

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

Crl. Appeal -D No. 976-DB of 2009(O&M)

Date of Decision: August 4 , 2016.

Narinder Singh APPELLANT (s)

Versus

State of Punjab RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Ms. Saumya Ahluwalia, Advocate (Amicus Curiae)
for the appellant.

Ms. Ritu Punj, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant – Narinder Singh has preferred this appeal impugning the judgment and order dated 28.08.2009 passed by the learned Sessions Judge, Ludhiana whereby he has been convicted for the offences punishable under Sections 376/307/201 IPC. The appellant has been sentenced to undergo life imprisonment, besides, pay a fine of ₹1,000/- and in default thereof, to undergo further rigorous imprisonment for one month for the offences punishable under `Section 376 IPC as well as Section 307 IPC.

He has been sentenced to undergo imprisonment for two years, besides, pay a fine of ₹5,000/- and in default thereof, to undergo further imprisonment for fifteen days for the offence punishable under Section 201 IPC. All the sentences were ordered to run concurrently.

Prosecution was set in motion on the statement (Ex.PA) dated 09.10.2007 of Harpreet Singh son of Raghbir Singh. The appellant is a cousin brother [son of the complainant's maternal uncle (Mama)] of Harpreet Singh, the complainant. The complainant stated that he is a resident of village Rampur, Police Station Payal. He had two children, the elder being a son, namely, Gurnam Singh aged about seven and half years and a daughter (victim), aged about five and half years. Both the children were studying in school. Harpreet Singh (complainant) was working as a driver for the trucks of Gurdev Singh (his uncle) ('Massar' i.e., the husband of maternal aunt). The complainant used to drive from Ludhiana to Orissa after loading the vehicle and he would return after 15/20 days. However at that time, he was home for about two or two and a half months due to the illness of his wife.

Appellant – Narinder Singh @ Noni came to the complainant's house on 08.10.2007 at about 11.30 a.m. in their village Rampur. He remained with them till 3.30 p.m. The appellant also visited Mohinder Kaur @ Mohindro, his aunt (sister of Harpreet Singh complainant's mother) who lives in the same village. The appellant took the complainant's minor daughter (victim) on his bicycle on the pretext that he would purchase toffees/sweets for her. However, when they did not return home till 5.00 p.m., Harpreet Singh (complainant) alongwith his mother started searching for the

appellant as well as his daughter (victim). He inquired from his aunt Mohinder Kaur @ Mohindro. When they met with no luck there, they proceeded to the house of his other maternal aunt, namely, Ranjit Kaur at village Latton Joga. The appellant and the victim were not found there also. When the complainant and his mother were returning to their village Rampura and were about one kilometer ahead of village Chhandran towards village Rampura, the appellant was found lying in an inebriated condition on the unmetaled (Katcha) portion of the road. The bicycle of the appellant was lying near him. On an enquiry about the victim, the appellant replied that he had dropped her at the complainant's house. However, it transpired that the victim had not been left home by the appellant. The victim could not be traced out at night.

Harpreet Singh (complainant) and his family members alongwith other residents of the village while searching for the victim on 09.10.2007 at about 9.30 a.m. came to know that a girl aged about five years was weeping in the well situated in the fields of Didar Singh. On reaching there, the complainant saw his daughter (victim) lying in the well. She was weeping and was injured. On taking her out from the well, it transpired that she had been raped. Blood was oozing out of the injuries suffered by her on her private parts and head. The victim was taken to the Civil Hospital, Payal for treatment. After giving first aid to her, she was referred to the Civil Hospital, Ludhiana. The victim was sent to Ludhiana with her grandmother Amarjit Kaur. Other residents of the village accompanied them. The victim revealed to her grandmother that she was raped by the appellant. She was then thrown

into the well. The appellant threw a sand bag and a brick upon her after throwing her in the well.

On receipt of information, SI Bhupinder Singh (PW13) proceeded to Civil Hospital, Payal where the statement of the complainant – Harpreet Singh (Ex.PA) was recorded. Formal FIR (Ex.PA/2) was registered. Rough site plan (Ex.PAA) was prepared. The police party thereafter proceeded to the place from where the victim was recovered i.e., the well in the fields of Didar Singh. The police party thereafter reached DMC Hospital, Ludhiana. An application (Ex.PX/1) was moved for recording the statement of the victim. She was declared unfit to make a statement by the doctor vide endorsement Ex.PX. MLR (Ex.PL) of the victim was obtained.

Three parcels, one containing vaginal swabs, another containing the clothes of the victim and the third containing a 'Prandi' (an accessory for making a plait) of the victim were handed over by PW12 Dr. Rajneesh Arora and PW11 Dr.Amarjasdeep Kaur. All the three parcels were duly sealed. The parcels were taken in possession vide memo Ex.PG. The said parcels were deposited with the MHC with their seals intact. The appellant – Narinder Singh was produced before the police by Narinder Singh, a Panch of village Rampur on 11.10.2007. He was formally arrested vide memo Ex.PJ. The appellant was medico-legally examined on 13.10.2007. In pursuance to the disclosure statement (Ex.PK) suffered by the appellant, his bicycle was recovered which was taken in possession vide memo Ex.PM.

An application (Ex.PY/1) was moved before the doctor on 18.10.2007 for recording the statement of the victim. She was declared fit to

record the statement vide Ex.PY. Statement of the victim was recorded by SI Bhupinder Singh, PW13 in question answer form. PW13, SI Bhupinder Singh took the photographs (Ex.P2 to P6) in possession vide memo (Ex.PF). Scaled site plan (Ex.PE) was prepared by PW8 Patwari Mohan Singh. Parcel of the blood-stained earth (Ex.P1) from the turmeric field was taken in possession. On completion of the investigation, Challan/report under Section 173 Cr.P.C. was presented on 19.12.2007. Charge for the offences punishable under Sections 376/307/201 IPC was framed against the appellant on 15.02.2008 to which he pleaded not guilty and claimed trial.

The prosecution examined as many as 13 witnesses to prove its case. The FSL report, Ex.PDD and the reports of the Chemical Examiner Ex.PEE and Ex.PS were tendered in evidence. The appellant while denying all the incriminating circumstances and evidence put to him under Section 313 Cr.P.C., pleaded innocence and false implication in this case. No evidence was led by the appellant in his defence.

The learned trial court on considering the facts and circumstances of the case as well as the evidence on record, concluded that the prosecution has proved its case against the appellant beyond reasonable doubt. Evidence of the child victim was found to be trustworthy, duly corroborated by the statements of the complainant i.e., the father of the victim as well as the other witnesses. The medical evidence duly corroborated the prosecution case. Hence the appellant was convicted and sentenced as mentioned above. Aggrieved from his conviction and sentence, the appellant has preferred the present appeal.

Learned counsel for the appellant vehemently contends that the learned trial court has grossly erred in convicting the appellant for the offences punishable under Sections 376/307/201 IPC. The appellant is a close relative of the complainant. He has been falsely implicated in this case. The evidence on record does not, in any manner, connect the appellant to the commission of the offence. No independent witness has been joined by the police. Conviction of the appellant is based solely on the statement of the child victim, which is not reliable. A gross error has been committed by the learned trial court by relying on the evidence of the victim, who was a child of merely five and half years at the time of the incident. The medical evidence on record does not, in any manner, point to the guilt of the appellant. It is submitted that PW11, Dr.Amarjasdeep Kaur, has admitted the possibility of Injury No.1 on the head being caused by striking against a hard surface. Injury No.3 could have been caused if the victim had fallen on an instrument like an iron rod etc. from a distance of about 10 feet. Therefore, it is submitted that the impugned judgment and order should be set aside and the appellant be acquitted of the charges against him.

Per contra, learned counsel for the State submits that the appellant is proved to be guilty of a heinous crime on the basis of clear and cogent evidence on record. He has been rightly convicted and sentenced for the offences punishable under Sections 376/304/201 IPC. It is submitted that the evidence of the child victim is trustworthy. The learned trial court had made certain that the victim was competent to depose as a witness. Her ability to understand the situation and give rational answers to the questions put to

her was duly affirmed by the learned trial court. Furthermore, medical evidence as well as other evidence on record clearly points to the guilt of the appellant. Therefore, the impugned judgment and order dated 28.08.2009 deserve to be upheld.

We have heard learned counsel for the parties and have gone through the record with their assistance. After a careful scrutiny of the evidence on record as well as the entire facts and circumstances of the case, we are of the firm opinion that the prosecution has successfully proved its case against the appellant beyond a shadow of doubt for the reasons as discussed hereinafter.

Learned counsel for the appellant has laid great stress and emphasis on the question of the entire prosecution case resting upon the testimony of the child witness (victim). The victim in the present case was about six years old at the time of the incident. The child witness (victim) has deposed before the learned trial court as PW2. She has narrated the events as they unfolded, revealing the commission of the offence by the appellant. It is a matter of record that the trial court affirmed and reassured itself that the victim was competent to depose in court as a witness. Her ability to understand and to give rational answers to the questions was duly tested by the trial court. It is specifically observed by the learned trial court that the victim, a child witness, was found competent to depose as a witness.

In respect to the evidentiary value of the testimony of a child witness, the Hon'ble Supreme Court in State of Karnataka v. Shantappa Madivalappa Galapuji and others, 2009 (12) SCC 731 has held that:

“The Indian Evidence Act, 1872 (in short “the Evidence Act”) does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old, disease – whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

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Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

It is further observed by the Hon'ble Supreme Court in the abovementioned judgment that the decision on the question of the child witness possessing sufficient intelligence rests primarily with the trial Judge. The trial Judge notices the child's manners, apparent possession or lack of intelligence. The trial Judge may resort to any examination which will tend to disclose the capacity and intelligence of the child witness as well as his understanding of the obligation of an oath. The evidence of a child witness cannot be rejected per se, but the court as a rule of prudence can consider such evidence after a close scrutiny. If the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the

evidence of the child witness.

In the case of Suryanarayana v. State of Karnataka, *AIR 2001 SC 482*, the only eye witness of a murder was a four year old child. The child's testimony was found to be reliable and trustworthy. It was observed by the Hon'ble Supreme Court that the evidence of a child witness cannot be rejected per se but would be subjected to greater scrutiny. Moreover, minor discrepancies in the child's deposition would not invite discredit and the prosecution can rightly claim a conviction based on the child's testimony.

As noted above, in the present case the learned trial court has conducted the exercise of considering the ability and competence of the child witness to depose in court. On such an examination it was found that PW2, the child victim, was competent to depose as a witness and she was not subjected to tutoring. PW2 has specifically stated that she knew Narinder Singh (appellant). He used to visit their house. The victim was taken by the appellant on 08.10.2007 on the pretext of getting sweets for her. She was taken to a room (Kotha) of the motor. The victim described the barbaric act committed by the appellant due to which blood started oozing out from her private parts. The occurrence took place where turmeric crop was sown in the fields. The victim revealed that the appellant threw her in a well when she started to bleed. He even threw a sand bag upon her after throwing her in the well in order to kill her. The victim has stated that as she lay in the well, the appellant threw a brick towards her, which hit on her head. Her head started to bleed due to the injury sustained on her head. The victim remained in the well throughout the night. In the morning she again started crying. She was

ultimately rescued by her father, her uncle and one Baba. She was then taken to the hospital. The victim has specifically clarified that the injuries on her private parts were received prior to her falling in the well. She received other injuries on her body when the appellant threw a sand bag and brick on her. It is clarified by the child victim that she fell on the ground of the well and not on the electric motor. She has denied the suggestion that she fell into the well when playing in the fields. The testimony of the victim, a child witness could not be shaken despite a searching cross-examination. Her testimony is reliable, trustworthy and inspires confidence.

PW1 Harpreet Singh, the complainant, has specifically deposed that the appellant – Narinder Singh was on visiting terms with his family. The appellant had come to their house on 08.10.2007 at about 11.30 a.m. The appellant thereafter visited the complainant's mother's younger sister (Massi) living in the same village. The appellant came back to the complainant's house at about 3.30 p.m. At that time, the complainant, his wife as well as their daughter (victim) were present at home. The appellant took the victim with him on his bicycle on the pretext of providing her toffees and chocolates. When they did not return home, the complainant and others started looking for the appellant as well as their daughter. The appellant was found in a drunken state on the unmetalled (Kacha) part of the road in the passage leading from village Chhandran to Rampur. The appellant's bicycle was also lying near him. On inquiry, the appellant informed that he had left the child (victim) at the complainant's residence. However, the victim was not found present at home, due to which the complainant and others again started looking for her.

The parents of the appellant were also informed telephonically. They were searching for the child in the wee hours of 09.10.2007 and it was at about 10.30 a.m. they came to know that their daughter was lying in the pit of the tubewell of Didar Singh. PW1 Harpreet Singh alongwith his mother Amarjit Kaur (PW3) and one Gurtej Singh (PW4) proceeded to the spot. The victim was found in a critical condition with bleeding from her head and private parts.

This position is fortified by the statements of PW3 Amarjit Kaur i.e., the grandmother of the victim as well as PW4 Gurtej Singh who is the person from whose shop the appellant has purchased sweets and toffees for the victim.

Contention of learned counsel for the appellant that PW1 Harpreet Singh and PW3 Amarjit Kaur are interested witnesses, is bereft of any merit. PW3 Amarjit Kaur, the grandmother of the victim as well as Harpreet Singh, the victim's father are the most natural witnesses in the facts and circumstances of the case. Amarjit Kaur (PW3) has deposed that she was residing with her son Harpreet Singh (complainant) who had two children, the victim being the younger child. She has three brothers, namely, Nachhatar Singh, Maggar Singh and Gurmail Singh. The appellant, Narinder Singh is the son of her Gurmail Singh. They were on visiting terms with each other. The appellant visited their house on 08.10.2007 at about 11.00 a.m. He came on a bicycle. Then he went to visit her sister Mohinder Kaur, who lives in the same village. The appellant came back at about 3.30 p.m. and took the child victim on the premise that he would get sweets and toffees for her. When the

appellant did not return with the child for some time, they went in search for them. They also went to village Latton Joga where another sister of Amarjit Kaur, namely, Ranjit Kaur lives. While returning from Latton Joga, they found the accused lying in a drunken condition in the fields situated in the middle of villages Chhandran and Rampur. His bicycle was lying near him. When they asked about the child, the appellant stated that he had left her at their home. However, the child was found present at home. They continued to search for her but could not trace the child. An announcement was also made regarding missing of the child at the local Gurdwara. The child victim was found in a well on 09.10.2007 at about 9.00/10.00 a.m. Turmeric crop was grown on one side of the well and 'Chari' crop on the other. They heard the cries of her grand-daughter and discovered her lying in an injured condition in the well. Her son Harpreet Singh with the help of other co-villagers extricated her from the well. She was in a critical condition with bleeding present from her private parts. Veins from the lower portion of the abdomen were protruding out. The child had injuries on her head as well. The victim was taken to Civil Hospital, Payal in a private car. On the way to the hospital, the child narrated the turn of events to Amarjit Kaur. PW3 Amarjit Kaur denied the suggestion that the child fell into the well accidentally and thereby sustained injuries or that the appellant was innocent. Amarjit Kaur had no reason to depose falsely against the appellant, who is none other than her nephew (real brother's son).

PW4 Gurtej Singh is the person from whose shop toffees were purchased by the appellant for the child victim. Gurtej Singh (PW4) has

testified that on 08.10.2007, the appellant alongwith the child had come to his shop for the purchase of toffees at about 3.00 p.m. When the appellant did not return with the child, the family members of the child started searching for both of them. When they could not be traced, an announcement was also made at the Gurdwara regarding the missing of the appellant alongwith the child victim. It is stated by PW4 Gurtej Singh that he joined Harpreet Singh (complainant) in searching for the child alongwith Avtar Singh, Panch and Balwinder Singh, Panch. While searching for the child they reached near the fields of Didar Singh. Cries of a child were heard. They noticed the turmeric crop damaged at a point with the presence of blood. They discovered the child victim lying in an injured condition in the well. PW4 Gurtej Singh has specifically stated that when he lifted the child, he noticed that the intestines were bulging out from her body. He handed over the child to her family members. On seeing her condition he was so perplexed that he could not stand there. He accompanied the victim to the hospital at Payal.

All the witnesses have withstood the searching cross-examination. Nothing favourable to the defence was forthcoming. It is not in dispute that the appellant is related to the family of the victim. He is the son of Gurmail Singh i.e., the maternal uncle (Mama) of complainant, Harpreet Singh. The appellant is first cousin brother of the complainant. There is nothing on record to even remotely indicate the reason for falsely implicating the appellant for the commission of such a heinous and barbaric crime involving a little child. To the contrary, the complainant, a cousin brother and Amarjit Kaur (PW3), the appellant's aunt (Bhua), had no discernible reason to

falsely implicate the appellant and let the real culprit go scot free. It is not even the case of the appellant that the complainant and his family are inimical towards him. Neither has any such suggestion been put to the witnesses.

Furthermore the medical evidence on record lends corroboration to the prosecution version. At the first instance, the victim was taken to the Civil Hospital, Payal from where she was referred to the Civil Hospital, Ludhiana for medico-legal examination and treatment. PW7 Dr. Nazar Singh while referring her to Civil Hospital, Ludhiana has noted that the gut was coming out from her private parts.

PW11 Amarjasdeep Kaur, Resident of Department of Surgery, DMC Hospital, Ludhiana examined the victim on 09.10.2007. PW11 Dr.Amarjasdeep Kaur has deposed that the victim was brought to the hospital by her grandmother Amarjit Kaur and Panchayat members. It was alleged to be a case of sexual assault by some relative when the patient was taken out of her home. After the incident the patient was thrown into a well from where she was recovered on 09.10.2007. The following injuries were found present on the victim:

1. Around 7x4 cm lacerated wound over forehead extending from midline to left frontal region, around 5 cm above left eyebrow, underlying bone was exposed.
2. Superficial abrasion was present over medial aspect of right forearm.
3. Gut loops coming out through perineum. Colour of the gut was dusky and patchy gangrenous areas present over several gut loops.
4. Multiple abrasions were present over medial aspect of both legs.

5. Superficial abrasion was present over posterior aspect of left arm.

PW11 Dr. Amarjasdeep Kaur has proved the original Bed Head Ticket (Ex.PQ). It is specifically stated by PW11 Dr.Amarjasdeep Kaur that the gut loops were repositioned. Thereafter vaginal swabs were taken in the operation theatre itself. It is specifically stated that the gut loops had come out through the perineum as a result of sexual intercourse.

The vaginal swabs were handed over to the police for further examination of the Chemical Examiner. As per the Chemical Examiner's report (Ex.PS) spermatozoa was present in the vaginal swabs as well as the patient's shirt. Injury No.1 as well as Injury No.3 were declared dangerous to life as per the opinion rendered by PW11 Dr. Amarjasdeep Kaur vide Ex.PV.

It is specifically mentioned by Dr. Amarjasdeep Kaur that the report of the Chemical Examiner shows that the victim was subjected to sexual intercourse. As a result of sexual intercourse gut loops come out through the perineum. Injuries No.1, 2, 4 and 5 may be the result of a fall from a height. Learned counsel for the appellant has argued vociferously that the possibility of the injuries in question being suffered by the victim when she fell in the well cannot be ruled out. This argument is devoid of any merit in view of the specific and positive evidence on record. Reference to the cross-examination of PW11 Dr. Amarjasdeep Kaur where it is stated that possibility of Injury No.3 being caused by a instrument like an iron rod etc. if the child falls upon it from a distance from more than 10 feet cannot be ruled out, is not helpful to the appellant in any manner. PW11 Dr. Amarjasdeep

Kaur has specifically deposed that in her opinion Ex.PV, it is stated that the child was subjected to sexual intercourse. This opinion was based on the report of the Chemical Examiner as well as clinical examination of the victim. It was further observed that the gut loops came out through the perineum due to sexual intercourse.

We have gone through Ex.PQ i.e., the bed head ticket containing the entire medical record of the victim from date of her admission i.e., 09.10.2007 till she was discharged on 22.10.2007. There is a photograph taken from the operating table just before the start of the procedure with a note that the victim was quickly shifted to the operating room as gut loops were coming out through perineal wound. They were gangrenous and intra-operatively it was mentioned that 3 feet of small intestine was prolapsing through the rectum. Prolapse was found to be gangrenous and dark in colour. Tear was present on left lateral wall of rectum, which was extending to posterior wall of vagina. All the walls of vagina were torn out and the vagina was communicating with rectum and pouch of douglas.

The abovesaid operative findings have been duly proved by PW12 Dr. Rajneesh Arora, Senior Resident, Department of Surgery, DMC Hospital, Ludhiana. PW12 Dr. Rajneesh Arora was one of the members of a team of Doctors, who had operated upon the victim. The victim was once again admitted in the DMC Hospital, Ludhiana on 12.12.2007 and discharged on 19.12.2007 after being operated upon again by the team of Doctors comprising PW12 Dr.Rajneesh Arora as well as Dr.Ravinderjit Singh. The operation was done on 13.12.2007. Original bed head ticket (Ex.PZ) has been

duly proved on record.

The medical evidence on record is categoric and permits of no doubt regarding the victim being subjected to rape in a barbaric manner by the appellant. Throwing of a brick upon the victim by the appellant is also corroborated by the medical evidence.

There is clear and cogent evidence on record which permits of no doubt regarding the complicity of the appellant in the commission of the offence as charged. Learned counsel for the appellant is unable to point out even a single chink in the prosecution case. We, thus, have no hesitation to hold that the prosecution has successfully proved its case beyond any reasonable doubt against the appellant for the commission of the offences punishable under Sections 376/304/201 IPC.

At this stage, learned counsel for the appellant submits that appellant has been sentenced to undergo imprisonment for life for the offences punishable under Sections 376/307 IPC. It is submitted that this punishment is not commensurate with the offences in question. The appellant was a young man of 24 years at the time of incident therefore, the sentence imposed upon the appellant be reduced.

Having gone through the peculiar facts and circumstances of the case, we do not find any mitigating circumstance to accede to this prayer made on behalf of the appellant. The appellant is a close relative of the complainant i.e., victim's father. He misused his relation to take the child/victim on the pretext of providing sweets/chocolates to her. The appellant is guilty of brazenly misusing the trust reposed in him by the parents

of the child victim being an uncle (Chacha) of the child. The appellant's conduct was reprehensible inasmuch as he even tried to snuff out the victim's life by firstly throwing her into the well pursuant to violating her and thereafter throwing a sand bag and a brick upon her. The appellant deserves no sympathy or leniency by a reduction in the quantum of sentence imposed upon him. The conviction of the appellant and the sentence imposed upon the appellant vide judgment and order dated 28.08.2009 is thus maintained.

In this case, the child victim suffered a traumatic experience at a tender age. She remained admitted in the hospital from 09.10.2007 to 22.10.2007. The victim had to be admitted again from 12.12.2007 to 19.12.2007 and was subjected to another surgery. We, therefore, deem it appropriate to direct the appellant to pay a sum of ₹1,00,000/- to the victim as compensation.

The appeal being devoid of merit is accordingly dismissed.

(**S.S.SARON**)
JUDGE

(**LISA GILL**)
JUDGE

August 4 , 2016.
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No