

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

Criminal Appeal-S No. 2463-SB of 2013(O&M)

Date of Decision: January 29 , 2018.

Mishra Singh

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Amaninder Preet, Advocate
for the appellant.

Mr. H.S.Grewal, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant has been convicted for the offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for ten years, besides, pay a fine of ₹5,000/- and in default thereof, undergo further rigorous imprisonment for six months vide judgment and order dated 06.03.2013 passed by the learned Additional Sessions Judge, Sangrur.

Brief facts necessary for adjudication of the case are that, FIR No.11 dated 12.01.2013 (Ex.PN/2) was registered on the statement (Ex.PN) of

the father of the prosecutrix/victim recorded on 12.01.2013. The complainant, aged about 32 years stated that he did labour to earn a living and has three children, the eldest being a son 18 year old, a daughter 15 year old (the victim in this case) and the youngest child, another daughter aged about 10 years. The complainant stated that his sister's daughter Rajvir Kaur (the co-accused, since acquitted by the learned trial court vide impugned judgment) and her husband Mishra Singh (the appellant) came to their village on 07.01.2013 to meet them. The appellant and his wife Rajvir Kaur stayed at the complainant's house for about 4-5 days. On 11.01.2013, the complainant left for doing labour work. His wife had also left for doing labour work in the village. Both his daughters as well as his sister's daughter and her husband (the appellant) remained at home. It is stated that when the complainant came back home on 11.01.2013 in the evening after work, his elder daughter was not found present at home neither were the appellant and his wife present there. The complainant searched for all of them in the village but could not trace them out. The complainant revealed that his sister-in-law Inderjeet Kaur wife of Joginder Singh, who lived in the adjacent house told him that at about 12.00 noon, his daughter had been taken away by the appellant and his wife. It is stated that despite best efforts he could not trace out the said persons. A suspicion was raised that his sister's son-in-law Mishra Singh, the present appellant and his wife Rajvir Kaur have enticed and kidnapped his daughter. He prayed for action to be taken against the said persons. Formal FIR No.11 (Ex.PN/2) was initially registered under Sections 363/366A IPC on 12.01.2013. The victim was recovered in the company of the appellant and his wife on 15.01.2013.

PW8 Inspector/SHO Shubeg Singh revealed that on secret information received regarding the accused persons, the police party reached near the bridge of canal in the revenue limits of village Bugran. Both the accused alongwith the victim found present under a shed duly identified by the complainant, were arrested. Custody of the victim was handed over to the complainant, her father. Statement of the victim was recorded and offence punishable under Section 376 IPC was added in the FIR. The accused as well as the victim were taken to Civil Hospital, Sangrur for medical examination. Applications, Ex.PG and Ex.PJ for medical examination of the appellant and the victim, respectively, were moved. The victim was examined by PW6 Dr. Ramanbir Kaur Boparai. MLR of the victim is Ex.PK. After medical examination the swabs, two slides and clothes of the victim in separate sealed parcels were taken in custody by the police. PW8 Inspector/SHO Shubeg Singh deposed that Smt. Shashi Bala, Head Teacher of the Govt. High School, Sahoke Dhadrian handed over a Certificate/letter (Ex.PT) on 14.01.2013 certifying the date of birth of the victim to be 26.02.1998 as per the school records. The mark-sheet of Class V examination taken by the victim in March 2009 is on record as Ex.PO. Her date of birth is mentioned as 26.02.1998 in the said mark-sheet.

Statement of the prosecutrix under Section 164 Cr.P.C. (Ex.PB) was recorded on 15.01.2013 itself. The victim stated that she was enticed by the appellant and his wife to leave her home on the pretext of getting her married in a good family. The appellant and his wife were stated to be visiting their home and living in the victim's home for the last 4-5 days prior to the occurrence. The

victim stated that the appellant took her to his sister's house at the first instance. She was thereafter taken to Boha and Kalike where the appellant's niece was residing. Thereafter, the appellant and his wife took a room on rent. The appellant committed rape upon the victim in the presence of Rajvir Kaur. When the appellant tried to commit the same offence again on the the next day, Rajvir Kaur protested but the appellant threatened to kill them both. The appellant used to lock the victim alongwith his wife in a room and go out. The victim stated that raid was conducted by the police at 7.30 p.m. on 15.01.2013 and at that time, she alone was present with the appellant as Rajvir Kaur had slipped away on the pretext of going to urinate. Rajvir Kaur thereafter called her parents. The victim further stated that she was not on very cordial terms with her cousin, Rajvir Kaur due to which the victim was raped by her husband i.e., the appellant. As per the chemical examination report (Ex.PL) spermatozoa was detected on the contents of the swabs lifted from the victim as well as Salwar of the victim. Medical examination of the appellant was conducted by PW5 Dr. Baljit Singh, Medical Officer, Civil Hospital, Sangrur. It was opined that there was nothing to suggest that the appellant was incapable of performing sexual intercourse.

Challan/final report under Section 173 Cr.P.C was presented after completion of investigation. A prima-facie case punishable under Section 363/366A/376/120B IPC was found to be made out against the accused. Accordingly, the matter was committed for trial vide order dated 29.01.2013 by the learned Judicial Magistrate First Class, Sangrur. Charge against the appellant and the co-accused was framed on 29.01.2013 by the learned trial

court. The appellant and the co-accused pleaded not guilty and claimed trial.

The prosecution examined as many as eight witnesses to prove its case. The medical reports of the victim as well as the appellant, chemical examiner report, the Detail Mark-sheet of Class V of the victim and the certificate issued by the Head Teacher of the Govt. High School, Sahoke Dhadrian were tendered in evidence alongwith other documents.

The appellant in his statement under Section 313 Cr.P.C. while denying all the incriminating evidence put to him, pleaded innocence and false implication. He specifically stated that he has been falsely implicated in this matter due to the enmity between his mother-in-law and the prosecutrix's father, who are real brother and sister. Co-accused Rajvir Kaur (since acquitted) also pleaded innocence and false implication on account of enmity between her mother and her brother i.e., father of the victim as well as her strained relations with the prosecutrix. Rajvir Kaur further stated that she was under threat and remained mum due to the same, but she quarreled with the appellant and protested when rape was committed upon the victim.

The learned trial court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution has successfully proved its case beyond reasonable doubt against the appellant Mishra Singh, but failed to do so against co-accused Rajvir Kaur for the offence punishable under Section 376 IPC. The appellant Mishra Singh and co-accused Rajvir were acquitted of the charge for the offences punishable under Sections 120B/363/366A IPC. Accordingly, co-accused Rajvir Kaur was acquitted of all the charges framed against her. The appellant Mishra Singh was convicted for

the offence as mentioned above and sentenced accordingly. Aggrieved therefrom, the present appeal has been preferred by the appellant Mishra Singh.

Learned counsel for the appellant vehemently argues that there is an unexplained delay in lodging of the FIR. It is further argued that once there is an admission of strained relations between the victim's father and his sister as well as strained relations between the victim and the appellant's wife Rajvir Kaur, there is no question of firstly, the appellant and his wife coming to stay at the house of the complainant and thereafter the victim accompanying them. It is further submitted that the medical evidence on record indicates no injury on the person of the victim or the appellant. Moreover, DNA testing was not conducted, therefore culpability of the appellant is not proved. It is pointed out that there are material contradictions regarding the place of recovery of the victim which creates a further dent in the prosecution version. As per the investigating agency, the victim was recovered under a shed in village Bugran in the company of the appellant and his wife, whereas the victim states that a raid was conducted on rented premises and she alongwith the appellant were recovered therefrom. It is vehemently urged that age of the victim is not proved on record. There is nothing on record to indicate that the victim was a minor at the time of the incident. The victim (PW1), it is submitted, had admitted herself to be 19 year old at the time of recording of her statement under Section 164 Cr.PC. The Head Teacher who had given the certificate regarding the date of birth of the victim was not examined. Thus, it is argued that the victim is not proved to be a minor at the relevant time. It is strenuously urged that the learned trial court has acquitted the appellant for the offences punishable under

Sections 363/366A IPC, therefore his conviction under Section 376 IPC is not sustainable in any manner, specifically for the reason that the victim is not proved to be a minor. She admittedly accompanied the appellant out of her own accord. She stayed with the appellant and his wife at various places. The victim never raised any alarm, even though she had the opportunity to do so. Thus, conviction of the appellant under Section 376 IPC, it is contended, is not sustainable. It is further urged by learned counsel for the appellant that the learned trial court has proceeded in haste in the present case which dealt great prejudice to the appellant. The final report in this case was presented on 29.01.2013 and charge was framed on the same date. Evidence was also led in haste and the appellant was convicted on 06.03.2013 itself. Therefore, the impugned judgment and order dated 06.03.2013 be set aside and the appellant be acquitted of the charges against him.

In the alternate, learned counsel for the appellant submits that the sentence imposed upon the appellant is not commensurate with the gravity of the offence. Therefore, the sentence of 10 years imposed upon the appellant be reduced to that already undergone by him (FIR in this matter was registered on 12.01.2013 i.e., before the amendment in Section 376 IPC which came into force w.e.f. 03.02.2013). It is submitted that the appellant is not involved in any other criminal case. He has been facing trial since 2013. He has undergone actual imprisonment of four years, nine months and nine days as on 27.10.2017. In case the period of remission is included, the total sentence undergone by the applicant/appellant is five years, nine months and twenty four days. It is thus prayed that the sentence imposed upon the appellant be reduced to that already

undergone by him.

Learned counsel for the State has refuted the abovesaid arguments while submitting that the learned trial court has rightly convicted the appellant on the basis of clear and cogent evidence on record. There is no ground for setting aside the said/ judgment. Moreover, there are no mitigating circumstances for reducing the sentence imposed upon the appellant by the learned trial court. It is thus prayed that this appeal be dismissed.

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

The undisputed facts are that, FIR No.11 dated 12.01.2013 (Ex.PN/2) was registered on the statement (Ex.PN) of the complainant (PW7). It is specifically stated by the complainant that the appellant and his wife i.e. niece of the complainant, had come to their village to meet them on 07.01.2013. They stayed with the complainant for 4-5 days. The complainant and his wife left their house on 11.01.2013 for labour work. When they returned home at about 6.00 p.m., their daughter, the appellant and his wife were not found present at the residence and could not be traced out, despite efforts. It was revealed by Inderjeet Kaur wife of the complainant's brother Joginder Singh, who lives in an adjacent house, that about 12.00 noon his elder daughter was seen accompanying the appellant and his wife. Accordingly, FIR was lodged on the very next day i.e., 12.01.2013 wherein a suspicion was raised that the appellant and his wife had kidnapped his daughter by enticing her. The victim's school certificate (Ex.PT) as well as the mark-sheet (Ex.PO) were handed over to the police reflecting the date of birth of the victim to be 26.02.1998. PW7, the complainant stated that he was joined in investigation by the police on

13.01.2013, on receiving secret information regarding whereabouts of his daughter. The victim alongwith both the accused persons were found sitting under a shed near the bridge of a canal in the revenue limits of village Bugran. PW7 further stated that he did not have cordial relations with his sister and her in-laws family. His sister's husband died 7-8 years back and she was turned out of her matrimonial home by her in-laws. The complainant's niece is stated to be one year younger to his elder daughter, the victim. PW7 specifically denied the suggestion that he has falsely implicated the appellant due to enmity with his sister and her family.

The victim (PW1) specifically stated that she was studying in Govt. High School, Sahoke Dadrian. The appellant and his wife who are their relatives, came to their house on 07.01.2013. Her parents had gone out for labour work. The appellant and his wife enticed her to leave her home on 11.01.2013 on the pretext that they would get her married in a reputed house/family. The victim (PW1) further stated that she was taken to various places by the appellant and his wife. The appellant committed rape upon her against her wishes. When she resisted, the appellant threatened to kill her. It is stated that Rajvir Kaur married the appellant against the wishes of her parents, it being a love marriage. Rajvir Kaur is stated to be illiterate. PW1 further stated that Rajvir Kaur quarreled with the appellant and also raised an alarm when the appellant committed rape upon the victim. The appellant threatened the victim as well as Rajvir Kaur to remain mum, otherwise he would kill both of them. The victim (PW1) admitted that Rajvir Kaur was a minor and her family did not have cordial relations with the family of the accused. PW6 Dr. Ramanbir Kaur

Boparai, Medical officer, Civil Hospital, Sangrur proved the MLR of the victim. PW8 Inspector/SHO Shubeg Singh has narrated and proved the investigation as conducted.

Perusal of the evidence on record does not reveal any inexplicable delay in the lodging of the FIR. The victim was found missing in the evening of 11.01.2013. Efforts were made by the complainant to trace out his daughter and when his efforts proved futile, FIR (Ex.PN/2) was registered promptly on the very next day on 12.01.2013. Contention of learned counsel for the appellant that the victim stated herself to be 19 year old while testifying before the learned trial court on 12.02.2013 is of no avail keeping in view the specific documentary evidence on record reflecting her date of birth to be 26.02.1998. The victim (PW1) specifically stated that she was studying at Govt. High School, Sahoke Dadrian. There is no evidence on record to disbelieve the prosecution stand of the victim's date of birth being 26.02.1998. The victim (PW1) has specifically stated that she was subjected to rape by the appellant on two occasions. Medical evidence on record fortifies the victim's stand. The medico legal report (Ex.PK) as well as the evidence of PW6 Dr. Ramanbir Kaur Boparai reveals subjection of the victim to sexual intercourse. Chemical examiner's report (Ex.PL) cements the same. It is a settled position that testimony of the prosecutrix/victim is not to be viewed with suspicion and in the absence of any evidence to impinge upon its credibility, the same should be accepted by the court for convicting the accused.

Learned counsel for the appellant is unable to point out anything on record, which casts a shadow or impinges upon the credibility of the victim

(PW1). She has given a consistent version of the events as they unfolded while specifically stating that she was subjected to rape by the appellant. Her cousin sister Rajvir Kaur had protested, but the appellant threatened to kill both of them in case they raised any objection.

Contradictions regarding the place of recovery as urged by the learned counsel for the appellant are not sufficiently substantial, material or relevant to form the basis of acquittal of the appellant. The appellant has not been convicted for the offences punishable under Sections 363/366A IPC. There is no appeal by the State or the complainant in this respect.

Another contention urged by learned counsel for the appellant that the learned trial court has proceeded in haste thereby prejudicing the appellant, is noticed only to be rejected. Such an argument is clearly fallacious and untenable hence, rejected. It is noted that no mala-fides have been alleged against the Investigating Agency or any other. A perusal of the record does not reveal any prejudice to the appellant who was afforded proper and due opportunity at every stage.

The prosecution has duly proved its case beyond reasonable doubt against the appellant for the offence punishable under Section 376 IPC. The victim in this case was merely 15 year old. She was allured and enticed on the pretext of getting her married in a reputed family. The appellant himself is married with the minor cousin sister of the victim against the wishes of the family. The ocular version duly corroborated by medical evidence permits of no other hypothesis but the guilt of the appellant. The learned trial court has rightly convicted the appellant for the offence punishable under Section 376 IPC. Learned counsel for the appellant is unable to point out any illegality or

infirmity in the impugned judgment dated 06.03.2013 passed by the learned Additional Sessions Judge, Sangrur.

However, there is merit in the argument raised by the learned counsel for the appellant in respect to the quantum of sentence imposed upon the appellant. The appellant has been sentenced to undergo rigorous imprisonment for ten years. The appellant is not reported to be involved in any other criminal case. He has been acquitted for the offences punishable under Section 363/366A IPC by the learned trial court. Therefore, keeping in view the facts and circumstances of the case, the sentence of ten years imposed upon the appellant is reduced to that of seven years i.e., the minimum sentence stipulated under Section 376 IPC. There is however no ground to reduce the same to the period already undergone by the appellant. The amount of fine and imprisonment in default thereof as imposed by the learned trial court is maintained.

Accordingly, judgment dated 06.03.2013 passed by the learned Additional Sessions Judge, Sangrur, convicting the appellant for the offence punishable under Section 376 IPC is upheld. With the modification as above in the order of sentence imposed upon the appellant by the learned Additional Sessions Judge, Sangrur vide order dated 06.03.2013, the present appeal is dismissed.

(**LISA GILL**)
JUDGE

January 29 , 2018.
'om'

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