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

**Date of decision: January 23, 2018
CRA-D-151-DB of 2013**

Shamsher Singh and others

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. R.S. Sekhon, Advocate for the appellants.

Ms. Ruchika Sabharwal, AAG Punjab.

A.B. CHAUDHARI, J (Oral)

The appellants, by the present appeal have put to challenge the judgment and order dated 17.01.2013 passed by the Additional Sessions Judge, Ferozepur, by which they were convicted for offences punishable under Sections 306 of Indian Penal Code, 1860 (for short 'IPC') and Section 376(2)(g) of IPC and sentenced to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹10,000/- each; and in default of payment of fine, to further undergo Rigorous Imprisonment for 2 months each under Section 376(2)(g) IPC, and under Section 306 IPC, they were also sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of ₹10,000/- each and in default of payment of fine, to further undergo Rigorous Imprisonment for two months each.

FACTS

In brief, the prosecution case was that the victim aged about 16/17 years old, in the night of 17.04.2009 was forcibly raped against her wishes by

the appellants. She disclosed the incident to her mother-Rani who in turn told the same to her husband-Sonu. They went to Baldev Singh, Sarpanch of the village who called the accused. Sarpanch-Baldev Singh, however, insulted the victim and her parents and not only that, the victim was slapped by Baldev Singh-Sarpanch. Victim felt insulted and that she does not want to live as no one was there to hear the poor. On 20.04.2009 at about 2:00 PM, when the mother of the victim had gone for some work and when she came back after half-an-hour, she found that her daughter committed suicide by hanging herself to the ceiling fan. The matter was reported to the police. Investigating Officer found, it was natural death. On 14.05.2009, the father of the victim filed application with the Senior Superintendent of Police, Ferozepur for taking action. FIR was registered. Thereafter, investigation was completed and challan was filed against accused persons. Complainant-Rani, mother also filed criminal complaint in the Court of Illaqa Magistrate, Ferozepur and as such, both were tried together. The prosecution examined PW4-Sonu, the father of the victim and mother-Rani so also other witnesses. Both the witnesses have categorically deposed about the prosecution case and they deposed that the deceased told her mother about the rape that was committed by the appellants. They also deposed that the victim stated that since they belong to poor strata of the Society and Baldev Singh-Sarpanch also insulted her by slapping, there was no point in living the life, if the poor was not heard and she committed suicide. The trial Court, thereafter, convicted the appellants. Hence, this appeal.

SUBMISSIONS

In support of the appeal, learned counsel for the appellants argued that there was hardly any evidence for convicting the appellants. The victim had died and therefore, there was no evidence directly in any form to infer

anything about commission of gang rape. Learned counsel then argued that in the absence of the evidence by the victim, it was not possible to draw any inference that any gang rape was committed. Counsel then submitted that the trial Court also illegally convicted the appellants under Section 306 IPC for the offence of abetment of suicide. He therefore, prayed for acquittal of the appellants.

Per contra, learned State counsel opposed the appeal and supported the impugned judgment and order of conviction and sentence and the reasons recorded therein. She submitted that there is strong evidence against the appellant who were the influential persons. Not only that, Sarpanch himself joined hands with the accused. Prosecution proved the case beyond reasonable doubt. She therefore, prayed for dismissal of the appeal.

CONSIDERATION

With the assistance of the learned counsel for the rival parties, we have gone through the entire evidence of the prosecution. It is unfortunate the the victim and her family members labourers belonging to poor strata of the Society were put to severe injustice. The appellants committed rape on the victim and what is surprising is that when the matter was reported to the Sarpanch-Baldev Singh, he slapped the victim/girl rather than taking action against the accused persons. Be that as it may. We have carefully perused the evidence of Sonu and Rani and we are fully satisfied that their evidence inspires confidence of this Court. There is no infirmity in their evidence to disbelieve them. The disclosure statement made by the victim to her mother about commission of gang rape on her has not at all been shattered in the cross-examination. The evidence has remained consistent and is thus, natural evidence. It would be appropriate for us to extract the following from the trial

Court's judgment about evidence, which we do hereunder:-

“..... I have considered the said evidence. PW5 Rani is mother of the victim. She is the most important witness of the prosecution. As per her testimony, on 17.04.2009 at night time her daughter was forcibly kidnapped by three accused, who are facing trial, and she was raped by them forcibly. This fact was disclosed by her daughter. She had narrated the incident to her husband Sonu. Father of the victim appeared as PW4. He has also testified this fact. As per the statement of PW4 and PW5, they along with their daughter Rekha had gone to the house of Sarpanch Baldev Singh resident of village Fattuwalla and asked for justice. PW5 has categorically stated that Baldev Singh did not take any action against the accused, rather he slapped to his daughter and beaten her with a stick. He told her daughter that she is wrong and he asked them to run away from there. They felt dis-hearted and returned home. On reaching home, her daughter told that she had not got justice. She has been raped by the accused persons and the Sarpanch had also insulted her and due to this reason she does not want to live and wants to die.

27. *Oral testimony of the parents of the victim is corroborated by the contents of suicide note Ex.P16. English translation of the said writing/letter is as under:-*

“Jarman gagged her mouth when she was urinating, Sherry and Sukha dragged her and all the three did wrong act with her. It was 11 p.m. In the morning she told the entire incident to her mother. Her parents had gone to Baldev Sarpanch. Sarpanch had called those boys and other persons of the village also came. Sarpanch gave her danda blows, but did not say them anything. He insulted we poor people. She felt ashamed. She cannot see the insult of her parents. Due to distress from Sarpanch and those boys she is ending her life, Rekha.

Contents of the suicide notice of the victim also indicate that the accused had committed forcible rape upon her.”

We have compared the above finding of fact with the evidence on record and we find that the same is consistent with the evidence and there is no inconsistency whatsoever. We are, therefore, agree with the trial Court for accepting the testimony of Rani. In so far as gang rape committed on the victim is concerned, discussion is in Paragraph 33 of the judgment, which we reproduce hereunder:-

“33. The learned defence counsel further submitted that in fact no rape was committed, therefore, girl did not make any statement to the police. I do not agree with the said contention. It has come on record that victim has immediately disclosed the fact to her mother who has further disclosed to her husband and the victim as well as the family had contacted the Sarpanch of the village. Victim and the family are admittedly illiterate persons and residents of the village. Sarpanch of the village is a grass root level person exercising an authority and having an easy access to the police authorities as well as to other authorities. Victim being minor living with her parents, her first natural reaction would have been to report the matter to her mother. It has come in the evidence of the parents of the victim that Sarpanch did not take any action against the culprits, rather the victim was humiliated and was threatened to remain silent.”

In so far as the conviction under Section 306 IPC is concerned, there is a clear-cut evidence of Rani and Sonu that the girl committed suicide only because of serious scar and injury of rape committed by the appellants. In the result, we find no reason to interfere with the conviction recorded by the trial Court.

The next question is about the award of sentence. We find that the appellants have been convicted for offence under Section 376(2)(g) of IPC and sentenced to undergo Rigorous Imprisonment for life. In our opinion, the

sentence of life is on higher side in the facts and circumstances of the present case. It would be appropriate, if the sentence of 10 years is given to them for both the offence under Section 376(2)(g) of IPC and Section 306 of IPC to run concurrently. In that view of the matter, we are inclined to interfere with the order of sentence and modify the same accordingly. In the result, we make the following order:-

ORDER

- (i) CRA-D-151-DB of 2013 stands dismissed;
- (ii) Impugned order of sentence is modified and sentence awarded to the appellants is reduced to 10 years.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 23, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No