

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.223-DB of 2011

DATE OF DECISION: SEPTEMBER 26, 2017

PARAMJIT

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN.
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.**

PRESENT: MR. RAJESH BHATEJA, ADVOCATE
FOR THE APPELLANT.

MR. SANDEEP VERMANI, ADDL.A.G., PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Convict-appellant Paramjit has filed the present appeal against the judgement passed by the trial Court dated 15.12.2009 vide which he was convicted under Section 363 IPC and was sentenced to undergo RI for 7 years and to pay a fine of ₹1000/- and in default to undergo a further period of RI for 3 months, under Section 365 IPC and was sentenced to undergo RI for 5 years and to pay a fine of ₹1000/- and in default to undergo a further period of RI for 3 months and Section 376 IPC and was sentenced to undergo imprisonment for Life and to pay a fine of ₹1000/- and in default to undergo a further period of RI for 3 months by learned Addl. Sessions Judge, Jalandhar for committing the rape of a 3 years' old girl child (hereinafter referred to as "prosecutrix"). All the sentences were ordered to run concurrently.

2. The case of the prosecution in brief is that on 14.2.2009, ASI

Kabal Singh received a telephonic message from Civil Hospital, Jalandhar regarding admission of the prosecutrix. While the prosecutrix was aged only 3 years and she was unable to make a statement, her father Dalip Murmu (PW3) got recorded his statement which is as follows:-

"Statement of Dalip Murmu son of Pavintar Murmoo @ Lingra R/o Sagwari, P.S. Masliha, District Damunda (Jharkhand) at present near Mann Medicity Hospital, Khambra Gate, aged 27 years.

I am residing at the abovesaid address alongwith my family and myself doing masonry work at this very place. Today, on dated 14.2.2009 at about 1 O'clock, I came to my house from the working place for taking meal. My daughter, name withheld, who is aged about 3 years and playing outside was picked up by Paramjit son of Darshan Singh, caste Jat, r/o Nawan Chand, District Moga, a carpenter working with me and started playing with her and after sometime he eloped with the girl. Me and my wife Subhasi reached near the room of Paramjit for making a search for the girl, there the voice of weeping of my daughter was coming from inside and the door had been bolted. My friend Om Parkash son of Kishan Chand r/o Gakhlan also came on the spot. The bolt of the door was broken with his help and it was seen that Paramjit who was in naked condition doing intercourse with my daughter and blood was oozing from the private parts of my daughter and on seeing us, he fled away from the spot. I

got admitted my daughter in the Civil Hospital after making arrangement for the transportation where my daughter is under treatment. Paramjit aforesaid has committed rape with my minor daughter forcibly. Legal action be taken against him.”

3. On the basis of the aforesaid statement FIR No.20 dated 14.2.2009 Ex.PE(II) was registered at Police Station Lambra, District Jalandhar. The spot was investigated. Site plan Ex.PF was prepared. On the same day, the accused was arrested and medically examined by Dr.Desh Raj, Medical Officer, Civil Hospital, Jalandhar vide application Ex.PC and PD. The prosecutrix was also medico-legally examined at Civil Hospital, Jalandhar. Sealed parcels containing two vaginal slides, two vaginal swabs and underwear were sent for Chemical Examination. As per Chemical Examiner's report (Ex.PK), spermatozoa were detected in the contents of three parcels sent for examination.

4. On completion of investigation, police report under Section 173 Cr.P.C. was filed whereby accused was charge-sheeted and charges under Sections 363, 365 and 376 IPC were framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 8 witnesses.

6. The statement of accused under Section 313 Cr.P.C. was recorded but he denied the allegations against him and claimed innocence being falsely implicated. A plea was taken by accused that he had a

quarrel with contractor under whom he as well as complainant-Dalip Murmu were working and it was at his (contractor) instance that a false case has been got registered against him.

7. The trial Court after considering the evidence on record, convicted and sentenced the accused-appellant as detailed above.

8. Hence the present appeal.

9. Learned counsel for the appellant contended that there is no evidence to prove the charges against the appellant as no DNA test was conducted. He further contended that the appellant has been falsely implicated at the instance of the contractor and the police had failed to conduct a fair investigation. Further, the prosecution had failed to examine Subhasi, mother of the prosecutrix.

10. On the other hand, learned counsel for the State submitted that that the prosecution has proved its case beyond the shadow of reasonable doubt and the appellant has been rightly convicted and sentenced by the trial Court.

11. Heard learned counsel for the parties and perused the record carefully.

12. The instant FIR was registered on the basis of the statement made by Dalip Murmu, PW3, father of the prosecutrix. PW3 categorically deposed that on 14.2.2009 at about 1.00 p.m. when he went to his house for lunch, the prosecutrix was playing outside his house with the accused and he eloped after some time with his daughter. He started searching his daughter and heard her cries from the quarter of the accused. PW3 broke

open the door of the quarter of the accused and went inside and picked up his daughter who was bleeding as blood was coming out of the private parts of the prosecutrix. Thereafter, PW3 took the prosecutrix to Civil Hospital, Jalandhar and further deposed that his wife Subashi also caused injuries on the person of the accused-appellant.

13. PW7 Om Parkash deposed that on 14.2.2009, he was working as Storekeeper at Mann Medicity Hospital, Khambra and at about 1.00 p.m., he was standing outside his office where PW3 Dalip Murmu and his wife came. He accompanied PW3 Dalip Murmu and his wife to the quarter of the convict-appellant in search of the prosecutrix and sound of crying was coming out of the room of accused-appellant. The door was broken and the appellant was found in naked condition and committing rape upon the prosecutrix. PW7 also deposed that blood was coming out of the private parts of the the prosecutrix.

14. PW1 Dr. Shiv Dayal Mali, Medical Officer, Civil Hospital, Jalandhar medico-legally examined the prosecutrix on 14.2.2009 at about 2.50 p.m. and found the following injuries:-

“Injury No.1: Bleeding/Vagina present.

Injury No.2 : Multiple, small, of varying sizes abrasions and bruises present on the left knee, left leg, right leg, abdomen, buttocks, complain of pain these areas. Gynae opinion was sought for suspected rape.”

PW1, in his cross-examination, categorically denied the suggestion of the injuries on the person of the prosecutrix as a result of fall on hard surface.

15. PW6, Dr. Manjit Kaur Bawa, Medical Officer, Civil Hospital, Jalandhar conducted medico-legal examination of the prosecutrix on 14.2.2009 at 5.15 p.m. and recorded the following:-

“Conscious crying child in blood stained clothing. Pulse was 102 per minute. No secondary sex characters. Menarche not attained. Multiple small abrasions present over legs and abdomen. Bleeding from vagina occasional. Per abdomen examination soft. Local examination hymen was torn. There was linear tear on 1 cm. on posterior wall of vagina present. Blood stained discharge from vagina present.”

16. PW6 also deposed that after going through the report of the chemical examiner (Ex.PK), as per which the spermatozoa was detected on Exs.I, II and III she opined that possibility of sexual intercourse existed.

17. PW2 Dr. Desh Raj, Medical Officer, Civil Hospital, Jalandhar conducted medico-legal examination of accused on 15.2.2009 and found the following injuries on his person:-

“Injury No.1: Injury of the right eye in the form of red bruise mark on whole of upper eyelid. Conjective is red. Lower eyelid inner 3/4 having red bruise mark on inferior orbit. Size 2 cm x half cm.

Injury No.2 : Reddish mark bruise mark upper eyelid and lower eyelid inner half conjection of conjective is present on left eye.

Injury No.3: Reddish brown abrasion mark 2.5 cm x 2 cm in

between eyebrow on middle of the forehead extending above oval shape.

Injury No.4: Reddish brown contusion mark on surface of upper lip in its right half.

Injury No.5: Contusion mark on inner surface of lower lip with superficial crack on lateral right lower lip which is not bleeding.

18. PW2 Dr. Desh Raj found the accused fit for performing sexual intercourse and also opined in his cross-examination that the aforesaid injuries on the person of the accused could be as a result of beatings given to him.

19. PW4 ASI Kabal Singh, who was the investigating officer in this case deposed to the effect that on 14.2.2009, he was posted at Police Station Lambra. A telephonic message was received with regard to admission of the prosecutrix at Civil Hospital, Jalandhar and he rushed to the Civil Hospital. As the prosecutrix was aged only 3 years and she was unable to make a statement, therefore, the statement of her father PW3 (Dalip Murmu) was recorded. On the same day, one Narinder Pal, Manager produced the accused and he was arrested. Thereafter, he got the accused medico-legally examined from Civil Hospital, Jalandhar. He also got the prosecutrix medico-legally examined firstly from PW1 Dr. Shiv Dayal Mali, Medical Officer, Civil Hospital, Jalandhar who noted down the injuries suffered by the prosecutrix and sought the opinion of Gynae Deptt. Thereafter, PW6 Dr.Manjit Kaur Bawa medico-legally examined the prosecutrix and handed

over four parcels which were sent to the Chemical Examiner. PW4 in his cross-examination had deposed that on 14.2.2009, he reached Civil Hospital, Jalandhar at about 4.00 p.m.

20. The case of the prosecution was based on eye witness account. PW3, Dalip Murmu, father of the prosecutrix as well as PW7 Om Parkash gave an ocular account of the incident, which was duly corroborated by the medical evidence adduced by PW6 Dr. Manjit Kaur Bawa and the report of Chemical Examiner's report (Ex.PK) vide which spermatozoa was detected on the vaginal slides, swabs and underwear of the prosecutrix. Considering the analysis made by the Chemical Examiner in his report Ex.PK, PW6 Dr. Manjit Kaur Bawa also opined that possibility of the sexual intercourse existed. Further, PW2 Dr. Desh Raj also found the accused fit for performing sexual intercourse.

21. The case of the prosecution was primarily based on ocular testimony. PW3 and PW7 have categorically deposed that the door of the quarter of the accused was bolted from inside and they broke open the door and found the accused naked committing rape upon the prosecutrix which was duly corroborated by the medical evidence. Therefore, considering the aforesaid circumstances and the ocular testimony, conducting of DNA test of the accused pales into insignificance. The offence was committed on 14.9.2009 around 1.00/1.30 p.m. The prosecutrix was examined Dr. Shiv Dayal Mali at 2.50 p.m. On the same day at 5.15 p.m. the prosecutrix was medico-legally examined by Dr.Manjit Kaur. Accused was also arrested on 14.9.2009 and was

medico-legally examined on 15.9.2009. Therefore, the action of the complaint as well as the investigating agency was prompt.

22. The convict-appellant had not taken any plea in his statement under Section 313 Cr.P.C. that there was any previous enmity between him and the complainant; or he disputed his presence on the spot. The injuries found on the person of the accused-appellant had been supported by PW3 Dalip Murmu, father of the prosecutrix that the same have been caused by his wife Subashini. No defence was led by the accused-appellant in order to justify his stand taken in his statement under Section 313 Cr.P.C. that there was some dispute with regard to payment of wages between him and the Contractor on whose instance, he had allegedly been falsely implicated by PW3 Dalip Murmu.

23. In view of the above, taking into consideration the eye witness account and the medical evidence on record, it is held that it was the accused-appellant only who committed the heinous crime. There exists no reason to discard the well considered judgement passed by the trial Court convicting and sentencing the appellant.

24. In view of the above, the judgement of the trial Court is upheld and the appeal stands dismissed.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 26 , 2017
Gulati

Whether Reportable : Yes
Whether Speaking/Reasoned : Yes