

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

CRA-S-904-SB of 2014 (O&M)

Date of decision : December 09, 2017

Shiva

.....Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Sumanjit Kaur, Advocate
for the appellant.

Mr. H.S. Grewal, Additional A.G., Punjab.

LISA GILL, J.

The appellant is aggrieved of judgment dated 17.10.2013 passed by the learned Sessions Judge, Sri Muktsar Sahib whereby he has been convicted of the offence punishable under Section 376 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 two months.

Brief facts necessary for adjudication of this case are that FIR No. 33 dated 03.03.2011 (Ex. PW11/B) was registered on the statement of the complainant, who is the mother of the victim/prosecutrix (Ex. PW7/A) . The complainant, a resident of Kusht Ashram (Leprosy Ashram) situated at Grain Market, backside Maur Road, Sri Muktsar Sahib, was working as domestic help and her husband was a rickshaw puller. The complainant had six children, four daughters and two sons. Her eldest daughter was married and other children were minor. It is stated by the complainant that on 02.03.2011, her

husband had gone to Bathinda to meet his relative. The complainant alongwith her children were sitting in the temple situated within the Kusht Ashram on account of the festival of *Shivratri*. Her daughter - the victim, aged about six years was not traceable in the temple. The complainant and another daughter of hers went in search of the victim aged six years. At about 10.30 p.m., when they reached near the railway lines they heard shrieks of the victim. The complainant and her other daughter saw the appellant - their neighbour committing the act of rape upon the victim. They saw the victim made to lay down on the earth was in a state of nakedness and the appellant was committing the act of rape. On seeing the complainant and her daughter, the appellant fled from the spot while taking alongwith him clothes of the victim i.e. her lower (pyjama) and under garment, which had been removed by him.

The complainant picked up the victim who was weeping and brought her back home. The complainant revealed the facts to her husband when he returned from Bathinda on 03.03.2011. Thereafter, she alongwith her husband, the victim and Sukha Singh, M.C. went to lodge a report. They met SI Jarnail Singh (PW11) at Masit Chowk. Statement of the complainant was recorded. Legal action was prayed for. Formal FIR (Ex. PW11/B) was registered on the said statement.

PW11 Inspector Jarnail Singh directed ASI Resham Singh for getting the medical examination of the victim conducted. Application (Ex.PW11/C) was prepared. Parents of the victim alongwith the victim were sent to Civil Hospital. Medical examination of the victim was conducted by Dr. Pooja, Medical Officer, Civil Hospital (PW3) on 03.03.2011 at about 7.00 p.m.. Carbon copy of the MLR is Ex. PW3/A. Vaginal swabs of the victim were taken

and handed over for chemical examination. As per the Chemical Examiner's report (Ex. PW3/C), spermatozoa was detected on the vaginal swabs. The place of occurrence was inspected by PW11. Site plan (Ex. PW11/D) was prepared. The appellant was arrested on 04.03.2011.

Final report under Section 173 Cr.P.C. was presented after completion of investigation. The case was committed to the Court of Sessions on 04.07.2011. Charge against the appellant was framed on 27.07.2011, to which the appellant pleaded not guilty and claimed trial. The prosecution examined as many as 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 he has been falsely implicated in this case, at the instance of the father of the victim with whom the appellant had some financial dealings. DW1 Santosh - brother of the appellant, was examined in defence, who deposed that a loan of ₹10,000/- on 01.01.2011 was taken by the father of the victim with a promise to return the same within 15 days. When the appellant demanded his money back, the father of the victim was putting him off on one pretext or the other. It is on this account that the appellant was falsely implicated in this case.

Learned trial Court on considering the evidence on record, facts and circumstances of the case, concluded that the prosecution had succeeded in proving its case against the appellant beyond the shadow of reasonable doubt thereby convicted him for the offence punishable under Sections 376 IPC and sentenced him as detailed above.

Aggrieved from his conviction and sentence by the learned

Sessions Judge, Sri Muktsar Sahib vide impugned judgment and order dated 17.10.2013, the appellant has preferred this appeal.

Learned counsel for the appellant vehemently argues that false implication of the appellant is apparent on the face of it. It is contended that there is an unexplained delay in the lodging of the FIR. The incident in question is stated to have taken place on 02.03.2011 at 10.30 p.m. The matter was reported on 03.03.2011 at 6.15 p.m. There is no plausible explanation for the said delay. Moreover, age of the prosecutrix/victim has not been proved on record. Learned counsel for the appellant vehemently argues that the clothes of the victim, which the appellant is stated to have taken along with him while fleeing from the spot, were never recovered. This casts a serious doubt on the prosecution version. It is further argued that the learned trial Court has not considered the defence evidence in the correct perspective. The appellant, it is submitted, has clearly proved his false implication due to financial dealing of the appellant with the victim's father. It is, thus, prayed that the impugned judgment and order should be set aside and the appellant be acquitted of the charges against him. In the alternate, it is prayed that the appellant has undergone actual imprisonment of five years and over nine months of the sentence imposed upon him. In case, the period of remission is included, the appellant has undergone over six years of the sentence imposed upon him. The appellant, it is stated, is not involved in any other criminal case. Therefore, in the facts and circumstances of the case, the sentence of ten years imposed upon the appellant should be reduced to that of already undergone or at least to seven years i.e. the minimum prescribed punishment for the offence punishable under Section 376 IPC. (The present case relates to an incident of 02.03.2011 i.e. prior

to the amendment in the provisions of Section 376 IPC.)

Learned counsel for the State, however, refutes the arguments addressed on behalf of the appellant and submits that there is clear and cogent evidence on record to prove the guilt of the appellant in this case. There is nothing on record, which calls for setting aside of the impugned judgment and order in this case. Therefore, this appeal be dismissed and the well reasoned judgment and order dated 17.10.2013 be maintained.

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

The undisputed facts are that FIR No. 33 dated 03.03.2011 was registered on the statement of the complainant to the effect that she was working as domestic help to earn her living. Her husband was a Rickshaw Puller. The complainant had four daughters and two son, her eldest daughter is married. The complainant's husband had gone to Bathinda on 02.03.2011 to meet a relative. She alongwith her children were sitting in the temple situated in the Ashram on the occasion of festival of *Shivratri*. Her daughter - the victim, aged about six years, was not traceable in the temple. The complainant and her other daughter went in search for her. At about 10.30 p.m., when they reached near the railway lines they heard shrieks of the victim. The complainant and her other daughter saw the appellant - their neighbour committing the act of rape upon the victim. They saw the victim made to lay down on the earth was in a state of nakedness and the appellant was committing the act of rape upon her. On seeing the complainant and her daughter, the appellant fled from the spot while taking alongwith him clothes of the victim i.e. her lower (pyjama) and under garment, which had been removed by him. The complainant picked

up the weeping, distressed victim and brought her back home. The incident was revealed by the complainant to her husband, when he returned from Bathinda on 03.03.2011. Immediately thereafter, she alongwith her husband, the victim and Sukha Singh, M.C. went to lodge a report. Formal FIR, Ex.PW11/B was accordingly registered against the appellant. Medical examination of the child/victim was carried out.

PW3 Dr. Pooja, Medical Officer, Civil Hospital examined the victim on 03.03.2011 at 7.00 p.m. In the MLR (Ex. PW3/A), it is observed as under:-

“ Complain of pain at perineal region, tender to touch. Wearing T-shirt and sweater, no undergarments, child wrapped in shawl;

Contusion 1.5 cm x 1.5 cm was present on right side of face, 2 cm lateral to right eye bluish in colour;

1. On P/V examination labia majora and minora swollen and tender. Hymen swollen and ruptured at posterior fourchette. Clotted blood was present in vagina;
2. Two vaginal swabs were taken first from introits and second from posterior fornix and sealed and handed over to police.”

As per report (Ex. PW3/C), spermatozoa was detected on the vaginal swabs sent for chemical examination. PW3 specifically opined that sexual intercourse had taken place with the victim. PW5 Dr. Satish Kumar Goyal, Medical Officer, Civil Hospital, Sri Muktsar Sahib, who examined the appellant, has specifically opined that there is nothing to suggest that the appellant was incapable to perform sexual intercourse.

The victim, in this case, while appearing as PW9 specifically stated that the appellant was known to her. He used to provide eatables to her

earlier. The victim stated that the appellant came during night time and took her to the grain market about 2½ years ago. The appellant, it is stated, took off her clothes, put his hand on her mouth and committed rape upon her. The victim stated that she suffered pain, she started crying and on hearing her shrieks her mother and sister arrived at the spot. The appellant fled from the spot on seeing the victim's mother and sister and took her clothes along with him. It is specifically stated that blood was oozing out from her private parts. There is nothing on record which causes this Court to doubt the veracity and credibility of the evidence/testimony of the child/victim. The victim, PW9, was certified by the learned trial Court to be a competent witness, capable of giving a statement on oath. The child has rendered a clear account of the incident as it unfolded. She was subjected to cross-examination but the victim withstood the same and nothing favourable in favour of the defence was elicited. The victim's account is duly corroborated with the testimonies of the three material witnesses as well as the medical evidence on record.

The victim's sister while deposing as PW10 has narrated the facts in consonance with the facts as stated by the victim and the complainant. The victim's father while appearing as PW8 stated that he had gone to Bathinda on 02.03.2011 to meet a relative. When he returned on 03.03.2011, the incident which took place at 10.30 p.m. on 02.03.2011, was narrated to him by his wife. Thereafter, PW8 alongwith his wife, their daughter (victim) alongwith Sukha Singh, MC proceeded to lodge a report against the appellant in this regard.

PW11, the Investigating Officer in this case, has narrated the details of the investigation carried out. It is specifically stated that FIR (Ex. PW11/B) was registered on the statement of the complainant recorded on

03.03.2011. An application for medical examination of the victim (Ex.PW11/C) was prepared. The victim was sent to the Civil Hospital. The spot was inspected and site plan (Ex. PW11/D) was prepared.

ASI Resham Singh, duly handed over a sealed parcel containing swabs and copy of the MLR of the victim, which were taken in possession vide memo (Ex. PW1/A). Case property was deposited with the MHC Surinder Singh. The appellant's medical examination was conducted by PW5, Dr. Satish Kumar Goyal. The appellant was arrested on 04.03.2011. Final report under Section 173 Cr.P.C. was presented by Inspector Harjit Singh after completion of investigation.

The argument raised by learned counsel for the appellant that there is an unexplained delay in the lodging of the FIR is not sustainable. This is so for the reason that it is the consistent case of the victim, the complainant, sister of the victim that the incident in question took place at 10.30 p.m. on 02.03.2011. The victim was picked up from the spot by the complainant and brought back home. The complainant's husband was admittedly not present at home. He had gone to Bathinda to meet a relative. It is natural and probable that the complainant waited for her husband to return on 03.03.2011. When the facts were narrated to him, they immediately proceeded to lodge a report with the police. The victim, in this case, was immediately thereafter subjected to medical examination on 03.03.2011 at 6.15 p.m. Thus, it cannot by any stretch of imagination be said that there is an unexplained delay in the lodging of the FIR, which proves fatal for the prosecution case. The delay, in question, is duly explained and casts no doubt on the prosecution case. There is nothing on record which causes this Court to doubt the veracity and credibility of the

consistent and clear ocular version presented by the victim, the complainant and the other witnesses. The said ocular version is duly corroborated by the medical and other evidence on record. Injuries detected on the person of the victim as well as the Chemical Examiner's report (Ex.PW3/C) revealing the presence of spermatozoa on the contents of exhibit 1 i.e. the vaginal swabs lifted from the victim clearly point to the commission of the offence in question by the appellant.

An argument was raised by learned counsel for the appellant that the clothes of the victim, which the appellant was alleged to have fled away with from the scene of occurrence, were never recovered, therefore, non-recovery of the said clothes casts a shadow of doubt. In view of the overwhelming evidence on record, said argument is completely bereft of any merit. Non-recovery of the victim's clothes does not even remotely cast a doubt on the prosecution version in this case. The defence of the appellant that there was some monetary transaction with the father of the victim, is not proved on record. DW1 i.e. brother of the appellant deposed that the victim's father had borrowed cash amount of ₹10,000/- on 01.01.2011 from the appellant with a promise to return the same within 15 days. When the appellant demanded the return of his money after expiry of 15 days, the victim's father tried to put him off on the one pretext or the other. It is due to this reason that the appellant has been falsely implicated in this case. It is to be noticed that DW1 has not produced any document/receipt or any other evidence, which would reflect that the said amount was actually handed over to the victim's father. Apart from the fact that it is highly improbable that any parent would subject their minor child to such a trauma merely because of a petty money dispute of ₹10,000/-, the

consistent ocular version duly corroborated by medical evidence on record whereby specific injury has been found on the private parts of the victim as well as the chemical examiner's report, do not permit of any hypothesis but guilt of the appellant.

Learned counsel for the appellant has also sought to urge that the age of the victim, in this case, has not been proved to be six years. There is no document on record to prove her age and age has been determined by the learned trial Court only as per the information given by the mother of the victim. PW3 Dr. Pooja, it is submitted, has stated that no document regarding the victim's age was obtained but the same is mentioned as per estimate neither was ossification test of the victim conducted. The said argument is indeed fallacious and irrelevant for the reason that this is not a case where the defence has raised an argument of the victim/prosecutrix being major involved in a consensual act or that the credibility of the witness is sought to be impinged due to the said reason. There is nothing on record to suggest that the victim, in this case, was not a minor at the time of incident. No such suggestion has also been put to any of the witnesses. The clear, consistent and cogent ocular version presented by the victim, complainant and the other witnesses, duly corroborated by the medical evidence on record, clearly points to the guilt of the appellant.

Learned counsel for the applicant is unable to point out any illegality, infirmity or perversity in the impugned judgment and order dated 17.10.2013 passed by the learned Sessions Judge, Sri Muktsar Sahib, which calls for any interference.

In respect to the alternate prayer of the appellant in respect to the quantum of sentence imposed upon him, it is to be noted that the victim, in this

case, was aged six years. There is specific medical evidence on record to prove the commission of offence. The appellant is guilty of the commission of heinous offence qua a child of tender age. In the given factual matrix, there are no such mitigating circumstances, which call for reduction of the sentence imposed upon the appellant. Prayer for reduction in the sentence imposed upon the appellant is declined as well.

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

December 09, 2017
rts/om

(Lisa Gill)
Judge

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