IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1661-SB-2016
Date of Decision:03.02.2018

Lakhwinder Singh .....APPELLANT

Vs.

State of Punjab .....RESPONDENT

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Sumer Singh Brar, Advocate for the appellant.

Mr.Saurav Khurana, DAG, Punjab.

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RITU BAHRI J. (ORAL)

This appeal has been preferred against the judgment of conviction and order of sentence dated 11.11.2014, vide which the appellant has been held guilty under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). He was sentenced to undergo RI for 07 years and to pay fine of Rs.5,000/- and in default of payment of fine to further undergo RI for one year.

The FIR was made on the Statement of the prosecutrix to the police, wherein she stated that on 03.05.2014 at about 5.30 P.M., when she was going in the Street towards the house of her friend and when she reached near the vacant plot, Lakhwinder Singh was present there, who called her but she avoided. Thereafter, the accused caught hold her arm and dragged towards the bushes and committed rape with her. The mother of prosecutrix reached at the place of occurrence and the accused fled away after giving push to her mother. After registration of the case, the investigation started. The accused was arrested. The medical examination of the accused as well as of the prosecutrix was got conducted by the police from Civil Hospital, Nabha. Statements of the witnesses were recorded. On completion of all other formalities of investigation, challan against

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the accused was presented and copies of documents, as required under Section 207 Cr.P.C. were supplied to the accused free of cost.

After going through the report under Section 173 Cr.P.C. and other documents placed on record, the learned Magistrate Committed this case to the Court of learned Sessions Judge, Patiala, vide order dated 14.08.2014, as the offences under Section 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 are exclusively triable by the Court of Sessions.

In order to prove its case, the prosecution has examined Dr. Smriti as PW-1, Dr. Sanjay Goyal as PW-2, the prosecutrix as PW-3, Teji Rani, mother of the prosecutrix, as PW-4, ASI Nazar Singh as PW-5, Sandeep Kansal, Clerk as PW-6, HC Sukhpal Chand as PW7, HC Gurcharan Singh as PW8 and thereafter, the learned Additional Public Prosecutor for the State closed the prosecution evidence except for the report of Chemical Examiner, which was still to be received.

After closure of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded, in which he came up with the plea of his innocence and false implication in the case. However, he did not lead any evidence in his defence.

PW1 Dr. Simrit conducted the medical examination of the prosecutrix, where she had opined that in her opinion there was nothing to suggest that sexual intercourse had not been committed with the prosecutrix.

PW2 Dr. Sanjay Goyal is the medical Officer, who conducted the Medical examination of accused Lakhwinder Singh on police application Ex.PB. He has proved the copy of MLR as PB/2. He has opined that there was nothing to suggest that the accused is not capable of performing sexual intercourse.

PW3 is the prosecutrix, who has reiterated the version given by her in her statement Ex.PC made to the police and fully corroborated the prosecution

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story.

PW4 Teji Rai is the mother of the prosecutrix, who has fully corroborated the version of the prosecutrix and Investigating Officer appeared as PW-5-ASI Nazar Singh has narrated the investigative part and proved various documents prepared by him during the course of investigation.

PW-6 Sandeep Kansal is the Clerk, Govt. High School, Thuhi, District Patiala, who has brought the school record pertaining to the prosecutrix and stated that as per school record, the date of birth of prosecutrix is 15.09.1996. P:W-7 and PW-8 is the formal witnesses.

Keeping in view that the prosecutrix was 17 years of age and was a minor, the school certificate produced by the clerk was considered appropriate for holding that the age of the prosecutrix was 17 years. The date of birth of the prosecutrix is 15.09.1996 was also stated by the prosecutrix as well as her mother.

The trial Court has examined medical evidence of the prosecutrix where there was no mark of external injury and hold that if no injury was found, it was not discredit the testimony of the prosecutrix even if there was no proof of physical assault. The accused did not lead any evidence to show that prosecutrix had gone with him with her consent. The plea of the accused is that he is innocent he was not committed any offence and having a love affair with prosecutrix, but her parents was against their relationship and they wanted her to get her married at some other place but prosecutrix wanted to marry him and she called him on his mobile to meet her in park where her mother came and apprehended prosecutrix and took her away with her and implicated him in the false case.

The prosecutrix is below 18 years of age and her date of birth is 15.09.1996 that was also stated by the prosecutrix as well as her mother. Therefore, the accused was convicted Section 4 of the Protection of Children from Sexual Offences Act, 2012 for a period of seven years.

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After hearing learned counsel for the parties and going through the record as well as the judgment passed by the trial Court, the appeal deserves to be allowed.

A perusal of the statement of PW-4 Teji Rani, mother of the prosecutrix shows that she in her cross-examination had admitted that accused wanted to marry her daughter and they were not ready for the said marriage and accused had visited their house once. Hence, the relationship of the accused and prosecutrix was admitted, as the accused wanted to marry her daughter. At the same time prosecutrix while appearing as PW-3 in her cross-examination had admitted that the accused was known to her, as he was friend of her brother and he had been visited my house. She was denied that she had a love affair with the accused and was not willing to marry him. She has further stated that her parents are not willing to marry with the accused nor she had a talk regarding the proposal of marriage either with the accused or his parents.

A perusal of the statement of PW-4 Teji Rani, mother of the prosecutrix shows that she in her cross-examination had admitted that accused wanted to marry her daughter and they were not ready for the said marriage and accused had visited their house once. Other fact as is evident from the statement of PW1-Dr. Simrit, Medical Officer, Civil Hospital Nabha is that after examining her, she had given opinion that there was nothing to suggest that sexual intercourse had not been committed with the prosecutrix. However, patient was advised pregnancy test, X-ray for determination of age. She handed over to the police a copy of MLR, a jar with one seal containing two glass slides and 1 swab stick in culture tube with discharge from posterior fornix, a letter addressed to Chemical Examiner with six seals and a sample seal used.

However, Head Constable, PW8 stated that on 20.05.2014 he took one sealed parcel alongiwth sealed envelope and sample seal chits from MHC Sukhpal

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Chand alongwith road and reached office at Chemical Examiner, Kharar and deposited the same in the office there. On return the receipt was handed over to MHC Sukhpal Chand.

A perusal of the record shows that no report from the Chemical Examiner was received and this would be the best evidence. Another important point highlighted from the statement of Nazar Singh PW-5 is that prior to the complaint of the prosecutrix, there was earlier complaint made by her mother with the police, but the allegations were not proved.

In the absence of the any chemical examiner report and admission of the mother of the prosecutrix that accused wanted to marry her daughter coupled with the fact medical examination report of Dr. Simrit proved that there is injury on the person of the prosecutrix and at the time of medical examination, prosecutrix had already taken bath and changed her clothes, the appellant was known to the family of the prosecutrix, as he was her brother's friend and visited her house as well as the fact that there was prior complaint made by the mother of the prosecutrix which was not proved, the appeal is allowed. Accordingly, the appellant-*Lakhwinder Singh* is acquitted of the charges framed against him.

(RITU BAHRI)
JUDGE

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Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No

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