

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-D-81-DB-2011.

Date of Decision: 12.01.2018

Sanjit Kumar

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MRS. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Kewal Singh, Advocate for the appellant.

Mr. Samrath Sagar, Additional Advocate General, Haryana.

RAJ SHEKHAR ATTRI, J.

Appellant-convict Sanjit Kumar has come up in this appeal assailing the judgment of conviction dated 30.10.2010 and order of sentence dated 11.11.2010 vide which he was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/-. In default of payment of fine to further undergo simple imprisonment of three years.

Prosecution has come up with a case that the appellant had sexually assaulted a minor girl, aged about 8 years.

It is the case of the prosecution that on 28.11.2009 at about 5:30 p.m., the minor victim had gone to play in the nearby park. When she did not return, her father Gaj Raj (PW1) alongwith his relative Niti Raj (PW2) had gone to the park search of her. They heard her cries and rushed towards that spot. They found that the appellant was performing sexual

intercourse with the minor, who was crying. However, on seeing them, the appellant tried to escape, but was chased and overpowered by Gaj Raj and Niti Raj. The matter was reported to the police. On its arrival, the appellant was handed over to it.

The minor prosecutrix was medico legally examined. Spot of the crime was inspected. Rough site-plan was prepared. The appellant was also medico legally examined. After completion of investigation, final report under Section 173 Cr.P.C. was presented against the appellant.

During the trial, the prosecution examined as many as 13 witnesses, namely, complainant Gaj Raj as PW1, Niti Raj as PW2, Dr. (Mrs.) Anjali Vaid as PW3, Dr. R.L. Arya as PW4, H.C. Krishan Lal as PW5, Inspector Ram Dutt as PW6, H.C. Naresh Kumar as PW7, H.C. Shish Pal as PW8, Constable Ashok Kumar as PW9, HC Sudeep Kumar as PW10, ASI Baljit Singh as PW11, ASI Devender Kumar as PW12 and Aarti (prosecutrix) as PW13. After closure of prosecution evidence, the appellant was examined under Section 313 Cr.P.C. whereby the entire prosecution evidence appearing against him was put to the appellant, but he pleaded his innocence and stated that a false case has been registered against him. On appreciation of evidence, learned Additional Sessions Judge convicted and sentenced the appellant as aforesaid.

We have heard learned counsel for the appellant as well as learned counsel for the respondent-State and critically examined the evidence available on the record.

In this case, the prosecution evidence is supported by direct evidence. PW1 Gaj Raj and PW2 Niti Raj have categorically stated that they had witnessed the appellant committing rape on the minor victim in the

bushes in the secluded area of the public park. They have also stated that on seeing them, the appellant made an unsuccessful endeavour to escape, but was chased and was apprehended. Both these witnesses were subjected to cross-examination, but nothing had been elicited to disprove or even to suspect their evidence. Their presence at the spot is natural as both of them had gone in search of the minor victim.

Even the minor prosecutrix stepped into the witness box as PW13. She was found to be a competent witness. She has testified that she had gone for playing in the park as usual, where the appellant caught hold of her and took her in the bushes and committed rape with her. She has categorically stated that when the appellant was indulging in the misdeed, she suffered pain and she cried. On hearing her cries, her father Gaj Raj and uncle Niti Raj arrived there and they rescued her from the clutches of the appellant. She further testified that blood started coming from her private parts due to the sexual assault committed by the appellant. Her underwear and Salwar were taken into possession by the doctor and were handed over to the police. Her evidence has been supported by direct evidence of her father Gaj Raj and her uncle Niti Raj. The same is also corroborated by medical evidence.

PW3 Dr. Anjali Vaid, Medical Officer, had medico legally examined the victim on 28.11.2009 at about 7:15 p.m. and found the following injuries on her person:-

“(i) External os admits one finger with difficulty, hymen was not felt, bleeding was present from the vagina and fresh bleeding was observed after per-vaginal examination.

Possibility of sexual intercourse cannot be excluded.

(ii) *Abrasion 1 cm x 1 cm was present on the right knee. No bleeding was present.*”

The doctor has also collected vaginal' swabs which were sent to the F.S.L. alongwith clothes of the prosecutrix. The Chemical Examiner, after analysis of the same, submitted report Ex.P6 which detected human semen on the underwear and blood was detected on the *Salwar* of the victim.

PW4 Dr. R.L. Arya, Medical Officer, had medico legally examined the appellant on 28.11.2009 at about 7:00 p.m. He opined that the appellant was capable of performing sexual intercourse. However, the doctor took into possession the blue coloured underwear worn by the appellant, which was sent to Forensic Science Laboratory and human semen was detected thereon.

On an independent analysis of the evidence, we are of the considered opinion that the prosecution evidence is cogent and reliable. The evidence of the minor prosecutrix is highly important piece of evidence against the appellant. None of the witnesses i.e. the prosecutrix, her father and uncle, had any ill-will or enmity against the appellant. There is no reason of the false implication of the appellant in this case. We reach to a safe conclusion that it was the appellant, who committed rape upon the prosecutrix. Thus, the judgment of conviction is well founded.

The next question to be dealt with is the punishment imposed by the trial Court against the appellant. The trial Court having recorded a conviction against the appellant for the offences of rape of a minor girl aged

Learned counsel for the appellant vehemently contended that the appellant is a poor labourer; that at the time of occurrence, he was 22/23 years aged; that he has been in custody since the day of his arrest and the ends of justice would be adequately met if he is awarded the minimum sentence.

We have considered this contention. The sexual abuse of the children is alarming and there is no respite although the legislature has provided stringent punishments for the sexual offences. Before arriving at an appropriate conclusion regarding the punishment to be inflicted on the appellant, it is necessary to refer to certain principles laid down by Hon'ble the Apex Court in the matter of awarding sentence in such a case. Hon'ble Supreme Court in case *State of Himachal Pradesh v. Sanjay Kumar @ Sunny, (SC) 2017(1) R.C.R. (Criminal) 261* has held as under:-

“33. At this juncture, we would also like to reproduce the following passage from the judgment of this Court in *State of Rajasthan v. Om Prakash, 2002(2) R.C.R.(Criminal) 764 : (2002) 5 SCC 745*: "19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape

besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well-considered and well- analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant."

Hon'ble Supreme Court in case *State of Punjab v. Gurmit Singh, (SC), AIR 1996 SC 1393* made the following observations:-

"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murder destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may

lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

Hon'ble Supreme Court in case *Parminder @ Ladka Pola vs. State of Delhi, 2014(2) SCC 592* has specifically observed in Para No.15 as under:-

“In *State of Rajasthan v. Vinod Kumar* (supra), cited on behalf of the State, the accused-Vinod Kumar had been convicted by the trial court under Section 376, IPC, and sentenced to seven years imprisonment. The High Court, however, reduced the sentence to five years imprisonment without recording adequate and special reasons for doing so. This Court held that the High Court failed to ensure compliance with the mandatory requirement of the proviso to Section 376(1), IPC, to record adequate and special reasons. This Court, after considering the earlier decisions of this Court, held :

"23. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/ commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case.

24. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation. The legislature introduced the imposition of minimum sentence by amendment in IPC w.e.f. 25-12-1983, therefore, the courts are bound to bear in mind the effect thereof. The court while exercising the discretion in the exception clause has to record "exceptional reasons" for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straitjacket formula can be laid down."

In our view, the appellant has taken undue advantage of the loneliness and haplessness of the minor victim. She fell prey his bestiality. Therefore, the appellant is not entitled to the minimum sentence. However, keeping in view his young age, we are of the opinion that ends of justice would be adequately met if he is awarded substantive sentence of 12 years. However, we are also of the considered opinion that victim belongs to a down trodden strata of the society, therefore, it is in the interest of justice that the appellant be asked to pay her minimum Rs.1,00,000/- as compensation. In this view of the matter, we enhance the amount of fine from Rs.50,000/- to Rs.1,00,000/- which be considered as compensation payable to the victim under the provisions of Section 357 Cr.P.C. Thus, the sentence awarded by the trial Court stands modified accordingly.

As a sequel to the above discussion, the appeal being devoid of any merit and the same is hereby dismissed. The judgment of conviction stands upheld. However, the order of sentence stands modified as aforesaid.

For the sake of clarity, now appellant Sanjit Kumar stands sentenced to undergo rigorous imprisonment for 12 years and to pay a fine in the sum of Rs.1,00,000/- or in default of payment of fine to further undergo simple imprisonment for a period of three years. If the amount of fine is recovered from the appellant, it shall be paid as compensation to the victim as envisaged under Section 357 Cr.P.C.

(Raj Shekhar Attri)
Judge

(Mahesh Grover)
Judge

12.01.2018
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No