

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

Criminal Appeal No.S-2254-SB of 2013

Date of Decision: 16.12.2017

Harjeet

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Aman Dhir, Legal Aid Counsel
for the appellant.**

Mr.D.R. Singla, DAG Haryana.

AVNEESH JHINGAN, J.

The appellant faced trial in case FIR No.189 dated 30.8.2012 under Section 376 read with Section 511 Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Sadar Narwana.

Learned Sessions Judge, Jind, vide judgment and order dated 13.3.2013, acquitted the appellant under Section 376 read with Section 511 IPC but convicted him under Section 354 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

The facts of the prosecution case, as noted by learned trial Court in the impugned judgment, are as under:-

"2. On 30.8.2012, complainant Subhash son of Kali Ram, a resident of village Bhana Brahamnan, District Jind moved an application addressed to the SHO, PS Sadar, Narwana before ASI Bhim Singh, met him at Railway

Crossing in the area of village Bhana Brahamnan to the effect that around 2 o' Clock on that day, he and his wife Sewapati had gone to the fields to bring fodder for animals leaving their handicapped and mentally retarded daughter Neha aged about 6 years and studying in Pragati School alone at home. Harjit accused alluring her took under Kikkar trees with an intention to commit bad act with her. However, she started weeping loudly which attracted Balraj son of Jagdish, resident of their village grazing the buffaloes nearby. On reaching the spot, he noticed that a naked boy overpowering her was trying to commit bad act. On calling by aforesaid Balraj, accused fled away leaving her at the spot. Said Balraj lifted shirt and chappal left by him (accused) at the spot and brought the girl to his (complainant's) house. Legal action may kindly be taken against him.

On these allegation, a case under Section 376 read with Section 511 IPC was registered in Police station Sadar Narwana. The police swung into action, inspected the spot, recorded statements of the relevant witnesses, got prepared scaled site plan and arrested the accused. After completion of investigation, final report under Section 173 Cr.P.C. was filed against him in the Court of learned Illaqa Magistrate.

After complying with the provisions of Section 207 Cr.P.C. Ms. Taranjit Kaur, the then learned Judicial Magistrate Ist Class, Narwana committed the case to the Court of Sessions vide order dated 12.10.2012.

Vide order dated 18.10.2012 charge under Sections 376 read with Section 511 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, has examined prosecutrix Neha as PW-1 followed by her father Subhash PW-2, mother

Sewapati PW-3, Balraj PW-45, Kuldeep Gupta Draftsman PW-5, Dr. Deepak Goyal PW-6, E/ASI Raghubir Singh PW-7, Inspector Suresh Pal PW-8 and ASI Bhim Singh, Investigating Officer PW-9.

After prosecution closed its evidence, statement of the accused under Section 313 Cr.P.C. was recorded putting entire incriminating evidence to him. He denied the same and pleaded his innocence and false implication. Initially he opted to adduce defence evidence, but later on closed the same without leading any."

After going through the evidence on record, the learned Trial Court vide impugned judgment and order, convicted and sentenced the accused for the offence punishable under Section 354 IPC, though he was acquitted under Section 376 read with Section 511 IPC.

Aggrieved of the said judgment and order, the present appeal has been filed.

Learned Legal Aid counsel appearing on behalf of the appellant argued that the trial Court erred in convicting the appellant under Section 354 IPC as the parents of the prosecutrix and the alleged eye witness turned hostile. In such circumstance, only on the basis of statement of prosecutrix, conviction could not have been made.

Learned State counsel argued that the appellant was 19 years of age and the prosecutrix was six years old kid who was also mentally retarded. He relied upon the recovery of Chappal and Shirt of the appellant from the place of occurrence. He argued that the prosecutrix narrated what she had undergone in her deposition and also stood firmly when cross-examined.

The contention raised by learned counsel for the appellant

cannot be accepted, as the parents of the prosecutrix and the alleged eye witness Balraj turned hostile it resulted into acquittal of the appellant for the offence punishable under Section 376 read with Section 511 IPC. It has also come on record that the prosecutrix was not medically examined and it has also not been proved that she was mentally retarded but the fact regarding her age has not been disputed. It would be worth mentioning here that the deposition of the prosecutrix along with statement of the Investigating Officer had established the case against the appellant under Section 354 IPC.

The prosecutrix in the Court deposed as under:

"I know accused present in the Court. He is resident of our village and Badi by caste. His name is Harjeet. His father's name is Parkasha. He had removed my underwear by taking me in the kikkar bushes of the village."

Learned counsel for the appellant relied upon the fact that the prosecutrix was not able to give the name and father's name of the accused in the cross-examination, whereas in the examination-in-chief she had answered such questions. This plea taken is of no help as while dealing with the case in hand, it has to be considered that if girl of tender age of 7 years has to undergo this trauma and, thereafter, suffer the police proceedings and recording of the statement in the Court, in such circumstance, it cannot be expected from a kid to give technically sound answers to the cross-examination of a duly trained lawyer.

The Investigating officer, ASI Bhim Singh-PW9 proved the entire investigation in chronological order. He deposed that father of the prosecutrix Subhash presented an application Ex.PA and thereafter he sent the same to the police station for registration of the case through constable

and he went to the place of occurrence and prepared rough site plan Ex.PJ. He recorded the statements of Sewapati and Balraj. The statement of prosecutrix was also recorded. Balraj produced T-shirt and chappal left by the accused at the place of occurrence, which was taken into possession vide recovery memo Ex.PD. He deposited the said case property in malkhanna. He arrested the accused on 1.9.2012 and got him medically examined.

In such circumstance, the judgment and order passed by the trial Court cannot be faulted.

The learned trial Court after appreciating the evidence and facts acquitted the appellant of the charges under Section 376 read with Section 511 IPC. Due reasons have been given for conviction under Section 354 IPC.

At this stage, learned counsel for the appellant argued that a lenient view be taken and sentence of the appellant be reduced to the period already undergone. He relied upon the judgment of this Court in a similar situated case in case of **Kala @ Kala Ram Versus State of Haryana, 2004 (3) RCR (Criminal) 420.**

Learned State counsel has produced the custody certificate issued by Sanjeev Kumar Budhwar, Deputy Superintendent, District Prison (Jind) Haryana, dated 15.12.2017.

As per the said custody certificate, the accused has already undergone actual sentence of one year, one month and 23 days including remission earned of 25 days. He is not involved in any other criminal case.

With regard to sentence, this court in **Mahabir vs. State of Haryana, 1997 (3) RCF 469**, keeping in view the delay in trial, reduced the sentence to the period already undergone.

Even, the Hon'ble Apex Court in **Mukesh vs. State of M.P.** 2015(1) RCR (Criminal) 251, had reduced the sentence to already undergone.

Keeping in view the family background of the convict and his age at the time of occurrence of the offence and further the fact that he was neither previously nor thereafter involved in any criminal offences and the fact that he has undergone one year, one month and 23 days of actual sentence, the sentence imposed upon him is reduced to the period already undergone by him. His bail bonds be released subject to deposit of fine, if already not deposited, within six months.

Accordingly, the present appeal stands partly allowed.

16.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No