

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2238-SB of 2013(O&M)
Date of Decision: February 20, 2018

Sombir Appellant

Versus

State of Haryana Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Anand Vardhan Khanna, Advocate
for Mr. Amaninder Preet, Advocate
for the appellant.

Mr. Anmol Malik, AAG, Haryana.

LISA GILL, J (Oral).

Appellant has been convicted for the offences punishable under Sections 376 (2) and 506 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Sessions Judge, Jind, vide impugned judgment dated 07.05.2013 and by a separate order of sentence dated i.e. 07.05.2013 he has been sentenced as under:-

Offence u/s	Sentence
376(2) IPC	Rigorous imprisonment for 10 years; besides pay a fine of ₹10,000/- and in default thereof to further undergo RI for one year.
506 IPC	Rigorous imprisonment for 3 years; besides pay a fine of ₹3000/- and in default thereof to further undergo RI for three months.

Aggrieved therefrom, the present appeal has been filed by the appellant.

Brief facts for the adjudication of this matter are that FIR No.

132 dated 23.08.2012 (Ex.P-G), was registered on the statement Ex.PA of the complainant, who is the mother of the victim in this case. The complainant in her statement on 23.08.2012 stated that she was a housewife and her husband an agriculturist. They had three children i.e. a daughter aged 13 ½ years (victim), another a daughter aged 10 years and a son, who is the youngest. The complainant stated that her eldest daughter complained of vomiting and giddiness about 15 days prior to the registration of this FIR. On enquiry, the victim revealed to her that about 4 years ago, the victim had gone to the grocery shop in the neighbourhood owned by the appellant-Sombir to purchase household articles. Appellant forcibly dragged her into room adjacent to the shop by gagging her mouth with his hands. Appellant committed rape upon the victim and threatened her of dire consequences in case she disclosed about it to anyone. It is due to fear that the victim did not disclose the incident to anyone. The victim further told the complainant that whenever she was alone in the house, the appellant used to come and subject her to sexual abuse under severe intimidation. In the month of March 2012, when the victim was alone, the appellant is again stated to have come to the complainant's house, committed rape upon the victim and further intimidated her with dire consequences. The victim revealed that she was feeling queasy and dizzy after the last incident. The complainant was dumbfounded and she went to meet the appellant-Sombir, his brother Sunil @ Sheenu and his wife, who threatened her that in case she disclosed about the incident to anyone, they would defame her as well as her daughter in the village and if they still did not keep quiet, they would kill the complainant and her daughter. They further revealed that they had a relative at Panipat, who was a doctor and they could get the complainant's daughter aborted from their relative. The complainant was pressurized and put under the fear of insult and dire

consequences, due to which she along with her daughter proceeded to Panipat in a Maruti Van bearing registration No. HR-56-6844 driven by Sunil @ Sheenu on 10.08.2012. He left them at the clinic and fled. It is stated that on the way to Panipat, Sunil @ Sheenu talked with someone on the phone several times. The doctor, a relative of the appellant aborted the pregnancy of the victim and on the next day, she and her daughter returned home. It is further stated that the complainant as well as her daughter remained under constant threat of the appellant and his family members, but gathering courage they finally decided to lodge a complaint which was submitted on 23.08.2012 (Ex.PA). Legal action was prayed for.

On the aforesaid allegations, formal FIR Ex.PG, was registered under Sections 376, 120-B, 506 read with Section 34 IPC against the present appellant, Sunil @ Sheenu and his wife-Babli, at Police Station Julana Jind. The prosecutrix was medico legally examined at General Hospital, Jind on 24.08.2012 by Dr. Anmol (PW-9), Medical Officer, PHC, Umra, Tehsil Hansi, District Hisar. It was advised that the ultrasound of the victim be conducted. The appellant was arrested on 25.08.2012. Rough site plan Ex.PU as prepared. On receipt of report from the Forensic Science Laboratory, Madhuban, opinion of Dr. Anmol was sought. As per the opinion Ex.PP, it is mentioned that the exact opinion regarding the abortion cannot be given as both the FSL report and the ultrasound report is not as per the direction given by the doctor. No evidence was found after investigation against Babli, wife of the appellant (Sunil @ Sheenu). Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented against the present appellant after completion of investigation.

The case was committed to the Court of Sessions, Jind, on 07.12.2012. Charge under Sections 376, 506 IPC was framed against the

appellant on 17.12.2011, who pleaded not guilty and claimed trial.

Subsequently, the prosecution's application for amendment of charge was allowed on 08.02.2013 and a fresh charge under Section 376(2) (F) and 506 IPC was framed against the appellant.

The prosecution examined as many as thirteen witnesses to prove its case.

The accused in his statement under Section 313 Cr.P.C., denied all the incriminating evidence put to him while claiming innocence and false implication. No evidence was led in defence.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved its case beyond reasonable doubt against the appellant. Consequently, the appellant was convicted for the offence punishable under Sections 376(2), 506 IPC and sentenced as detailed above.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant argues that there are material discrepancies and contradictions in the evidence on record and the same is woefully deficient to sustain the conviction of the appellant. First and foremost it is argued that there is cutting and over-writing in the birth certificate Ex.PH, wherein the date of birth of the victim is mentioned as 15.03.1999. It is further submitted that the said certificate issued by the Principal, Government Girls Senior Secondary School, Shamlo Kalan (Jind), is stated to be proved by PW-7-Maha Singh, Principal, Government Girls Senior Secondary School, Shamlo Kalan. PW-7, it is submitted has admitted the cutting and over-writing against some of the entries in the register as well. Said record cannot be said to be proved and it is doubtful that the date of birth of the victim is 10.03.1999. Moreover, there is no evidence on

record to indicate pregnancy of the victim as alleged. No details or even the name, address of the doctor at Panipat, have not been brought forth by the prosecution even though it is the case of the prosecution that the doctor was a relative of the appellant. Medical evidence on record, it is submitted is inconclusive inasmuch as PW-9-Dr. Anmol, has stated that she cannot give a definite opinion regarding the pregnancy, if any of the victim. No external injury was detected on the person of the victim. Therefore, it is argued that the learned trial Court has grossly erred in convicting the appellant of the offences as charged.

Learned counsel for the appellant further argues that the learned trial Court has failed to appreciate that the appellant has been falsely implicated in this case because of professional rivalry. The parents of the victim were running a grocery shop in the same street. It is due to this reason that the present appellant was falsely implicated in this case. It is thus prayed that conviction of the appellant be set aside and he be acquitted of the charges against him.

In the alternate, learned counsel for the appellant submits that the sentence imposed upon the appellant be reduced to that already undergone by the appellant. The appellant has undergone approximately 8 ½ years (with remissions) of the sentence of 10 years imposed upon him. It is vehemently argued that the appellant is not involved in any other criminal case either prior or subsequent to the present matter. The appellant who was aged about 22 years at the time of occurrence has minor children and aged parents, who have no source of income. They are in dire straits because of the incarceration of the appellant for all these years. Learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court in **Kesar Singh Vs. State of Haryana 2005(2) R.C.R (Criminal) 933**, wherein the

sentence imposed upon the convict had been reduced from 7 years to 3 years. He further relies upon the judgment of this Court in **Hari Ram Vs. State of Haryana 1992(1) R.C.R(Criminal) 326, Rajpal Vs. State of Haryana 2005(1) R.C.R(Criminal) 635, Ashok Kumar Vs. State of Haryana 2007(4) R.C.R(Criminal) 610 and Harinder Singh Vs. State of Haryana 2015(4) R.C.R (Criminal) 31**. It is thus prayed that sentence imposed upon the appellant be reduced to that already undergone by him.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear and cogent evidence on record, which clearly reveals the commission of the offences as charged by the appellant. The appellant has been rightly convicted for the offences punishable under Sections 376(2), 506 IPC and sentenced accordingly. It is further submitted that there are no mitigating circumstances which call for reduction of the sentence imposed upon the appellant. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment of conviction and order or sentence dated 07.05.2013, which is based on a sound appreciation of the evidence on record.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

The complainant-PW-2, in this case has reiterated the version given by her at the first instance before the learned trial Court. The victim has deposed as PW-1 before the learned trial Court. She has clearly deposed about the commission of the offence by the appellant. The victim withstood searching and lengthy cross-examination. Defence could not illicit anything favourable in its response. Keeping in view the peculiar facts and circumstances, the alleged delay in filing of the FIR is not fatal to the prosecution case. Perusal of the Medico Legal Report-Ex.PL, reveals that it

is mentioned that patient gave a history of abortion of a foetus (gestation age 5 months) at some private clinic in Panipat, two weeks ago. PW-9, Dr. Anmol, has noted as below:-

“P/A- Soft

No injury seen over the abdomen.

P/S- Hymen totally formed out. Blood mixed discharge present. Vaginal swabs taken and handed over to police.

P/V- ut is bulky, A/V. B/L formices clear blood mixed discharge present per vaginum.”

PW-9, Dr. Anmol, in her opinion Ex.PP has observed as under:-

“FSL report is not upto the mark as asked i.e. no histopathological exam report is given. USG report is not of uterus and adnexa as was asked to do. Only USG abdomen is done. No details of uterus and adnexa are given. As both reportings are not sufficiently right and only on the basis of examination done, the exact opinion could not be given about the abortion.”

For the fault on the part of the investigating agency for not having conducted the medical investigations properly as directed, no benefit can be given to the accused. Specific directions had been given by PW-9, Dr. Anmol but the investigating agency for reasons best known to it did not comply. Ex.PO, the ultrasound report which is also not as per the directions of the doctor reveals that the testing was done at a private establishment namely 'Jeevandeep M.R.I, C.T. Ultrasound, Digital X-ray Centre' at Jind, for reasons best known to the prosecution. Similarly, absence or non production of the bills of expenditure incurred in regard to the doctor at Panipat can be of no avail to the appellant. It is to be noted that it is the specific case of the complainant that the said doctor was a relative of the appellant. The investigation of the case indeed appears to be shoddy. A perusal of the statement of ASI Kulwant Singh-PW-12, who initially

investigated the matter as well as of PW-11-Rajinder Singh, who took over the investigation from him reveals the same. The appellant can derive no benefit from defective or shoddy investigation.

Learned trial Court has rightly observed that there is nothing on record to prove that the parents of the prosecutrix were running any grocery shop in the village. The complainant has specifically stated in her initial complaint that her husband was an agriculturist and she was a home maker. Similarly, the argument regarding age of the prosecutrix not being proved to be under eighteen is of no relevance in the factual matrix of the case. The prosecution has successfully proved its case beyond reasonable doubt. The evidence on record unerringly points towards the guilt of the appellant. There is nothing on record to doubt the credibility of the prosecutrix and her mother who have given a clear and cogent picture of the events as they unfolded.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction, which calls for interference by this Court. The appellant has been rightly convicted for the offences punishable under Sections 376(2), 506 IPC by the learned trial Court.

However, there is merit in the argument of learned counsel for the appellant in respect to reduction of the sentence imposed upon the appellant.

There is no denial that the appellant was about 22 years at the time of the occurrence. He is the sole bread winner of his family. The appellant admittedly, is not involved in any other criminal case either prior or subsequent to the present FIR. As per the custody certificate dated 01.02.2018, the appellant has undergone imprisonment of 8 years 5 months

and 18 days with remissions as on 01.02.2018. The minimum sentence stipulated under Section 376 IPC is seven years.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to reduce the sentence imposed upon the appellant to the one already undergone by him. The fine of ₹10,000/- imposed upon him under Section 376 (2)(F) IPC is increased to ₹25,000/- (i.e. by ₹15,000/-). Fine imposed under Section 506 IPC is increased from ₹3000/- to ₹10,000/-. The imprisonment in default of payment of fine under both the sections shall be maintained.

Impugned judgment dated 07.05.2013, passed by the learned Sessions Judge, Jind, convicting the appellant under Sections 376(2), 506 IPC, is accordingly upheld. With the modification in the sentence as above, the present appeal is dismissed.

February 20, 2018

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.