

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

**CRR No.4171 of 2014 (O&M)
Date of decision: 06.10.2016**

Loveleen Singh @ Lovely

.....Petitioner

Versus

The State of Punjab

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kulwant Singh, Advocate,
for the petitioner.

Mr. A.P.S. Gill, AAG, Punjab.

Ritu Bahri, J.

This petition has been filed against the judgment dated 12.09.2014 passed by the Additional Sessions Judge, Ludhiana, dismissing the appeal filed by accused-petitioner, Lovleen Singh @ Lovely, against the judgment of conviction and order of sentence dated 05.10.2013 passed by the Principal Magistrate, Juvenile Justice Board, Ludhiana, whereby he has been ordered to be sent to special home for a period of 03 years for commission of offence under Section 376 read with Section 511 IPC.

Brief facts of the case are that on 25.04.2012, ASI Hoshiar Singh In-charge, Police Post, Sudhar, was present at Bus Stop, Village Latala along with other police officials in connection with patrolling duty. In the meantime, he received an information from HC Gurmel Singh to the effect that rape has been committed with the prosecutrix. Thereafter, ASI Hoshiar

Singh along with other police officials reached at Civil Hospital, Pakhowal, where Amarjit Kaur (maternal grandmother of the prosecutrix) met him and made a statement that she had three daughters and one son, who had died about two years ago. Her daughter-Harpreet Kaur was married to Randeep Singh, who has one daughter, aged about 5 years (prosecutrix). She was studying in UKG at Anand Ishar Public School, Sudhar. On the day of occurrence, her grand-daughter came from school at 2.30 P.M. Thereafter, she went to the house of Lovely (petitioner) and his sister-Anju for playing. When the complainant had gone to the house of Lovely, she found that Anju was washing clothes, whereas the prosecutrix was weeping in a room. When she opened the door, she found that clothes of the prosecutrix were removed and Lovely (petitioner) was committing rape upon her. On raising an alarm, Lovely fled away in a naked condition. The prosecutrix was bleeding. Thereafter, the complainant and her daughter-Harpreet Kaur took the prosecutrix to Civil Hospital, Pakhowal. After recording statement of the complainant, the investigation was started and site plan of the place of occurrence was prepared.

On completion of investigation, challan was prepared and presented in the Court. Copies of challan and other documents were supplied to the accused-petitioner free of costs, as envisaged under Section 207 Cr.P.C. Thereafter, finding a prima facie case, charge under Section 376 IPC was framed against the accused-petitioner, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Amarjit Kaur, grandmother of the prosecutrix (PW-1), Randeep Singh (PW-2), Dr. Surinderjit Singh (PW-3), Pipan Sethi (PW-4), Ranjit Singh (PW-5), Dr.

Mandee Kaur (PW-6), ASI Satnam Singh (PW-7), ASI Hoshiar Singh (PW-8), HC Balbir Chand (PW-9), HC Ranjit Singh (PW-10) and HC Baldev Singh (PW-11). On conclusion of the prosecution evidence, statement of the accused-petitioner under Section 313 Cr. P.C. was recorded, wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication. In defence, accused-petitioner had examined Kuldeep Singh (DW-1), Raju, LRC (DW-2) and Harwant Kaur (DW-3). Remaining evidence of defence was closed by order.

Trial Court, after going through the entire evidence led by the parties, convicted and sentence the accused-petitioner in the aforesaid terms. Appeal against this judgment was dismissed by the Appellate Court vide judgment dated 12.09.2014.

Heard.

While convicting the accused-petitioner, following two points were considered by both the Courts below:-

- “1. Whether Juvenile in conflict with law made an attempt to commit rape with the prosecutrix and thereby, committed the offence under Section 376 read with Section 511 IPC.
2. Whether the prosecution has proved the guilt beyond shadow of reasonable doubt against the appellant?”

Amarjit Kaur-complainant, who is grandmother of the prosecutrix had stepped into the witness box as PW-1 and reiterated her version given in the FIR. She stated that when she opened the door of the house, she found that the clothes of the prosecutrix were removed and Lovely-petitioner was committing rape with her. She raised an alarm, whereupon the accused-petitioner fled away from the spot in a naked condition. The prosecutrix was

bleeding. Thereafter, She was taken to Civil Hospital, Pakhowal. The complainant had identified her signatures on Ex.PC to Ex.PE. She also identified the juvenile in the Court. Randeep Singh, father of the prosecutrix, appeared in the witness box as PW-2 and stated that when he and his wife had come to meet his daughter (prosecutrix), who was residing with her maternal grandmother, they found that they were weeping. Thereafter, the complainant had narrated the entire incident to him. Dr. Surinder Singh (PW-3) proved the MLR, Ex.PW3/B and deposed that no abnormality was detected in the penis and other body parts of accused-Loveleen Singh. Dr. Mandeep Kaur (PW-6) had examined the prosecutrix on 25.04.2012. As per her opinion, there was bleeding and blood staining on the underwear of the patient. There were abrasion in red colour. Dried blood was present on the margin of hymen. She had proved the MLR as Ex.PW6/B and pictorial diagram showing the seats of injuries as Ex.PW6/C.

The prosecutrix was five years of age and from the ocular and medical evidence, it stood established that the present petitioner had made an attempt to commit rape with her. She was found crying and bleeding at the time when the complainant had reached at the spot. On the basis of aforesaid evidence, the petitioner was convicted by both the Courts below. Keeping in view the nature of crime committed by the convict, his prayer for releasing him on probation, had been declined, although he was 11 years of age at the time of occurrence.

Learned counsel for the petitioner, at the outset, restricts his prayer to quantum of sentence and does not challenge the conviction on merits.

Hon'ble the Supreme Court in **Koppula Venkat Rao Vs. State of**

A.P., 2004 (3) Supreme Court Cases 602, has interpreted Section 511 IPC in a case of rape under Section 376 IPC and observed as under:-

“10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on the aspect.”

In the aforesaid case, the conviction was altered from Section 376 IPC to Section 376/511 IPC. It was held that the custodial sentence of 3½ years would meet the ends of justice. The accused, in that case, was a major. As per the aforesaid judgment, an attempt to commit an offence can be punished by half of the longest term provided for that offence.

In the facts of the present case, as per Section 15 (g) of the Juvenile Justice Act, a juvenile who has committed a heinous crime, can be sent to a Special Home for a period of three years. Therefore, applying the ratio of the judgment given by Hon'ble the Supreme Court in Koppula

Venkat Rao's case (supra), one-half of three years would come to 01 year and 06 months. As per custody certificate, the petitioner has already undergone 02 years and 01 month in Special Home. Moreover, he was 11 years old at the time of incident.

In view of the totality of facts and circumstances of the present case, coupled with the reasons aforementioned, this petition is dismissed so far as the conviction of the petitioner is concerned. Ultimately, conviction of the petitioner is upheld, however, keeping in view the tender age of the petitioner and the fact that he has undergone more than 02 years, the conviction of the petitioner is upheld, however, his sentence is reduced for a period of 02 years and 01 month.

With the above modification, the petition stands disposed of accordingly.

06.10.2016
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No