

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1268-DB-2014 (O&M)

Date of decision: 31.08.2018

Naveen

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldeep Singh

Present: Ms.Sharmila Sharma, Advocate for the appellant
Mr.Vivek Saini, DAG Haryana

1. *Whether Reporters of Local newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Appellant has preferred this appeal against the judgment of conviction dated 9.7.2014 and order of sentence dated 10.7.2014 passed by learned Additional Sessions Judge, Special Court, Sonapat, vide which, appellant was convicted under Section 376(2) IPC and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.30,000/-, in default thereof, to undergo further Rigorous Imprisonment for a period of three years.

The prosecution case in brief is that Jaiveer had an 18 years old daughter, who is mentally retarded. Jaiveer was plying a three wheeler. On 18.8.2013, he along with his wife and prosecutrix had gone to his fields for cutting green fodder on three wheeler. He parked his three wheeler near

katcha passage and started cutting fodder with his wife. The prosecutrix was made to sit in three wheeler. At about 10.00 a.m., when Jaiveer and his wife came towards three wheeler, they found that the prosecutrix was missing. Then they heard some sound coming from the adjacent sugarcane fields of his brother. They reached there and they saw that the accused Naveen was committing rape upon their mentally retarded daughter. Accused fled away from the spot and could not be caught.

On the statement of Jaiveer, FIR was registered. The prosecutrix was got medico legally examined. She was also taken to a private institute, namely, Red Cross Hindu Institute for Education and Rehabilitation of Mentally challenged Children at Sonipat (RHUCHI, Sonipat). Principal of RHUCHI, Sonipat submitted the report that the prosecutrix is mentally challenged child and was not able to say anything as to what had happened on that day. Accused was arrested and on interrogation, he admitted his involvement in the crime. He was also got medico legally examined. Prosecutrix was taken before the Magistrate for recording statement under Section 164 Cr.P.C., but she was not found to be capable of making any statement.

After completion of investigation, challan was presented in the Court. Accused was charge sheeted under Section 376(2) IPC, to which he pleaded not guilty.

In support of its case, the prosecution examined PW1 Dr.Randeep Kumar, PW2 ASI Shamsheer, PW3 Om Parkash Patwari, PW4 ASI Rameshwar Dayal, PW5 Constable Neelam, PW6 Constable Rakesh, PW7 MHC Balvinder, PW8 Constable Satyawan, PW9 Ms.Malti Sharma, Principal, PW10 Jaiveer father of the prosecutrix, PW11 Santosh mother of

the prosecutrix, PW12 Ms.Kavita Yadav, Judicial Magistrate, PW13 SI Anand, PW14 Dr.Anuradha Jain, PW15 Constable Vinod, PW16 Dr.Jitender Sharma and PW17 EHC Satish and closed the evidence.

When examined under Section 313 Cr.P.C., accused pleaded that he has been falsely implicated. He claimed that father of the prosecutrix had borrowed a sum of Rs.50,000/- from his father in April 2013 and promised to return the same in three months. On 16.8.2013, his father asked to father of the prosecutrix to return the said amount but he refused. On 17.8.2013, father of the prosecutrix undertaken to return the money. In the evening Panchayat was convened but father of the prosecutrix refused to return the money and an altercation had taken place. On 18.8.2013 prosecutrix left the house in the morning and had gone to village temple. Complainant searched for her. When the accused was coming back after answering the call of nature, he had seen the prosecutrix with the Priest of the temple and informed the complainant. On the same day, at about 10.00 a.m. when the father of the accused had gone to the father of the prosecutrix for repayment of the borrowed amount then father of the prosecutrix had disclosed that his daughter had been raped by the Priest of the temple but threatened to involve him. Case has been registered under the pressure of the DSP Sumit Kumar.

In defence, accused examined DW1 Ishwar Singh father of the accused, DW2 Rajesh nephew of the accused, DW3 Sheela aunt of the accused and himself entered in the witness box as DW4 and closed the defence evidence.

After hearing the prosecution and the defence counsel and going through the evidence, the learned Additional Sessions Judge, Special Court,

Sonipat convicted and sentenced the accused aforesaid.

We have heard learned counsel for the parties and have also carefully gone through the record.

The Crime Scene Report shows that when the spot was inspected, the blood was observed on the leaves of sugarcane crop at the spot. The grass observed crushed at the spot. The photographs were taken. It confirmed that the rape was committed in the sugarcane fields.

Statement of Dr.Anuradha Jain (PW14) shows as under:-

On local examination the vulval hair matted with blood.

A tear on the fourchette about 0.5 cm present with skin torn, underlying connective tissue visible. Bleeding points present.

Redness present around urethra with superficial abrasions around urethra present.

Tenderness present.

Two vaginal swab taken and sent for examination.

One finger can be introduced into vagina easily.

Impression:- Rape/ sexual assault ahs taken place as suggestive from above findings.

Medical evidence shows that rape was committed with the prosecutrix.

Now, coming to the ocular version. Both the father and mother of the prosecutrix had appeared to support the prosecution case.

PW10 Jaiveer, complainant testified that on the day of crime, he along with his wife and the prosecutrix had gone to the fields on three wheeler for cutting green fodder. Her daughter was made to sit in the three wheeler. When they came back after cutting the fodder, they found their daughter to be missing. They called the prosecutrix by name and then the

prosecutrix was seen rushing towards them. Accused was seen running from the same side. They noticed that *salwar* of Monika had fallen down. He stated that the accused had committed rape upon his daughter.

Santosh mother of the prosecutrix while appearing as PW11, also stated that when they found their daughter to be missing, they called her. On hearing some sounds from the sugarcane crop, she rushed there and found that her daughter was in a bad condition. Blood was oozing out of her vagina. Accused had committed rape upon her daughter. After hearing their voice, accused left the spot. She identified the accused present in the Court. She also claimed that she had seen the accused mending his underclothing while fleeing from the spot.

In this way, there is direct eye witness account, which is supported by the medical evidence. Ms.Malti Sharma the Principal of Red Cross Hindu Institute for Education and Rehabilitation of Mentally challenged Children at Sonipat has proved that the prosecutrix is mentally challenged child.

After going through the judgment, we are of the view that the occurrence has been proved. It is very easy for the accused to produce his relations in defence to claim some other story of loan. In the police investigation also, the place of crime is proved. The prosecutrix was immediately medico legally examined, which proved that rape was committed sometime earlier. Therefore, we do not find any illegality or infirmity in the judgment passed by the trial Court.

Faced with these circumstances, learned counsel for the appellant has prayed for leniency. It is stated that the sentence of imprisonment for life is very harsh. The petitioner was a young boy of 19

years old at the time of crime. He had already lost his father. Therefore, he prayed for reduction in sentence.

After considering the facts and circumstances, we are of the view that imprisonment of life is quite harsh, in the given circumstances. Therefore, same is liable to be reduced. Accordingly, we pass the following order:-

- (i) CRA-D-1268-DB-2014 is partly allowed.
- (ii) Judgment and order dated 9.7.2014/ 10.7.2014, passed by Additional Sessions Judge, Special Court, Sonipat, convicting the appellant for the offence under Section 376(2) of Indian Penal Code is confirmed.
- (iii) Judgment and order dated 9.7.2014/ 10.7.2014 in Sessions Case No.147/679 of 2013, passed by Additional Sessions Judge, Special Court, Sonipat, as to the sentence is set aside and modified and the appellant shall undergo rigorous imprisonment for 12 years with a fine of Rs.30,000/-, in default Rigorous Imprisonment for three months.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

31.08.2018
gk

Whether speaking/reasoned
Whether reportable

Yes
No