

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

CRA-S-3144-SB-2010 (O&M)
Date of decision : 18.11.2017

Fateh Ram

...Applicant-Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Singla, Advocate/Legal Aid Counsel,
for the appellant.

Ms. Dimple Jain, AAG, Haryana.

JITENDRA CHAUHAN, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 13.09.2010, passed by learned Additional Sessions Judge, Palwal (for short 'the trial Court'), whereby, the appellant was convicted under Section 376 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI for 10 years.

The facts of the case as noticed in the impugned judgment passed by the trial Court are as under:-

“1. The case of the prosecution, in brief, is that on 5.6.2008 ASI Khursheed Ahmad along with Constable Kanwaljit Singh and Lady constable Ms. Anjana was present at Bamnikhera on patrol duty. Complainant Smt. (prosecutrix) wife of Balu Ram, resident of Village Gudrana came there along with Shri Gangalal,

Ex.Sarpanch of Village Gudrana and gave a written complainant. It was stated by the complainant that accused Fateh Ram was her son. Accused had made attempts several times to rape her but she managed to escape with the help of villagers. On 5.6.2008 at around 8.00 a.m., accused dragged her and took her in a room. He lifted her petticoat towards upside and started raping her forcibly. When she raised alarm, her younger son Brijesh reached at the spot and tried to save her. But accused picked up a stick lying there and gave stick blow on the head of Brijesh. Accused pushed Brijesh outside the room and bolted the room from inside and again started raping her. She cried for help but she could not save herself due to her old age and accused succeeded to rape her. Her son Brijesh called Shri Gangalal, Ex-Sarpanch of the village, who reached at the spot and got the door of the room opened. Gangalal, Ex-sarpanch apprehended the accused. The accused was also handed over to the police by Gangalal.”

Upon registration of the formal FIR, the accused was arrested. The accused and prosecutrix were medico-legally examined. After completion of investigation, challan was presented against the accused. Upon finding a prima facie case, charge was framed against the accused for the offence punishable under Section 376 IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1-Dr. Usha Mathur, PW2-Smt. (prosecutrix) (complainant), PW3-Brijesh, PW4-Gangalal, PW5-ASI Paras Ram, PW6-HC Anjana, PW7-HC Sultan Singh,

PW8-Anuj Kumar, Draftsman, PW9-Constable Mahinder, PW10-EHC Aas Mohammad, PW11-Constable Sunil Kumar, PW12-Inspector Narender Singh, PW13-ASI Khursheed Ahmad, PW14-Vinod Kumar, Record Keeper, Civil Hospital, Palwal, and closed the prosecution evidence.

The statement of accused was recorded under Section 313 of Cr.P.C. and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications. However, he did not lead any evidence in defence.

After appraisal of the evidence, the learned trial Court convicted and sentenced the accused as narrated at the outset of this judgment.

It is contended that in the instant case, the medical evidence is contrary to the prosecution version. The prosecutrix was medico-legally examined on the same day, however, no semen could be detected either on the clothes or on the vaginal swab as is apparent from the FSL report, Ex.P1, which renders the prosecution version highly doubtful. Moreover, no injury was noticed on the person of the prosecutrix. It is further the case of the prosecutrix that when her younger son, Brijesh, tried to rescue her, the accused caused injuries to him but no MLR was proved on record.

On the other hand, learned State counsel vehemently argued that the prosecution has proved its case beyond a shadow of reasonable doubt. All the prosecution witnesses have supported the prosecution story.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

At the outset, it would not be out of place to mention here that as per the custody certificate furnished by learned State counsel in the Court, it emerges that the accused-appellant has been released from custody after having served the entire sentence.

The case in hand is one of the rarest cases wherein the biological son has been accused of committing sexual offence against his mother. The prosecutrix has given a narration of the incident in her complaint which formed the basis of the instant FIR. She also deposed before the trial Court on the same terms. The prosecutrix was also subjected to a lengthy cross-examination but nothing beneficial in favour of the accused could be elicited. By now, it is a settled principle that in such like cases, the testimony of the prosecutrix is to be treated at par with that of an injured as held by the apex Court in *State of Punjab Vs. Gurmit Singh, 1996 AIR SC 1393* and *Aman Kumar and another Vs. State of Haryana, 2004(1) RCR (Criminal) 925*. Moreover, the younger son of the prosecutrix and eyewitness to the occurrence, PW3, Brijesh Kumar has also fully corroborated the case of the prosecution. The assertion of learned counsel for the petitioner that the MLR of PW-3, Brijesh was not produced before the Court, is also against the record as the same is available on the case file as Ex.PO. This document fortifies the prosecution version. The other material witnesses have also supported the prosecution story. On the contrary, the accused did not lead any evidence, either oral or documentary, to show that he has been falsely implicated in the present case. The mere absence of the semen on the exhibits in the FSL report, in no way, further

the cause of the accused-appellant.

In view of the above discussion, this Court is of the considered opinion that the findings returned by learned trial Court are based on correct appreciation of facts and evidence available on record and that there is no scope for interference in the well-reasoned judgment of the trial Court. Accordingly, the instant appeal fails and is accordingly, dismissed.

18.11.2017
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(JITENDRA CHAUHAN)
JUDGE

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