

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

Criminal Appeal No. S-2031-SB of 2003
Date of Decision : March 19, 2015

Manjit Singh @ Billa

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. M.S.Dhillon, Advocate

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was charge sheeted for committing an offence punishable under Section 376 IPC on the allegations that on 4.10.2001 he had raped two years' old grand daughter of complainant Swaran Singh. Vide impugned judgment and order dated 28.8.2003, the Additional Sessions Judge (Ad hoc), Jalandhar convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/- and in default of the same, to further undergo rigorous imprisonment for six months. The period already spent by him in custody was ordered to be set off against his substantive sentence of imprisonment. Hence, the present appeal by the appellant wherein he has prayed for setting aside the impugned judgment of conviction and sentence and for his acquittal of the said charge.

The case of the prosecution, in nutshell, is that on 4.10.2001 at about 2.30 p.m., the prosecutrix was playing in front of her house and when she did not return, the complainant started searching for her. Even an announcement was made on the loudspeaker in the village, pursuant to which, the villagers started searching for her. When the complainant, alongwith Balbir Singh, while searching the prosecutrix, was proceeding on the metalled road and reached near the sugarcane field of Jarnail Singh, they heard the cries of a child. Both of them went towards the said field and saw the appellant running away after leaving the prosecutrix there. The prosecutrix was bleeding from her private parts. The appellant had taken the prosecutrix from outside her house to the fields and had committed rape upon her. The complainant then made statement Ex.PE before ASI Dev Raj and on its basis, FIR No.34 dated 4.10.2001 (Ex.PE/2) was recorded against the appellant under Section 376 IPC at Police Station Bilga.

During investigation of the case, the prosecutrix was taken to Civil Hospital, Bilga where she was medically examined. The shirt worn by her was handed over by the doctor to ASI Dev Raj, who converted it into a parcel. The doctor also handed over vaginal swabs, which were similarly made into parcel. ASI Dev Raj then went to the place of occurrence and prepared rough site plan. The appellant was arrested on 5.10.2001. His underwear was got removed and made into parcel. He was taken to the hospital for medical examination. The attending doctor found him fit to perform sexual intercourse. ASI Dev

Raj also recorded statement of formal witnesses. Upon completion of the investigation, challan was presented against the appellant. Subsequent to 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 ten witnesses. PW1 Dr. N.K. Singh testified that he conducted medico-legal examination of the prosecutrix and observed tear on the left side of labia minus and fresh blood. He, thereafter, referred the prosecutrix to the gynaecologist. PW2 Bhag Ram, Patwari proved the scaled site plan Ex.PA. PW3 Shinda, Chowkidar of the village proved the birth entry of the prosecutrix. PW4 HC Joginder Ram and PW5 Constable Anwar Masih tendered in evidence their affidavits Ex.PC and Ex.PD, respectively. Complainant Swaran Singh stepped into the witness-box as PW6 and supported the prosecution case. PW7 HC Bakhshish Lal tendered in evidence his affidavit Ex.PF. PW8 Balbir Singh, who had accompanied the complainant to the place of occurrence, did not support the prosecution case and was declared hostile. PW9 Prem Singh testified that he made announcement on the loudspeaker of the Gurudwara regarding disappearance of the prosecutrix. PW10 ASI Dev Raj deposed about the various steps taken by him during investigation of the case. The prosecution also tendered in evidence report Ex.PS of the Forensic Science Laboratory before closing its evidence.

When examined under Section 313 Cr.P.C., the appellant denied the allegations and pleaded that the witnesses were deposing falsely. He was innocent and had committed no offence. He was falsely implicated in the case at the instance of some interested persons, who were inimical towards him. However, the appellant did not lead any evidence in his defence.

After hearing learned counsel for the parties and perusing the record, the trial Court came to the conclusion that there was consistent evidence about the appellant having committed rape upon the victim, who was found bleeding as observed by the complainant and so stated in his statement Ex.PE, on the basis of which FIR was registered. Accordingly, the prosecution had been successful in proving the guilt of the appellant under Section 376 IPC. The defence plea set up by the appellant about his false implication was found to be an afterthought. Resultantly, the appellant was convicted and sentenced, as mentioned above.

This Court has heard Mr. M.S. Dhillon, Advocate for the appellant and Mr. Vikram Bishnoi, Assistant Advocate General, Punjab and scanned the evidence with their able assistance.

The objection of the defence regarding PW1 Dr. N.K. Singh conducting medico-legal examination of the prosecutrix on the ground that he being a male doctor was not competent to examine the

prosecutrix in a sex related case, is of no substance. Dr. N.K. Singh stood posted in Civil Hospital, Bilga and once the prosecutrix was brought before him he was under a professional duty to examine her, besides giving her proper treatment. During his cross-examination, PW1 Dr. N.K. Singh testified that there was no lady doctor or nurse available at the hospital but he had not referred the case to other hospital where lady doctor could be available. He further testified that even male doctor was competent to conduct the medico-legal examination although of late directions were issued that only lady doctors could examine the prosecutrix. Therefore, no fault can be found with PW1 Dr. N.K. Singh, medico-legally examining the prosecutrix.

It is the plea of the appellant that though in examination-in-chief PW6 Swaran Singh, grandfather of the prosecutrix, had testified that he had seen the appellant, who belonged to his village, coming out of the fields and running away yet in his cross-examination he stated that the appellant was shown to him at the Police Station on the same evening. Further, he had seen the back of the appellant at the place of occurrence and not his face. Therefore, the prosecution had failed to establish the identity of the appellant, being the one who was involved in the crime.

It is true that in his cross-examination PW6 Swaran Singh stated that he had seen the appellant from behind and not his face but in his re-examination by the Public Prosecutor, he stated that he had got recorded correctly in his statement Ex.PE that it was the appellant

who had come out of the sugarcane fields and ran away. If the father of the prosecutrix had correctly identified the appellant at the time of the occurrence, no benefit of any such mistake in not identifying the appellant can be extended to him.

According to the prosecution, when the prosecutrix did not return home for quite some time and an announcement made on the loudspeaker in that regard, the grandfather of the prosecutrix and one Balbir Singh started looking for her and when they reached near the sugarcane field of Jarnail Singh, they heard the cries of a child and, accordingly, they entered the field and found the appellant present there with the prosecutrix and on seeing them, he ran away. Aforementioned Balbir Singh was examined by the prosecution as PW8. He refused to toe the line of the prosecution and after getting him declared hostile, the Public Prosecutor cross-examined him. During such cross-examination, Balbir Singh denied that he had stated to the police about accompanying the grandfather of the prosecutrix in search of her or had heard the cries of the prosecutrix. He also denied that he and Swaran Singh proceeded towards the sugarcane field and the appellant running away after leaving the prosecutrix. However, in his examination-in-chief he had deposed that at noon time on 4.10.2001 when he had come to his house from the fields, an announcement was made from the Gurudwara on the loud-speaker about the prosecutrix being not traceable. He also stated that the villagers went in search of her. However, he himself did not go for the search nor he knew

anything about the incident.

PW9 Prem Singh testified in his cross-examination that on 4.10.2001 an announcement was made from the Gurudwara loudspeaker regarding disappearance of the prosecutrix. However, he stated that he did not see the appellant taking the girl away on his shoulder. As the witness failed to support the prosecution version, he was got declared hostile and cross-examined by the learned Public Prosecutor, where he denied that on 4.10.2001 at about 2.30/3.00 p.m. he had noticed the appellant carrying a child on his shoulder and proceeding on *pucca* road leading from Guntala to Bilga. He also denied that the appellant had kidnapped the prosecutrix and taken her to the sugarcane fields where he committed rape upon her.

Merely because PW8 Balbir Singh and PW9 Prem Singh did not support the case of the prosecution in entirety is no ground to absolve the appellant of the charge against him. The reason of their not supporting the case of the prosecution could be that they had been won over by the appellant. On the other hand, there is clear, cogent and convincing evidence in the nature of statement of PW6 Swaran Singh, grandfather of the prosecutrix, who had testified that when his granddaughter did not return home for some time, an announcement was made from the loudspeaker installed at the Gurudwara, pursuant to which a number of villagers started searching for the prosecutrix. Even he, alongwith Balbir Singh while looking for his grand-daughter,

proceeded on the metalled road and when they reached near the sugarcane field of Jarnail Singh, they heard the cries of a young child. Both of them went into the sugarcane field and found the appellant present there with the prosecutrix, who after seeing them, ran away from the spot. He also noticed that blood was oozing from the private parts of his grand-daughter. Soon after the occurrence, he left for the Police Station for lodging the report. At about 7.30 p.m. when he reached on the canal bridge within the revenue estate of village Bilga, he came across ASI Dev Raj before whom he made statement Ex.PE, on the basis of which FIR Ex.PE/2 under Section 376 IPC was registered against the appellant at Police Station Bilga on 4.10.2001 at 7.50 p.m. The prosecutrix was, thereafter, taken to PHC Bilga where she was medico-legally examined by PW1 Dr.N.K Singh, who found a bruise on the left side of her chin. Though there was no visible injury on the external genitalia and inner side of both thighs, he noticed small tear on the left side of labia minus. Fresh bleeding was present. Hymen was torn. After receipt of the report of chemical examiner, wherein it was mentioned that semen was found on the vaginal swab, the doctor opined that the prosecutrix was subjected to sexual intercourse. Thus, the identify of the appellant stands duly established and so also his involvement in the crime.

The plea of the appellant that he was innocent and had not committed any offence and falsely implicated at the instance of some interested persons who were inimical towards him, is only an after

thought. It is also not supported by any evidence. As such no benefit of the same can be extended to him.

In view of the above, no case is made out for any interference in the impugned judgment of conviction. Even as regards the quantum of sentence of imprisonment, no benefit can be extended to the appellant as the prosecutrix was almost an infant, being two years of age and as she was subjected to forcible sexual intercourse by the appellant, the law requires imposition of minimum sentence of imprisonment of ten years, which has been awarded in the present case. No case is made out for awarding any lesser sentence, more so, when no adequate and special reasons are made out.

The appeal is without any merit and, therefore, dismissed.

March 19, 2015
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(T.P.S. MANN)
JUDGE