

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

CRA-S-20-SB-2002

Date of decision:-23.8.2018

Harjinder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sartaj Singh Gill, Advocate
for the appellant.

Mr.Dhruv Dayal, Sr.D.A.G., Punjab.

H.S. MADAAN, J.

Accused Harjinder Singh faced trial by learned Additional Sessions Judge, Amritsar, who vide judgment dated 28.11.2001 convicted him for an offence under Section 376 IPC and vide order of that very date sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

The accused-convict – Harjinder Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that on 27.1.2000 at about 3:00 p.m., the prosecutrix (name not

being mentioned to conceal her identity), grand-daughter of the complainant Surjit Kaur was playing with children at village Aasal Uttar,, Tehsil Patti, then District Amritsar, now District Taran Tarn, in the meanwhile Harjinder Singh accused living in neighbourhood of the complainant came there and took away the prosecutrix with him on the allurement of providing her toffees; that after about half an hour when the prosecutrix did not return, then the complainant and her son Surta Singh i.e. father of the prosecutrix started searching for her; that when they reached near bridge of drain, they heard cries of the prosecutrix and observed that accused was committing rape upon her, who was lying on the ground; that her salwar had been brought down; that Surta Singh and complainant Surjit Kaur raised alarm, then Harjinder Singh accused ran away from the spot; then the prosecutrix was brought home; that respectables of the village tried to get the matter compromised between the parties but those efforts proved futile. Thereafter, the matter was reported to the police. The statement of complainant Surjit Kaur was recorded by Inspector Rajinderpal Singh (hereinafter referred to as the Investigating Officer/I.O.), who after appending his endorsement thereon sent ruqa to the police station, on the basis of which formal FIR was recorded. The prosecutrix was got medically examined. The investigation in the case started. Inspector Rajinderpal Singh recorded statements of witnesses, prepared rough site plan of the place of incident. The police officer, who was deputed to get medically examined the prosecutrix produced her MLR and parcel containing swabs and blood stained salwar of prosecutrix besides one envelope before the Investigating Officer, which were duly sealed. Those were taken into

possession by the Investigating Officer. The accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Patti.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Patti, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 376 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Patti committed the case to the Court of learned Sessions Judge, Amritsar vide order dated 5.5.2000 from where it was entrusted to the Court of learned Additional Sessions Judge, Amritsar.

On receipt of case in the Court, learned Additional Sessions Judge, Amritsar, observing that prima facie charge for offence under Section 376 IPC was disclosed against accused, he was charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as nine witnesses i.e. PW1 Dr.Sukhwinder Singh Sandhu, PW2 Smt.Surjit Kaur, PW3 – the prosecutrix, PW4 Inspector Rajinderpal Singh, PW5 Rishi Ram, Draughtsman, PW6 Constable Chaman Lal, PW7 Bhupinder Kaur, Teacher, PW8 SI Gurbachan Singh and PW9 Sukhraj Singh. The report Ex.PX of Chemical Examiner was also tendered into evidence.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and has been falsely implicated in the case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned trial Court convicted and sentenced accused Harjinder Singh as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the present appeal.

In this case, PW2 Surjit Kaur complainant supported the prosecution story on material aspects deposing as regards accused Harjinder Singh living in their neighbourhood, taking away her granddaughter, the prosecutrix, who was playing with other children on the pretext of giving her toffees/candies and when she did not return, she along with her son Surta Singh searched for the prosecutrix and while near drain of village, hearing cries of the prosecutrix and observing that the prosecutrix was lying on the earth horizontally, she was not having a salwar, accused Harjinder Singh was committing rape on her and on their raising alarm, accused ran away. She further stated that efforts for compromise were going on but those did not materialize, ultimately, she lodged complaint with the police. The prosecutrix aged about 7 years, who was found to be a competent witness by the trial Court supported the prosecution story on material aspects.

Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and

variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find the account given by both of them to be worthy of reliance.

No cogent or convincing reason has been suggested or proved prompted by which, the accused might have been involved in this case wrongly.

The delay in lodging of the report to the police has been adequately explained by the prosecution submitting that it was due to the fact that the respectables of the village were trying to get the matter compromised between the parties but when those efforts did not prove fruitful, then the matter was reported to the police.

The medical evidence duly corroborates the ocular evidence. PW1 Dr.Sukhwinder Singh Sandhu, Medical Officer, Civil Hospital, Patti, who on 28.1.2000 at 7:30 p.m. had medically examined the prosecutrix, aged about 7 years and noted the following observation:

History of alleged rape yesterday. Patient was a female child, apprehensive, un-cooperative, weeps, while being examined. No secondary sexual character

development. On physical examination.

(1) Salwar bearing stain mark.

(2) An abrasion 0.5 cm x 0.25 cm on the left gluteal region.

(3) Locally, labia minora and majora inflamed, painful to touch. A tear with under lying inflamed tissue, 1.0 cm x 0.25 cm on the right postero lateral margin of vaginal introitus. Hymen ruptured and inflamed. Vaginal swab taken from external 1/3 of vagina salwar and swab handed over to the police.

Nature of injury was simple and probable duration was within 24 to 36 hours.

On police request dated 21.3.2000, this witness gave his opinion Ex.PA/1 that injuries on the person of prosecutrix showed that there was possibility of rape committed on her.

From such deposition, it comes out that the prosecutrix a minor female child of 7 years was subjected to forcible sexual intercourse. From the statement of this very doctor, it comes out that accused Harjinder Singh was fit to perform sexual intercourse.

The prosecutrix got her statement recorded as PW3 had identified the accused present in the Court to be her tormentor , who had sexually ravished her.

PW6 Constable Chaman Lal provided the link evidence stating that on 17.2.2000 while posted at P.S. Valotha, on that day MHC Sukhraj Singh had handed over to him a parcel along with envelope for

depositing the same with Chemical Examiner, Patiala; that the seals were intact at that time. He deposited the same on 17.2.2000 in the intact form and had not made any alteration or tampering till it remained in his custody.

PW7 Smt.Bhupinder Kaur, Teacher, Government Primary School, Asauttal, Tehsil Patti had brought the record regarding the date of birth of the prosecutrix stating that as per the record, the date of birth of the prosecutrix was on 10.3.1993. She had proved school certificate in that regard.

PW8 SI Gurbachan Singh had recorded the formal FIR.

PW9 MHC Sukhraj Singh, a formal witness has tendered his affidavit Ex.PW9/A.

Report of Chemical Examiner Ex.PX goes to show that semen was found on the salwar and in vaginal swab. That further corroborates the prosecution case. The prosecution had successfully proved its charge against the accused beyond shadow of reasonable doubt. Whereas accused has failed to render a reasonable or plausible explanation for his alleged false implication in this case. The prosecution having been successfully proved its charge against the accused beyond a shadow of reasonable doubt, the trial Court was justified in convicting the accused for the offence under Section 376 IPC and sentencing him accordingly. The accused by committing rape on an innocent female girl of seven years causing a nightmare and horrible trauma to her, deserves to be dealt with sternly, so as to send a signal in the society that such type of criminal would have to face harsh punishment. I do not see any reason to reduce the sentence of imprisonment from 10 years in any

manner.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Harjinder Singh Singh is on bail in terms of the orders passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Amritsar.

23.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No