

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

**CRA-D-347-DB of 2003
Date of decision : 16.2.2016**

Vijay Kumar

.....Appellant

v.

State of Haryana

.....Respondent

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

Present : Mr. Sameer Sachdeva, Advocate
as legal aid counsel for the appellant

Mr. Dhruv Dayal, DAG, Haryana

RAMENDRA JAIN, J.

Accused has preferred the present appeal against the impugned judgment dated 31.8.2000 holding him guilty and order dated 2.9.2000, sentencing him to undergo rigorous imprisonment for life under Section 376 IPC and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

Briefly stated, on 23.5.1999 the prosecutrix, who was minor, was raped by the appellant in his house. Gopal Dass father of the minor got registered the case with the police. After completion of investigation, the final report under Section 173 Cr.P.C. was presented in the Court.

On commitment of the case, the learned trial Court framed charge under Section 376 IPC against the appellant, to which, he pleaded not guilty and claimed trial.

After hearing learned counsel for both the sides and going through the evidence available on record, the appellant was convicted and held guilty in the manner as indicated above.

Learned counsel for the appellant-accused contended that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court failed to appreciate that no bleeding from the vagina of the prosecutrix was found by the doctor during her medico legal examination. Her hymen membrane was also present. Even no mark of injury was detected on the chest or back or inner side of thigh of the prosecutrix as per medical report. Therefore, the prosecution had not been able to prove that any rape was ever committed upon the prosecutrix by the appellant, but despite that the learned trial Court recorded his conviction illegally and wrongly. Ocular version of the prosecution witnesses was also contradictory to the medical evidence and, therefore, the appellant was liable to be acquitted.

We have given our thoughtful consideration to the above submissions.

Undisputedly, the age of the prosecutrix at the relevant time was around 11 years. The learned trial Court after satisfying that the minor prosecutrix was able to give rational answers to the questions put to her, recorded her statement as PW-5. The minor prosecutrix deposed that around 5.00/5.30 p.m. she had gone to the house of the appellant to bring a “karahi”. The house of the appellant was at a distance of 5-6 houses from her house. At that time, the appellant was alone. He on the pretext of giving her “karahi” put her on a cot and by untying the string of her salwar, put his penis in her vagina. It caused a lot of pain to her. She cried and started weeping. After 4-5 minutes,

the appellant left her. Then she returned home and while weeping disclosed the entire episode to her mother. Her mother told the entire story to her father in the evening on his returning home from his work. Thereafter, she also narrated the entire story to her father. Finally, she along with her father went to the police station. Police recorded her statement. Her medico legal examination was also got conducted. The above deposition of the prosecutrix was corroborated by her father PW-6 Gopal Dass.

The contention of learned counsel for the appellant that ocular version was contradictory to medical evidence has no legs to stand, because PW3 Dr. Meena Barwal has categorically deposed that on general examination, apparent age of the prosecutrix was found 11 years. Her sexual characters had not developed. Pubic hair, axillary hair were not present. No mark of injury was seen on the face, chest, back inner side of thigh. However, there was complain of pain in right wrist joint. On local examination, separation of thigh was found painful. Labia majora and minora was red, inflamed and tender. Membrane was found red, inflamed and tender. The above medical evidence fully corroborates the ocular version of the prosecution.

The appellant did not bring any contrary evidence on the record. He also did not allege any motive against complainant Gopal Das to falsely implicate him. Even otherwise, no person would falsely implicate any one by putting at stake the honour of his minor daughter, or, in other words, assassinating the character of his minor daughter.

The deposition of the minor prosecutrix is above board. She has fairly conceded that earlier also she used to visit the house of the appellant to call her brother, but he never made any such attempt. Her father Gopal Das as

PW-6, has also conceded that relation between him and the appellant were cordial till the date of occurrence. Both of them were cross examined at length, but nothing favourable to the appellant could be elicited from their mouth.

From the deposition of Dr. Meena Barwal, coupled with FSL report, it was established beyond doubt that it was a case of penetration as semen was detected on the salwar Ex.P-1 and underwear Ex.P-4, worn by the minor prosecutrix at the relevant time.

In view of discussion above, we find no illegality or perversity in the impugned judgment of conviction dated 31.8.2000 and uphold the same.

However, considering overall facts and circumstances of the case, more particularly the age of the appellant at present around 52 years, in the fitness of things, the sentence of the appellant from life imprisonment is reduced to rigorous imprisonment of ten years. Simultaneously, the fine amount is increased from ₹ 5000/-to ₹ one lakh, which on recovery, shall be paid as compensation to complainant Gopal Dass. In the event of failure to make the payment of the aforesaid fine, the appellant shall further undergo imprisonment for one year.

The appeal is, accordingly, disposed of.

(RAMENDRA JAIN)
JUDGE

(T.P.S. MANN)
JUDGE

16.2.2016
Ashwani