case and was the only earning member and support for the family.

11. The only question that remains is with respect to the sentence. The appellant was a *Granthi* in a *Gurudwara*. He had behaved in an indecent manner. The appellant at present is in jail and is in custody for the last two years and nine months.

12. Taking into account the cumulative effect and over all view of the matter and considering the fact that he has minor children and is to provide education, I am of the opinion, that the ends of justice will be satisfied if the substantive sentence imposed by the

trial Court is reduced from five years to three years. There will be no modification in the fine. The sentence of the fine and the default clause will remain untouched.

13. Subject to the above modification in the sentence, the appeal stands dismissed. The amended jail warrants would be issued to indicate the reduction in sentence to be intimated to the Jail Superintendent in conformity with the judgment passed by this Court.

14. The record be sent back.

9th DECEMBER, 2015
'raj'

(ANITA CHAUDHRY)
JUDGE