

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

CRA-S-3360-SB of 2012 (O&M)

Date of decision : November 21, 2017

Gurpreet Singh @ Mithu

.....Appellant

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Gurnam Kaur Turka, Advocate
for the appellant.

Mr. Rahul Rathore, DAG, Punjab.

LISA GILL, J.

The appellant is aggrieved of judgment dated 25.09.2012 passed by the learned Sessions Judge, Patiala whereby he has been convicted of the offence punishable under Sections 376 (2)(f) IPC. By a separate order of even date, he has been sentenced to undergo rigorous imprisonment for ten years besides, pay a fine of ₹5,000/- and in default thereof undergo rigorous imprisonment for a period of one month.

Brief facts of the case are that FIR No. 204 dated 24.07.2011 was registered on the statement of the victim's father (Ex.PA). The complainant stated that he is Mason by profession. On 22.07.2011, he had gone with his wife and son to the market at Bahadurgarh for purchasing household items. They had left their 3½ years old daughter with his mother at their residence. When they came back at about 7.00 p.m. they found that their daughter was not present at home. The complainant asked his mother about his daughter, who revealed that their daughter had gone to the house of the appellant for playing. The complainant proceeded to the residence of

the appellant. He saw the appellant carrying out obscene acts and outraging the modesty of the victim. The appellant fled on seeing the complainant. It is stated that the complainant brought his daughter home but could not muster the courage to lodge a report with the police to avoid ignominy. However, the victim being unwell was brought to the Community Health Centre, Model Town, Patiala on 23.07.2011. Dr. Sirat Kaur, Medical Officer, who conducted the medical examination of the victim at Community Health Centre, Model Town, Patiala opined (Ex. PG/1) that local external examination of genitalia showed evidence of sexual assault. The patient was thereafter referred for expert gynaecological opinion. MLR in this regard is Ex. PF. The condition of the victim was critical, therefore, she was referred to Rajindra Hospital, Patiala, where she was admitted on 24.07.2011. Thereafter, statement (Ex. PA) of the complainant was recorded on 24.07.2011 on the basis of which formal FIR (Ex. PJ/1) was registered. The appellant was arrested on 26.07.2011. His medical examination was conducted. Investigation was carried out by ASI Jarnail Singh (PW11). Rough site plan at the instance of the complainant was prepared (Ex. PK). As per chemical examiner's report (Ex. PE), spermatozoa were detected on the vaginal and anal swabs of the victim. Opinion of the doctor after the receipt of the chemical examiner's report was obtained.

Final report under Section 173 Cr.P.C. was presented on completion of investigation. Charge against the appellant was framed on 01.02.2012. The appellant pleaded not guilty and claimed trial. The prosecution examined eleven (11) witnesses to prove its case.

The appellant in his statement under Section 313 Cr.P.C. denied all incriminating evidence put to him. He pleaded innocence and false

implication. The appellant stated that no such incident as alleged took place on 22.07.2011. He has been falsely implicated due to enmity with the complainant regarding his labour wages. DW1 Kuldip Singh was examined in defence, who testified that the appellant was earlier working with the complainant.

PW1 – complainant, the father of the victim, reiterated the version as narrated by him in his statement (Ex.PA). PW2 – mother of the victim disclosed that their daughter aged about 3½ years was left with her mother-in-law at their residence as she alongwith her husband and son went to the market for purchasing some household articles. When they returned home and inquired about their daughter, her mother-in-law informed that the victim had gone out for playing with the appellant. After a few minutes her husband went to the house of the appellant. She alongwith her mother-in-law came out of the house in the street. They saw the appellant running out of his house while carrying his clothes in his hands. Soon after, her husband came out of the appellant's house with their daughter in his arms.

The victim was initially examined by PW7 Dr. Sirat Kaur, Medical Officer, CHC Model Town, Patiala. She proved the MLR (Ex.PF) as well as her opinion (Ex.PG/1) whereby the victim was referred for expert gynaecological opinion. PW6, Dr. Bimla Rani, Senior Resident, Department of Obstetrics and Gynec, Rajindra Hospital, Government Medical College, Patiala examined the victim on 24.07.2011. She has proved Bed Head Ticket (Ex. PD). She specifically opined that in view of the chemical examiner's report, sexual assault on the person of the victim cannot be ruled out. PW8, Dr. Deepander Singh Rathore, Junior Resident, Rajindra Hospital, Patiala produced skiagrams and x-ray and opined the radiological

age of the victim to be between 4 to 5 years.

Learned trial Court on considering the evidence on record, concluded that the prosecution had proved its case beyond the shadow of reasonable doubt against the appellant thereby convicted him for the offence punishable under Sections 376 (2)(f) IPC and sentenced him as detailed above.

Aggrieved from his conviction and sentence by the learned Sessions Judge, Patiala vide impugned judgment and order dated 25.09.2012, the appellant has preferred this appeal.

Learned counsel for the appellant vehemently argues that no offence punishable under Sections 376 (2)(f) IPC is made out against the appellant. It is submitted that as per the medical evidence on record, the so-called injuries on the person of the victim are not necessarily due to a sexual assault. Reference is made to the cross examination of PW7, Dr. Sirat Kaur, who stated that the possibility of the injuries can be due to scratches on the skin around the genitalia from frictional cause like rubbing, scratching with fingers or clothes. It is further submitted that DW1 Kuldeep Singh specifically deposed that the appellant, appellant's father Shamsheer Singh and DW1 used to work for the complainant. DW1 has stated that the complainant is yet to pay for the labour done by him as well as the appellant and his father for about 22 days. When they demanded their wages, the complainant had threatened them. The defence has not been considered.

Learned counsel for the appellant further argues that, if at all, an offence is indeed made out, it would be a lesser offence punishable under Section 354 IPC and not under Section 376 IPC. It is, thus, prayed that this appeal be allowed and the appellant be acquitted of the charges against him

or in the alternate, he be punished for a lesser offence punishable under Section 354 IPC.

Learned counsel for the State has, however, submitted that there is clear and cogent evidence on record to prove the guilt of the appellant in this case. Therefore, this appeal be dismissed and the well reasoned judgment and order dated 25.09.2012 should be maintained.

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

The complainant (PW1), in this case, is the father of the victim. He is in fact an eye witness of the occurrence in question. A clear and cogent narration of sequence of events has been given by the complainant, in this case. It is specifically stated that the complainant alongwith his wife and son had gone to the market of Bahadurgarh on 22.07.2011 in the evening to make purchases of certain household items. They left their minor daughter with the complainant's mother at home. When they returned home, they did not find their daughter present at home. It was revealed by the complainant's mother that she had gone to play in the appellant's house. It is the most natural conduct that at night, the father proceeded to the appellant's home to bring back his daughter. He was witness to the horrific scene where his minor child was being subjected to sexual assault. It is a very normal and probable reaction that being shaken and perplexed, they did not immediately proceed to the police authorities. When the child complained of pain, she was ultimately taken to the Community Health Centre, Model Town, Patiala on the next day in emergency.

It is observed by PW7, Dr. Sirat Kaur that the victim aged 3½ year old was brought by the parents with alleged history of attempted sexual

assault upon the child. The child's mother complained of her excessive crying with micturition and pain in the genitalia. The following injuries were found present:-

- (1) Red abraded area measuring 4 cm x 1 cm noted over labia majora on the right side;
- (2) Skin over clitoral area also shows red abrasions measuring 2 cm x 1 cm;
- (3) Labia majora on left upper side shows redness measuring 2 cm x 1 cm. No fresh bleeding seen.
- (4) Anal area shows abrasion measuring 1 cm x 0.5 cm at 6 o'clock position. No fresh bleeding seen.

The victim was referred to Rajindra Hospital, Patiala for gynaecological examination. The victim was thereafter taken to Rajindra Hospital, where she was examined by Dr. Bimla Rani (PW6). Swabs from the victim's person were taken. The police was informed, statement of the complainant was recorded and prosecution set in motion.

It is not in dispute that as per the chemical examiner's report (Ex. PE), spermatozoa were found present on the vaginal and anal swabs of the victim. Reference to cross examination of PW7, Dr. Sirat Kaur by learned counsel for the appellant to submit that injuries present on the victim's person could be due to other causes, is of no avail. This is so, because it is specifically mentioned by PW7 that the child was under fear. Though it is mentioned that possibility of the injuries could be due to scratches on the skin etc., it is specifically opined by PW7 that site of the injuries reflects them to be of the nature of sexual assault. PW7 has proved her opinion (Ex. PG/1) that local external examination of genitalia shows

evidence of sexual assault. Moreover, the chemical examiner's report, reflecting the presence of spermatozoa on the vaginal and anal swabs of the victim, clinches the issue. Therefore, the said argument raised by learned counsel for the appellant is untenable, hence rejected.

Contention on behalf of the appellant that the defence evidence proves false implication of the appellant is equally devoid of any merit. It is to be noted that even if the defence version is accepted, it is highly improbable that any parent would subject his child to such a trauma merely because of a petty money dispute i.e. labour wages for 22 days. At this stage, it is relevant to note that DW1, in his cross examination, has specifically stated that he did not know whether the appellant is actually involved in the alleged incident or not, as at the time of occurrence, he was not present at his residence. DW1 did not produce any document or any other evidence to show that he or the appellant had ever worked with/for the complainant.

It is relevant to note at this stage that DW1 has admitted that Shamsher Singh (father of the appellant) is his father-in-law, meaning thereby that DW1 is married to the appellant's sister. In the circumstances as above, testimony of DW1 is of no avail to the appellant.

A perusal of the record reveals clear and cogent evidence in the shape of a graphic ocular version given by the complainant, which is duly corroborated by the medical evidence on record. Offence punishable under Section 376(2)(f) IPC is duly proved on record. It cannot by any stretch of imagination be said that the offence in question is a lesser offence punishable under Section 354 IPC.

In the facts and circumstances of the case, there are no

mitigating circumstances to reduce the sentence imposed upon the appellant as urged by learned counsel for the appellant. The appellant has been convicted for the offence punishable under Section 376 (2)(f) (un-amended provision) which reads as under:-

376 (2) Whoever, --

xxx

xxx

(f) commits rape on a woman when she is under twelve years of age;

xxx

xxx

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

The victim, in this case, was a child of the tender age of about three and a half years (3½). The act of the appellant is unquestionably depraved and inhuman. There are no special reasons, which call for reduction of the minimum sentence stipulated by the statute.

Learned counsel for the applicant is unable to point out any illegality, infirmity or perversity in the impugned judgment and order dated 25.09.2012 passed by the learned Sessions Judge, Patiala, which calls for any interference by this Court.

Accordingly, this appeal being devoid of any merit is dismissed.

(Lisa Gill)
Judge

November 21, 2017

rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No