

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

CRA-S-2455-SB-2004 (O&M)
Date of Decision: May 14, 2018

Santosh Paswan

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amaninder Preet, Advocate
for the appellant.

Ms. Gaganpreet Kaur, AAG Haryana.

JAISHREE THAKUR, J.

1. The instant criminal appeal has been filed against the judgment dated 09.10.2004/12.10.2004 passed by the Sessions Judge, Kurukshetra, whereby the appellant herein has been convicted and sentenced to undergo rigorous imprisonment substantially for a period of 10 years under Sections 363, 366, 376 of Indian Penal Code and to pay fine in case FIR No.251 dated 12.07.2003, under Sections 363, 366, 376 of Indian Penal Code, registered at Police Station City Thanesar.

2. In short, the facts of the case are that, complainant-Om Parkash gave a complaint to the police stating therein that he was residing with his wife Pooja alias Bitto and daughter Poonam Kumari aged 14 years in a rented room in the house of Ved Parkash in Mohan Nagar, Kurukshetra. The

complainant worked as labourer with a mason for fixing stone slabs and his wife worked in houses for cleaning, sweeping etc. and their daughter having failed in middle standard, remained at home. On 08.07.2003, at about 8.30 a.m., the complainant and his wife left home for their work and their daughter remained alone in the house. His wife returned home at about 1.30 p.m. and found Poonam missing from the house. The complainant returned home in the evening and was informed by his wife about it. They searched for Poonam, but could not find her. The complainant learnt that accused Santosh Paswan, who was also residing in a rented room in the vicinity, was also missing from his room. The complainant suspected that the present accused had kidnapped Poonam, minor, with intent to marry her with assistance of his elder brother Sanjay Kumar, who was also a mason residing nearby. When despite search, the complainant could not find his daughter, he made application dated 12.07.2003 to the police mentioning the above facts.

3. On the basis of the complaint, the instant FIR came to be lodged and during investigation, Sanjay Paswan was arrested, however, he was later on found innocent. The prosecutrix returned home on 27.07.2003 and disclosed that on 08.07.2003, while she was alone at home, accused Santosh Paswan came there at about 10.00 a.m. and got a letter written forcibly and pulled her out under threat and took her in a waiting auto-rickshaw to Pipli and then in a bus to Ludhiana. The accused threatened to kill her in the auto-rickshaw, if she made noise. At Ludhiana, the accused kept her at the house of a friend during day time. At about 6.30 p.m. he took

her to a village i.e. Nangal Khera in Phagwara (Punjab). He kept her there in a room and forcibly committed sexual intercourse with her there against her consent and wishes. He did not allow her to talk with anybody. On 27.07.2003, she requested one Kamla aunty, who sent her son named Sanjay with her and she was left at Aggarsain Chowk, Kurukshetra and from there, she went home. Her parents produced her before the police and she was medico legally examined and sealed parcels were prepared and Section 376 of Indian Penal Code was added. Thereafter on 29.07.2003, her statement was got recorded under Section 164 Cr.P.C. Her radiological age was also got determined by ossification test and it was found to be 12-13 years. It is thereafter accused surrendered before the court on 26.08.2003 and joined in the investigation and also got medico legally examined. The spot, where the prosecutrix was kept, was also examined and spot memo was prepared and gunny bags which were found there, were seized. During the course of investigation, statement of the witnesses were recorded, middle examination certificate of the prosecutrix was taken into possession, FSL report was obtained and on completion of investigation, challan was presented in the court.

4. On the basis of material available on record, charge under Sections 363, 366 and 376 of Indian Penal Code was framed against the accused, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined ten witnesses in all. Dr. (Mrs.) Madhu Sharma was examined as PW1, who proved the MLR of prosecutrix Ex.PB; Dr. G.D. Mittal was examined as

PW2, who proved he MLR of accused Ex.PD and radiological report of the prosecutrix as Ex.PE and x-ray films Ex.PE/1-4; Head Constable Mukesh Kumar was examined as PW3, who prepared the scaled site plan Ex.PF; Sub Inspector Sat Narain was examined as PW4, who recorded the formal FIR; Head Constable Mohinder Singh was examined as PW5 ; Constable Satish Kumar was examined as PW6; prosecutrix was examined as PW7; Pooja alias Bitto, mother of the prosecutrix was examined as PW8; Sub Inspector Sudhir Kumar was examined as PW9 and Assistant Sub Inspector Jahangir Singh was examined as PW10.

6. After conclusion of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. and denied all the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent.

7. The trial court convicted the accused under Section 363, 366, 376 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for three years and to pay fine of ₹ 1000/- under Section 363 of Indian Penal Code, to undergo rigorous imprisonment for five years and to pay fine ₹ 2000/- under Section 366 of Indian Penal Code and to undergo rigorous imprisonment for ten years and to pay fine of ₹ 2000/- under Section 376 of Indian Penal. In default of payment of fine imposed upon the accused, he has to undergone further rigorous imprisonment of different periods. Against the said conviction, the instant appeal has been filed.

8. Learned counsel appearing on behalf of the appellant argues that the prosecution has miserably failed to prove its case. It is submitted

that the trial court failed to take note of the fact that there is delay in filing the FIR and there is no explanation for the same, which is fatal to the prosecution case. It is contended that the medical evidence on the record has not been appreciated by the trial court, because as per MLR of prosecutrix, there was no mark of injury or scratches over any part of her body, which clearly ruled out the possibility of any sexual assault on the prosecutrix. It is argued that if the story projected by the prosecutrix is assumed to be true, there were number of occasions for her to raise alarm, but she remained silent, which shows that the prosecution story is concocted one. It is also submitted that the material witnesses Kamla and her son Sanjay have not been examined by the prosecution, who helped the prosecutrix. It is also contended that there are material contradiction in the statement of the witnesses, which has not been considered by the trial court.

9. Per contra, learned counsel appearing on behalf of the respondent-State argues that the material witnesses i.e. the prosecutrix and her mother have fully supported the case of the prosecution. It is submitted that the statement of the prosecutrix is duly corroborated by the medical evidence, which prove that she had been subjected to sexual intercourse. It is also contended that the judgment passed by the trial court is well reasoned and no ground is made out to interfere with the same.

10. I have heard learned counsel for the parties, apart from perusing the record.

11. An argument has been raised that there is a delay in lodging of the FIR. In the case in hand, the complainant, who is father of the

prosecutrix has specifically mentioned that till the date of lodging the complaint, he tried to search for his daughter, but could not trace her. Delay in lodging of the FIR, in every case, is not fatal to the prosecution case and it depends upon peculiar facts and circumstances of each case. In the instant case, a minor girl, aged less than 15 years, had been found missing by her parents. In such matters, when a minor is found missing from the house, it is natural that the parents would first resort to looking for her themselves and if unsuccessful would then report the matter to the police, after consulting their relatives. Parents usually hesitate in making such matters public immediately, just to save reputation and future of the girl. In the case in hand, a reasonable and satisfactory explanation has come forward in reporting the matter to the police after four days by the complainant.

12. An argument has also been raised that the trial court has not appreciated the medical evidence in right perspective, because it failed to take into consideration the fact that there was no mark of injury or scratches over any part of her body. In this regard, evidence of Dr. (Mrs.) Madhu Sharma (PW1) is very material, who proved on record the MLR of the prosecutrix as Ex.PB which clearly shows that hymen was torn and vagina admitted two fingers easily. In the opinion of PW1, possibility of sexual assault on the prosecutrix could not be ruled out. Further, FSL report Ex.PO reveals that human semen was detected on slides of vaginal smear as well as on underwear of prosecutrix. Moreover, in her statement (PW7) prosecutrix has clearly stated that the accused has forcibly committed sexual intercourse with her. All these factors are sufficient to prove that the prosecutrix, who

was less than the age of 15 years, was subjected to sexual assault by the appellant.

13. Another argument raised by the counsel for the appellant that the prosecutrix remained silent, when she was allegedly taken to Ludhiana and did not raise any alarm, but this fact cannot give any benefit to the appellant in any manner, because in her statement PW7 prosecutrix has clearly mentioned that when she raised the objection, the appellant threatened to kill her, in case, she told this to anybody. Under these circumstances, this argument raised by learned counsel for the appellant is not sustainable.

14. So far as argument regarding non-joining of Kamla and her son Sanjay is concerned, the trial court has clearly observed that the prosecutrix in her cross-examination stated that on 30.08.2003, when she pointed out the spot in Nangal Khera in Phagwara to the police, the said persons were not there, so their statements could not be recorded by the police on that day. Even otherwise, if the Investigating Officer made any such lapse, the accused cannot be acquitted when there is other sufficient trustworthy evidence on record to prove the guilt of the accused. So, in this view of the matter, this argument of learned counsel for the appellant find no force behind it.

15. It is also the case of the appellant that he has been falsely implicated as he refused to marry the prosecutrix as she is of a lower caste. However, the actual position is just reverse to it. The complainant party belongs to Nai (barber) caste, whereas the accused is Harijan. Therefore, the

plea of false implication does not find favour.

16. Learned counsel for the appellant is not able to point out any material contradiction in the statement of the witnesses from the record, which gives any benefit to the accused. Rather, a perusal of the same reflects that both the prosecutrix as well as her mother, have been tested by the acid test of cross-examination at length by the defense counsel, however, their testimony could not be shaken.

17. In view of the foregoing discussion, this court does not find any illegality or irregularity in the impugned judgment so passed by the trial court. As such, the appeal in hand is hereby dismissed. Intimation be sent to the quarter concerned in this regard.

May 14, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

