

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1518-SB of 2013(O&M)
Date of Decision:December 22, 2017

Manjit Singh
..... Appellant
Versus
State of Punjab
..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.P.S.Sidhu, Advocate
for the appellant.

Mr. Saurav Khurana, DAG, Punjab.

LISA GILL, J (Oral).

Appellant has been convicted for the offences punishable under Sections 366-A, 376 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Sessions Judge, Ferozepur, vide impugned judgment dated 09.01.2013 and by a separate order of sentence dated i.e. 10.01.2013 he has been sentenced as under:-

Offence u/s	Sentence
366-A IPC	Rigorous imprisonment for 10 years; besides pay a fine of ₹1,00,000/- and in default thereof to further undergo RI for two years
376 IPC	Rigorous imprisonment for 10 years; besides pay a fine of ₹1,00,000/- and in default thereof to further undergo RI for two years

Aggrieved therefrom, the present appeal has been filed by the appellant.

Brief facts of the case are that FIR No. 60 dated 27.06.2011 was registered under Sections 363, 366-A, 376 IPC on the basis of statement(Ex.P-5) of the victim/prosecutrix. The victim stated that she was 14 years old doing household work. It is stated that on 23.06.2011, she

alongwith her brother-Lovepreet had gone to Village Bharana to pay obeisance at the Mazar of Peer Baba Bulle Shah. An altercation took place between the victim and her brother. In the meantime, the appellant who is their neighbour arrived on his vehicle i.e. Tata 207 bearing registration number PB-29-L-9028, at the spot. The victim on his inquiry told him that she had a quarrel with her brother on which he said that her family would physically abuse her on account of her quarreling with her brother. Appellant said that he had to go to Zira, therefore, he would drop the victim at the house of her paternal aunt (Bhua) at Zira. Victim stated that it was at about 2.00 p.m. that appellant allured her to sit in his vehicle and proceeded towards Zira. When they reached Zira, the victim told the appellant that he should drop her at her paternal aunt's home. However, the appellant locked the doors of the vehicle and went ahead of Zira towards a village. He stopped his vehicle near a bus stop of village Zira-Jhatre. Appellant allegedly took the victim behind the bus stop and committed rape upon her throughout the night in a forcible manner. In the morning, it is alleged that the appellant dropped the victim near the house of her paternal aunt, a resident of Basti Machhian, Zira. The appellant threatened the victim that in case she revealed the incident to anyone, she would be done to death. The victim stated that she proceeded to her aunts' home, but out of fear she did not reveal the incident to anyone.

The victim returned home on 27.06.2011 and revealed the incident to her father-Lakhwinder Singh. Thereafter, both the victim and her father proceeded to lodge a report in this regard. Statement of the victim was recorded by ASI Iqbal Khan and the above said FIR Ex.P5/B registered. Statement of the victim's father was recorded as well. The victim was sent to Civil Hospital, Zira for conducting her medical examination. At the first

instance, the doctor was not found present. ASI-Iqbal Khan (PW-9), thereafter alongwith the complainant and other officials proceeded to the place of occurrence. Rough site plan Ex.P-14 was prepared. They returned to the Civil Hospital, Zira, where the victim was examined by Dr. Kamaljit Kaur (PW-6). Appellant was arrested on 27.06.2011, itself. His medical examination was also carried out. As per Chemical Examiner's report Ex.P-8, presence of spermatozoa was detected on the vaginal swabs of the victim. Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented after completion of investigation.

The case was committed to the Court of Sessions, Ferozepur, on 03.12.2011. Charge was framed against the appellant on 17.12.2011, who pleaded not guilty and claimed trial.

The prosecution examined as many as ten 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. Appellant specifically stated that he retired from Indian Army in October, 2010. Thereafter, he started residing in his village and used to sell vegetables to sustain his family. It is stated that the appellant's family had a longstanding enmity with the family of the prosecutrix due to which he was falsely implicated. The victim and her family are stated to be the appellant's neighbours, but they were not on talking terms since the past 20-22 years when the appellant's mother, a Member of Panchayat, was killed in September, 1990. The family of the victim was under suspicion in that case. Thereafter, the appellant stated that his brother was killed in the year 1998, as he was having relations with the sister of the victim's father i.e. the paternal aunt of the victim. Thereafter, in December, 2010, a fight took place

between co-villagers and close relatives of the victim's father. The appellant stated that at that time, the victim's father had got him picked up by the police, but the appellant was found innocent. Appellant further stated that the victim in-fact had illicit relations with a boy of village Mishriwala. She was caught in a compromising condition with him on 23.06.2011, but, in order to save her own skin and that of the boy in question, the appellant was falsely implicated under political pressure as he belongs to the Congress Party and the victim's family owes allegiance to the then ruling Akali party. Moreover, it is stated that the appellant himself has a daughter of marriageable age, therefore, he could not thinking of carrying out such an act. Three witnesses were examined in defence.

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 against the appellant. Consequently, the appellant was convicted for the offence punishable under Sections 366-A, 376 IPC and sentenced as detailed above.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that evidence on record does not justify conviction of the appellant in this case. It is submitted that there is an inordinate and unexplained delay in lodging of the FIR. Incident in question took place on 23.06.2011, whereas the FIR was lodged on 27.06.2011. Moreover, the medical evidence on record is not suggestive of commission of rape upon the victim. No injuries were found on the person of the victim. Learned counsel for the appellant argues that DNA test in this case was not conducted despite the recommendation. Therefore, mere presence of spermatozoa on the vaginal swabs does not by itself lead to the conclusion of guilt of the appellant. Moreover, the learned

trial Court, it is submitted has not considered the evidence led in defence. As per the specific stand of the appellant, there was longstanding enmity between the appellant's family and that of the victim. Moreover, they belong to opposing political parties, due to which the appellant has been implicated. It is further submitted that there are material discrepancies in the statements of the victim as well as her father, which cast doubt on the prosecution version. The paternal aunt (Bhua) of the victim has not been examined before the learned trial Court. She is not even cited as a prosecution witness. Furthermore, there is a discrepancy regarding the place of occurrence as well as the manner of occurrence itself, which renders the prosecution version unworthy of any credence. It is thus prayed that conviction of the appellant be set aside and he be acquitted of the charges against him.

In the alternate, it is urged that the sentence imposed upon the appellant be reduced to the one already undergone by him. The appellant is stated to be a father of three children. He has been facing the proceedings since the year, 2011 and has undergone actual imprisonment of nearly five years and nine months. It is further submitted that the appellant is not involved in any other criminal case either prior or subsequent to the registration of the present matter. He had retired from the Indian Army and was earning his livelihood by selling vegetables in the village. He is the sole bread earner of the family and there is no other source of income due to which his three children and wife are in dire straits. It is thus prayed that sentence imposed upon the appellant be reduced to that already undergone by him.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear and cogent evidence on record, which clearly reveals the commission of the offence as charged by the appellant.

The appellant has been rightly convicted for the offences punishable under Sections 366-A, 376 IPC and sentenced accordingly. It is further submitted that there are no mitigating circumstances which call for reduction of the sentence imposed upon the appellant. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment and order dated 09.01.2013 and 10.01.2013, 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.

The victim-PW-9, in this case clearly stated that she alongwith her brother had gone to Village Bharana on 23.06.2011 to pay obeisance at the Mazar of Peer Baba Bulle Shah. The siblings had a dispute. She was crying because of the said altercation. The appellant came to the spot and asked her the reason. When she revealed the incident to him, the appellant said that the victim's father would beat her when he came to know that she had fight with her brother. The appellant offered to drop the victim at her paternal aunt's home (Bhua). The victim accompanied the appellant in his vehicle at about 2.00.p.m. The appellant did not drop the victim at her aunt's house, but proceeded to lock the vehicle's doors. The victim was subjected to rape. She was dropped at her aunt's house on the next morning. The victim was threatened not to disclose the incident to anyone. Feeling scared, the victim did not narrate anything to her aunt, but revealed the entire occurrence to her father when she returned home on 27.06.2011. The FIR in question was registered immediately.

As per medical evidence as proved by PW-6-Dr. Kamaljit Kaur, Medical Officer, Civil Hospital, Zira, there was no evidence of any fresh/old injury on the body of the victim. It is observed in the Medico Legal

Report, Ex.P-7 as under:-

“The patient was conscious, co-operative, well oriented in time, place and person. B.P. was 110/60 MM of Hg, Pulse 90 per minute. Respiratory rate 31 per minute. Patient gave alleged history of assault four days back. L.M.P. was 1806.2011.

On general physical examination, no evidence of fresh/old injury was found on the body at the time of examination.

Secondary sexual character: Axillary hairs present, dark brown in colour, public hairs were present dark brown in colour. Breasts were well developed. Aerola was dark brown in colour, nipples developed, Labia majora and minora were well developed. No mark of any fresh external injury found on thigh, abdomen, breasts and parineal area.

Per vaginal examination: Hymen were absent. External Os admitted one finger, was lax.”

PW-6-Dr. Kamaljit Kaur further stated that vaginal swabs were taken. As the victim had changed and washed her clothes were not sent for chemical examination. Medico Legal Report(Ex.P-7) was proved. PW-6-Dr. Kamaljit Kaur specifically stated in her cross-examination that absence of injuries on the person of the victim is not necessarily suggestive of the fact that she was a consenting party.

As per the birth certificate-Ex.P-2, duly proved by PW-1-Baljit Singh, Statistical Assistant, Office of Civil Surgeon, Ferozepur, date of birth of the victim is 28.02.1997. As per the Radiological examination, age of the victim is opined to be 15-16 years.

The victim as well as her father have duly supported the prosecution version. The discrepancies sought to be pointed out in their evidence are not material or relevant so as to cast doubt on the veracity of the prosecution version. There are no such discrepancies which impinge

upon the credibility of the said witnesses. It was vehemently urged by learned counsel for the appellant that the delay of four days in the lodging of the FIR shows the falsity of the same. This argument is devoid of any merit for the reason that the victim in this case is a girl of merely fifteen (15) years. The appellant, admittedly a mature married man taking advantage of the prevalent societal mores first convinced the victim that her parents would physically abuse her for fighting with her brother. Thereafter, he persuaded her to go her paternal aunt's home at Zira and took her alongwith him on his vehicle. Instead of dropping the victim at her aunt's place, the appellant committed rape upon her. The victim specifically stated that she was unable to reveal the incident to her aunt but immediately on returning home, she disclosed all facts to her father on 27.06.2011. FIR in question was immediately lodged on 27.06.2011 itself. It is specifically stated by the victim that the appellant (who was admittedly known to the victim) had threatened to kill her in case she revealed the incident to anyone. PW-5, father of the victim has clearly deposed that the victim was scared when she came back home. In the facts and circumstances of the case it cannot be said that the delay itself in lodging of the FIR is fatal to the prosecution case.

It is a settled position that due weightage has to be given to the evidence of a prosecutrix and conviction can be based solely on her statement provided her testimony inspires confidence. Reference in this respect can be gainfully made to the decision of the Hon'ble Supreme Court in **Sudhansu Shekhar Sahu Vs. State of Orissa, 2003(5) R.C.R. (Criminal) 447**. In the present case, there is nothing on record which casts a shadow on the testimony of the victim who has withstood lengthy cross-examination. Nothing favourable could be elicited by the defence in its favour. No cause of suspicion or element of tutoring can be detected therein.

It is to be noted that as per the Chemical Examiner Report-Ex.P-8, spermatozoa was detected on the vaginal swabs of the victim. Contention on behalf of the appellant that as DNA testing was not conducted therefore the appellant cannot be linked to the offence in question in the factual matrix of this case is fallacious, untenable, hence rejected. Mere absence of injuries on the person of the victim in the facts of this case, do not per se point to the innocence of the appellant. The victim in this case was admittedly a minor aged about fifteen (15) years at the time of the incident. The appellant has failed to prove the defence of alibi or of any longstanding enmity between the families of the victim and the appellant. Both the victim(PW-4) as well as her father (PW-5) have specifically denied the suggestion that there was any enmity between the families of the appellant and the victim. DW-1, Sarabjit Singh stated that the appellant was present with him at the relevant time. Except his bald statement there is no such evidence on record to prove the same. DW-1 admittedly gave his version for the first time before the learned trial Court. He never approached any senior police official regarding the appellant's innocence. DW-1 admits that the prosecutrix is a neighbour of the appellant. He further admits that site plans Ex.D-1 to Ex.D-3 were prepared by him at the asking of the appellant's counsel. Ignorance expressed by DW-1 of the allegations of rape levelled by the prosecutrix cast a serious doubt on his credibility. There is no document or other evidence on record to prove any enmity between the appellant and the family of the victim. The appellant cannot derive any benefit from the defence led by him. Another contention that there is a discrepancy regarding the place of occurrence is an argument noted only to be rejected. There is no such evidence on record to substantiate such an argument. The prosecution has indeed proved its case beyond reasonable doubt against the appellant.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction, which calls for interference by this Court. The appellant has been rightly convicted for the offences punishable under Sections 366-A, 376 IPC by the learned trial Court.

However, there is merit in the argument regarding the quantum of sentence imposed upon the appellant, though not for reduction to the sentence already undergone.

Learned counsel for the State is unable to deny that the appellant has three children and a dependent wife. The appellant is not reported to be involved in any other criminal case either prior or subsequent to the registration of the present case. The appellant has been facing the proceedings since the year, 2011. He retired from the Indian Army and was earning his livelihood by selling vegetables in the village. In the facts and circumstances of the case, it is considered just and expedient to reduce the sentence imposed upon the appellant from ten years each for the offences punishable under Section 366-A, 376 IPC to seven years each. However, the total fine of ₹2 lakhs i.e. ₹1 lakh each under Section 366-A and 376 IPC as well as the imprisonment in default of payment of fine is maintained. Both sentences to run concurrently.

Impugned judgment dated 09.01.2013, passed by the learned Sessions Judge, Ferozepur, convicting the appellant under Sections 366-A, 376 IPC, is accordingly upheld. With the modification in the sentence as above, the present appeal is dismissed.

December 22, 2017

s.khan

**[LISA GILL]
Judge**

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