

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

Criminal Appeal No.957-SB of 2012

Date of Decision : 28.08.2015

Ranjit Singh @ Jeetu

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. N.S. Sodhi, Advocate,
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab,
and Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J.

Assailed in the present criminal appeal is the judgment of conviction and the order of sentence dated 17.02.2012 (hereinafter referred to as 'the impugned judgment'), passed by the Juvenile Justice Board, Ferozepur, (for short, 'the Board'), whereby, the accused appellant has been convicted under Section 376 of the Indian Penal Code (for short, the IPC) and sentenced to undergo for a period of two years and was directed to be sent to the Special Home for a period of two years.

Briefly stated, the facts of the present case, as recorded in

para 2 of the impugned judgment, are as under:-

“2. That the brief facts of the prosecution case are that on 18-9-2003, an application was moved to the Assistant Superintendent of Police, Abohar by the complainant, namely xxx daughter of Ram Saran for the lodging of FIR, wherein she stated that she is a minor having the age of 13 to 14 years and on 20-8-2003, at about 5-00 P.M., her neighbourer Ranjit Singh alias Jeetu son of Jangir Singh i.e the present juvenile has committed the rape upon her forcibly and against her wishes and at that time, he was accompanied by one Rani and Nikki daughters of Nathu and they all threatened her that if she (complainant) disclosed the matter to the police or her parents, they will kill her and her brothers. Then on 15-9-2003, the present juvenile Ranjit Singh alias Jeetu along with his other co-accused i.e Nikki and Rani again threatened her and they tried to take her away with them and then she had told the entire occurrence to her parents, who took per at the Police Post Balluana, but the police at Balluana did not take any action against them and then the matter was

reported to the Police Station Sadar, Abohar, but they also failed to take the action against the present juvenile and his other co-accused and then on 15-9-2003, she had appeared before the Sub Divisional Magistrate, Abohar and moved an written application and on the said application, an endorsement bearing no.1760-SA dated 15-9-2003 was made, whereby her medical examination was conducted from the Civil Hospital, Abohar and then the present juvenile along with his other co-accused had started giving threats that if she does not withdraw her said application, they will eliminate her as well as her brothers by kidnapping them and they also gave threats not to register any case against them in the police station and they also threatened to her that they will kill her and she has made the ultimate prayer that the action be taken against them.”

On the basis of the said application, the present FIR came to be registered. Upon completion of investigation, the present appellant along with his co-accused was arrested and report under Section 173 Cr.P.C. was prepared and presented before the Board.

Upon presentation of challan, charge under Section 376 IPC, was framed against the accused-appellants, to which he pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, the prosecution examined the following witnesses:-

PW1-Dr. Jagmeet Kaur, Medical Officer, Civil Hospital, Abohar, stated that on 16.09.2003 at 8.44 A.M., she medically examined the prosecutrix and made the following observations:-

She was moderately built and nourished.

Secondary sex characters were developed and she was unmarried and her last menstrual period was 05.09.2003. Her external genitalia were developed, pubic hair were normal and her hymen was torn and tear was old one. There was no redness and swelling. Vagina admitted two fingers easily. She also proved carbond attested copy of the MLR as Ex.P1.

PW2-the prosecutrix reiterated her earlier version as recorded in her application Ex.PW2/A. She also proved the FIR as Ex.PW2/B and another application for conducting the MLR as Ex.PW2/C.

PW3-Ramesh Kumar, JBT Teacher, proved school leaving certificate as Ex.PW3/A and the result card of 5th standard as

Ex.PW3/B. As per these documents, the date of birth of the juvenile was 15-4-1988.

PW4-HC Satwant Singh, stated that on 18.09.2003, he was posted as Police Station Sadar, Abohar and on that day, MHC Ravinder Kumar handed over to him a glass bottle containing two vaginal swabs and the same were deposited in the office of Assistant Chemical Examiner, in accordance with law.

PW5-ASI Harcharan Singh (Retd.), is the Investigating Officer of the present case. He deposed with regard to the investigating carried out by him. He also proved copy of the MLR as Ex.P1, application as Ex.P2, recovery memo as Ex.P3 and the site plan as Ex.P4.

PW6-Lajwanti, is the mother of the prosecutrix. She also supported the prosecution story.

PW7-SI Gurpreet Singh, deposed that on 18.10.2003, he was posted at Police Station Sadar, Abohar and on that day, Ramesh Kumar Sarpanch produced before him the present appellant. He also proved the ground of arrest as Ex.P5 and his personal search memo as Ex.P6.

PW8-ASI Skhmander Singh, stated that on 25.03.2004, he was posted at Police Post Balluana, Police Station Sadar, Abohar and the investigation of the case was handed over to him. On 26.03.2004, accused Nikki @ Pammi was joined the investigation as per the

orders of this High Court. On 06.05.2004, he arrested accused-Rani.

When examined under Section 313 Cr.P.C., the accused-appellant denied all the allegations of the prosecution and pleaded false implication. However, despite availing several opportunities, he did not lead any defence evidence.

The Board, after hearing both the parties, convicted and sentenced the accused-appellant as noticed at the outset of the judgment. Hence the present appeal, which was admitted by this Court on 16.03.2012.

The learned counsel for the appellant contends that there is an inordinate delay of 27 days in lodging the complaint to the police. The alleged occurrence took place on 20.08.2003, whereas, the first application was moved on 15.09.2003 and only thereafter, the FIR was lodged on 18.09.2003. The learned counsel further refers to the testimony of PW1-Dr. Jagmeet Kaur, and states that no injury was found on the person of the prosecutrix. No semen was detected from the vaginal swab sent for chemical examination. It is further contended that there are material contradictions in the statements of the prosecution witnesses. The mother of the prosecutrix while appearing as PW6 has stated that her Salvar was not blood stained, whereas, the prosecutrix has categorically stated that on the day of occurrence, her apparel was stained with blood. The learned counsel argued that the appellant has been falsely implicated in the present

case on account of the dispute between the families over a common wall.

On the other hand, the learned State counsel argued that the prosecution has proved its case against the accused-appellants beyond reasonable doubt. The prosecutrix was a young child of 13-14 years at the time of the occurrence. She was subjected to a lengthy cross-examination, however, she withstood the same and no material discrepancy could be noticed.

I have heard the learned counsel for the parties and carefully perused the record.

As far as the delay in lodging the FIR is concerned, admittedly, it has been lodged after 26 days of the date of occurrence. However, the said delay has been sufficiently explained by the prosecution. The occurrence took place on 20.08.2003. After committing the crime, the appellant and his co-accused, Nikki and Rani, threatened her that her younger brother would be killed in case, she disclosed anything to anybody. Thus, out of fear, the prosecutrix, who was of a tender age, could not share the incident to other members of the family. On 15.09.2003, the appellant again visited her house and tried to take her away forcibly but she was saved as the parents of the prosecutrix came there. It was only thereafter, the prosecutrix narrated the entire incident to her parents and without any delay, the matter was reported to the police.

As regards the argument raised by the learned counsel for

the petitioner that there was no injury mark on the person of the prosecutrix, it is to be noticed that the incident of rape took place on 20.08.2003, whereas, her medical examination was conducted on 16.09.2003, i.e. after 27 days of the occurrence. Even if she had received any abrasions or bruises, they must have healed by that time. Moreover, the absence of injuries on the person of the prosecutrix can not lead to a conclusion that no rape was committed. In the case of ***Gurcharan Singh Vs. State of Haryana, AIR 1972 SC 2661***, it has been held by Hon'ble the Apex Court that “the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of violence or stiff resistance in the present case may as well suggest helpless, surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the definition of rape.” The absence of semen on the exhibits sent for chemical examination is also explained by the fact that there is a delay of about one month between the occurrence and the medical examination of the prosecutrix.

The learned counsel for the appellant also referred to the statement of PW1-Dr. Jagmeet Kaur, wherein she has stated that the prosecutrix was habitual to sexual intercourse. However, the appellant cannot be allowed to take benefit of this fact as the same

cannot be termed as permission or consent to the appellant to commit rape upon the prosecutrix, particularly, when she is a minor.

As far as the discrepancies in the statements of the witnesses pointed out by the learned counsel for the appellant, especially, with regard to the fact whether the salwar worn by the prosecutrix got blood-stained after the incident, are also liable to be ignored. In this case, the prosecutrix has fully supported the case of the prosecution.

In ***Dinesh @ Buddha Vs. State of Rajasthan, AIR 2006 SC 1267***,

Hon'ble the Supreme Court has observed as under:-

“12. In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the

real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in the rape case....”

The plea of the appellant that he has been falsely implicated in the present case on account of the enmity is also negated in the absence of any proof in this context. In the Indian context, this explanation of false implication deserves to be rejected outrightly. In the present case, it appears to be an effort to malign and consequently discourage the family of the prosecutrix to defend against the aggression of the perpetrator of the crime.

In view of the above discussion, this Court feels that the prosecution has been successful in bringing home the guilt against the accused-appellant beyond a shadow of reasonable doubt.

Accordingly, the present appeal is dismissed.

(JITENDRA CHAUHAN)
JUDGE

28.08.2015

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Note: Whether to be referred to reporter ? Yes/No