

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

CRA-S-729-SB of 2007(O&M)

Date of Decision: 23.09.2017

Hardeep Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Samir Rathaur, Advocate
Legal Aid Counsel for the appellant.

Mr. Kirat Singh Sidhu, DAG, Punjab.

LISA GILL, J (Oral).

Appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court, Rup Nagar, vide impugned judgment dated 26.10.2006 and has been sentenced to undergo rigorous imprisonment for ten years; besides a fine of ₹2000/- and in default thereof to further undergo rigorous imprisonment of two months vide order dated 28.10.2006. Aggrieved therefrom, the present appeal has been filed.

Brief facts of the case are that FIR No. 217 (Ex.PW9/C) was registered on the statement of the father of the victim on 25.10.2005 (Ex.PW1/A). The complainant was working as a senior manager in Ambuja Cement Factory, at Ropar. He stated that he has two children, elder being a daughter (victim), aged about 10 years, studying in class 5 at Shivalik Public School, Ropar and younger son studying in class 3. It is further stated that

the complainant's daughter had gone to play with other children at the GACL, Recreation Club (the facility provided by his employer). The said club is situated near the residential quarters of the complainant where his children used to play daily. Appellant-Hardeep Singh was employed to look after the club premises. The complainant's daughter, it is stated came back home at about 7.30 p.m. She was extremely pale and perplexed. The complainant and his wife inquired about the reason from their daughter, on which she revealed that when she was playing hide and seek with her friends then appellant-Hardeep Singh took her to the room next to the tennis court. None was present in that room, though, the light was switched on. Appellant removed his trouser as well as the undergarment of the victim and thereafter violated her person. The victim revealed that she was pinned to the ground, appellant came over the victim, started committing wrong acts. She experienced a lot of pain and raised hue and cry. Appellant after putting on his clothes ran away from the spot. The victim stated that she wore her clothes and immediately returned home. Undergarment of the victim was discovered to be blood stained by the complainant and his wife. The entire occurrence was revealed by the complainant to his friend-Nasib Singh, who was incharge of the club. The complainant proceeded towards the Police Station to lodge a complaint along with Nasib Singh, when the police party met him on the way. Statement Ex.PW1/A of the complainant was recorded, on the basis of which formal FIR Ex.PW9/C was lodged. Investigation was conducted. Accused was arrested on 25.10.2015 itself.

PW-9-SI Barinder Singh Gill, SHO, Police Station, Chamkaur Sahib revealed that after recording of the statement and lodging of the FIR, the place of occurrence was visited by him and the site plan Ex.PW9/D was prepared. The victim was sent to the Civil Hospital along with Lady Head

Constable Dhanno Devi and HC Ram Singh. Medico Legal Examination of the victim was requested for vide application Ex.PW9/E. Appellant was produced before him by Nasib Singh on 25.10.2005 itself. Statements of the witnesses were recorded. Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented on completion of the investigation. Report of the Chemical Examiner Ex.PX was received.

The case was committed to the Court of Sessions, Ropar on 07.12.2005. Charge was framed against the appellant, who pleaded not guilty and claimed trial.

The prosecution examined as many as eleven witnesses to prove its case.

The accused in his statement under Section 313 Cr.P.C., denied all the incriminating evidence put to him while claiming innocence and false implication. He stated that the management wanted to remove him from his service and employ an other person in his place, therefore, he was falsely implicated. No evidence in defence was however, led.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved its case beyond reasonable doubt. Consequently, the appellant was convicted for the offence punishable under Section 376 IPC and sentenced as detailed above.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the evidence on record does not justify the conviction of the appellant in this case. The conduct of the appellant by itself reveals that he is not guilty of the offence in question. After the alleged commission of the offence on 24.10.2005, at about 7.15 p.m., appellant did not abscond. He remained

present on the premises of the club. In case, he was guilty, he would have absconded from the place. Moreover, the report of chemical examiner Ex.PX reveals the absence of spermatozoa on the vagina of the victim. Moreover, the prosecution has relied upon the extra judicial confession of the appellant allegedly suffered before the PW-7-Nasib Singh. It is highly improbable and opposed to all probabilities that the appellant would have suffered such a statement. Learned counsel for the appellant in the alternate prays for reduction of sentence imposed upon the appellant. It is thus prayed that this appeal may be allowed.

Learned counsel for the State while refuting the said arguments submits that the prosecution has proved its case against the appellant beyond all reasonable doubt. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment and order dated 26.10.2006 and 28.10.2006, which is based on a sound appreciation of the evidence on record.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

PW-1-Balbir Singh Rana (complainant) in this case was admittedly working as a senior manager at Ambuja Cement Factory. The facility of the recreational club was provided by his employer. It is not in dispute that the complainant's children used to play at the said premises. The complainant's daughter on the day of the occurrence i.e. 24.10.2005 was playing hide and seek with her friends at the premises of the club. The appellant was admittedly an employee looking after the club premises. The complainant's daughter returned home at 7.30 p.m. when the parents noticed that the child was pale and perplexed. They inquired about the reason and it was revealed by the victim, aged 10 years of age at the time, that the

appellant who was known to her being the club boy, took her to the room adjacent to the tennis court. She has given the details of how the appellant violated her person. The appellant threatened her not to disclose this incidence to anybody. She returned home and disclosed this incident to her parents on inquiry. It is mentioned by the complainant that the undergarment of the victim was blood stained. The complainant revealed the entire occurrence to his friend-Nasib Singh (PW-7). PW-7-Nasib Singh stated that he immediately informed the General Secretary of the Ambuja Recreation Club, who advised them to report the matter to the police. Thereafter, the complainant as well as Nasib Singh reported the matter to the police, upon which, the above said FIR was registered. PW-7-Nasib Singh stated that when he came back after reporting the matter, the appellant met him and confessed his guilt and asked Nasib Singh to produce him before the police as he feared the wrath of the public/ residents qua his conduct. He thereafter, produced the accused before the Investigating Officer.

There is no dispute regarding the age of the victim in this case. As per certificate Ex.PW8/A given by the Principal of Shivalik Public School, Ropar, where the victim was studying, her date of birth is 01.01.1996. Gurpreet Kaur, Principal of Shivalik Public School, Ropar was duly examined as PW-8, who has proved the date of birth of the victim. The victim herself was examined as PW-3 and she gave graphic details of the incident in question. It is specifically mentioned by PW-3 that the appellant caught hold of her after 10 to 15 minutes of her arrival at the club premises. The other children were concealed at different place as they were playing hide and seek. The appellant had closed her mouth with his hand. Therefore, none was attracted to the spot at that time.

Medical examination of the victim was conducted by Dr.

I.D.Gill, Medical Officer, Civil Hospital, Ropar on 25.10.2005. Dr. I.D.Gill (PW-5), in his report observed as under:-

“The patient was came as alleged case of sexual assault around 7 p.m. on 25.10.2005. She was fully conscious, cooperative, moderately built, moderately nourished well oriented to time and space and person. B.P was 100/68, pulse rate was 72 per minute. Breasts were not developed. Axillary and public hair were absent. Menarche not yet attained (i.e. not menstruated as yet).

Local examination- Hymen admits one finger easily. Hymen was torn partially. Vulva reddish and tender to touch and was bruised Reddish blue in colour.

- (A) Two high vaginal swabs were taken bottled, sent to chemical examiner Patiala in a pocket bearing five seals.
- (B) Under wear white coloured with pink carton print, blood stained packed and made into parcel bearing five seals.
- (C) Envelop bearing seven seals contained i) copy of MLR, ii) copy of police request, iii) sample seal, iv) covering letter.

Packet A and B and envelop C were handed over to police Constable Kanwar Raj Kumar No. 607/R.”

It is to be noticed that the medical evidence clearly indicates the commission of the offence qua a child of the tender age of ten (10). Learned counsel for the appellant submits that Dr. I.D.Gill (PW5) in his cross-examination has stated that possibility of injury to the hymen by a hard substance or article cannot be ruled out, therefore, the commission of offence is not proved especially in the absence of spermatozoa. This argument is devoid of merits firstly in view of the specific, clear and cogent version given by the victim herself. There is nothing on record to dent the credibility of the victim who was declared to be a competent witness by the

learned trial Court. The victim has given a clear and consistent narration of the incident in question. She withstood lengthy cross-examination and the defence failed to elicit anything in its favour. The victim specifically stated that blood was oozing from her private part due to the act of the appellant. The medical evidence on record duly corroborates her stand. It is to be noted that the blood stained undergarments of the victim were duly handed over by PW-5-Dr. I.D. Gill, to Constable Kanwar Raj Kumar. In case necessary action in this regard was not taken by the investigating agency, no benefit thereof can accrue to the appellant. Faulty investigation cannot be of any avail to the appellant. Moreover, mere absence of spermatozoa in the present factual matrix fails to create any doubt or dent in the prosecution version.

Much stress has been laid by learned counsel for the appellant on the alleged conduct of the appellant in not absconding from the place of occurrence to contend the same to be reflective of his innocence. This argument is noticed only to be rejected. It is opposed to all probabilities that any parent would involve his minor child only with a view to remove an employee from service. Moreover, there is nothing on record to show that the complainant was in-fact the appointing authority of staff at the recreation club or that there were any acrimonious relations between them. This argument is totally unsubstantiated and completely devoid of merit.

In the present case, the prosecution has indeed proved its case beyond all reasonable doubt. The child victim was declared to be a competent witness by the Court. She has revealed the incident as it unfolded, in a clear and cogent manner. The ocular version is duly corroborated by the medical evidence on record. Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction and order of sentence dated 26.10.2006 and 28.10.2006 which

calls for any interference by this Court. Furthermore, keeping in view the tender age of the victim the facts and circumstances of the case, there is no ground to reduce the sentence imposed upon the appellant as urged by learned counsel for the appellant.

Consequently, the present appeal being devoid of any merit is dismissed. Judgment of conviction dated 26.10.2006 and order of sentence dated 28.10.2006 passed by the learned trial Court, are accordingly upheld.

Accused-appellant is on bail. His bail stand cancelled. Learned Chief Judicial Magistrate, Roopnagar, shall take necessary steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

23.09.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.