

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

CRA-S-2876-SB-2012

Date of decision: 18.8.2018

Sandeep Kumar @ Vasu

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms.Sumanjit Kaur, Advocate for the appellant

Ms.Harsimrat Rai, DAG, Punjab

JITENDRA CHAUHAN, J.

The appellant has filed the present appeal against the judgment of conviction dated 3.8.2012 and the order of sentence dated 4.8.2012, passed by Additional Sessions Judge, Jalandhar, vide which he was convicted under Section 376 of the Indian Penal Code (for short 'IPC') and sentenced for a period of 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-; in default of payment of fine, he was further sentenced to undergo rigorous imprisonment for one year, whereas co-accused Krishan Kumar @ Dahu was convicted under Section 354 IPC and sentenced to undergo RI for two years and to pay fine of Rs.2,000/-; with default stipulation.

The relevant facts of the case have been noticed in para no. 2 of

“As per the facts of the case, on 14.8.2011 ASI Major Singh alongwith his police party was present at Jandiala Chowk, Jalandhar. Smt. Kiranjit Kaur alongwith her husband came there and got her statement recorded. She stated that she is mother of 5 children. Her daughter Manisha i.e. victim was 12 years old. There was a function in their neighbourhood in the house of Rajan son of Narinder Kumar on account of birth of a son in their family. They had organized lunch. She alongwith her husband Amrik Singh had taken lunch and returned home at about 2 p.m. Thereafter at about 4 p.m. Sandeep Kumar @ Vasu, younger brother of Rajan, came to their house and told them that there was extra food lying in their house and they could collect the same. His daughter Manisha accompanied him for bringing food. She did not return home for about 20-25 minutes. She went to the house of Sandeep Kumar but her daughter was not there. Thereafter she went to the house of Darshan Singh adjoining to their house. She went to the choubara and noticed that door was closed. She knocked at the door. In the meantime her husband Amrik Singh also reached there. On alarm raised by them, Sandeep Kumar opened the door. Her daughter was weeping. They started look after their daughter to console her, in the meantime, accused pushed them and ran away from the spot. The victim disclosed to her that Sandeep Kumar @ Vashu committed rape with her whereas Krishan Kumar @ Dahu present with Sandeep Kumar also outraged her modesty. The complainant prayed that action may be taken against the accused persons. ASI Major Singh sent ruqa for registration of FIR. He went to the spot and prepared site plan. Statements of the witnesses were recorded. The victim was taken for her medical

examination. Both the accused were arrested in this case on 15.8.2011. Statement of the victim was recorded by the Magistrate on 17.8.2011. The investigation was completed. The report of Forensic Science Laboratory was also received and thereafter both the accused were challaned in the case.”

After completion of investigation, report under Section 173 Cr.P.C. was filed in the Court, on the basis of which, charge under Sections 376 and 354 read with Section 34 IPC was framed against the appellant alongwith his co-accused, namely Krishan Kumar @ Dahu, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 11 witnesses, which are as under:-

(i) PW 1- prosecutrix, who deposed that she was studying in Govt. Girls Sr. Secondary School, Samrai. On the day of occurrence, she was present in the house alongwith her family. There was a party in the house of accused-Vasu @ Sandeep Kumar. Her parents had attended the party. At about 4.00 p.m., accused Sandeep Kumar came to their house and told her mother to collect food which was lying extra in their house. She accompanied Sandeep Kumar to his house. His mother was not there. She further stated that Sandeep Kumar pushed her inside the room and the other boy Dahu @ Krishan Kumar was already present there. Sandeep Kumar bold the door from inside. He had committed

rape with her and the other boy Krishan Kumar had misbehaved with her and touched her in a wrongful manner. She screamed for help and told them to leave her. Sandeep Kumar had also slapped her and tied her hands. In the meantime, her mother reached there and knocked at the door. Both the accused persons ran away from there by opening the door. She was also taken to the Court where her statement was recorded by the Magistrate. She was also taken to the hospital for her medical examination.

(ii) Kiranjit Kaur, mother of victim appeared into witness-box as PW 2, who fully corroborated the version of victim. She also identified the accused persons facing trial in the case.

(iii) Dr. Jasmeet Walia, Radiologist stepped into witness-box as PW 3. She deposed that on 18.08.2011, she alongwith Dr. AS.Riar, Dental Surgeon conducted X-ray to determine the age of victim. As per radiological opinion, age of the victim was between 14 to 15 years.

(iv) Amrik Singh, father of the victim appeared as PW4. He also corroborated the version of the victim.

(v) PW5- HC Paramjit Singh deposed that he had received the sealed parcels from the doctor and took the same to the office Chemical Examiner, Kharar and deposited on 18.8.2011. The same were remained in his

possession and were not tampered.

(vi) PW 6 Dr. Raj Kumar medico-legally examined both the accused on 16.08.2011. As per his opinion, there was nothing to suggest that Sandeep Kumar and Krishan Kumar were unable to perform sexual intercourse.

(vii) PW7 Meenakshi Kakkar, Draftsman, who is a formal witness.

(viii) PW-8 Sh.Sanjiv Joshi, Additional Chief Judicial Magistrate, Jalandhar, who get recorded the statement of the prosecutrix.

(ix) PW 9 Dr. Parminder Kaur, Medical Officer medico-legally examined the victim before whom, the victim disclosed her age as 12 years. The consent of victim was taken for her medical examination. The victim had disclosed the alleged history of rape on 14.08.2011 at 4.00 p.m. The detailed medical report was prepared. The victim was medically examined from the Dental Surgeon and Radiologist. The reports of Dental Surgeon and Radiologist were received and on that basis, she gave her opinion about the age of the victim between 14 to 15 years. The report of Chemical Examiner Laboratory Ex.PW 9/B was received. The Examiner report had shown the presence of spermatozoa in vaginal swabs and vaginal slides. As per this report, possibility

of sexual intercourse could not be ruled out.

(x) ASI Major Singh, who was the Investigating Officer, was examined as PW10. After completion of the investigation, he produced the challan in the Court.

(xi) Charanjit Kaur, Math Teacher, Govt. Girls Sr. Secondary School, Samrai stepped into witness-box as PW 11. She produced the admission and withdrawal register in which date of birth of the victim is mentioned as 05.04.1999. The relevant entry of the register is at Sr. No.2703 dated 01.04.2011.

In their statements, recorded under Section 313 Cr.P.C, the accused denied all incriminating evidence against them and pleaded their false implication. In defence, DW-1 Heera Lal and DW2 Parichey Sood were examined.

After going through the evidence and hearing the learned counsel for the parties, learned Trial Court convicted and sentenced the appellant alongwith his co-accused as indicated above. Aggrieved against the judgment of conviction and sentence, accused-appellant Sandeep Kumar @ Vasu has filed the present appeal.

Learned counsel for the appellant submits that there is no cogent evidence regarding the age of alleged victim. The birth certificate of the victim has not been produced on record. PW 11 Charanjit Kaur, Math Teacher proved on record entry in the school register in respect of Bindu daughter of Amrik Singh. In the said school record, the name of victim

school register cannot be relied upon to determine the age of the prosecutrix. Dr. Parminder Kaur (PW 13), who medico-legally examined the victim, stated that age of the victim between 14 to 15 years without there being any evidence or referring this case for DNA testing.

It is further argued that there are material discrepancies in the statement of the prosecutrix, which create doubts regarding the place of occurrence. The victim had stated that she had gone to the house of the accused for collecting food, but as per the case of prosecution, the occurrence took place in adjoining house in the room situated on the first floor. The said house is situated in a dense populated area and in such like situation, it is not probable that this type of crime could be committed in day time. She further contended that the victim had tried to commit theft in the house of appellant-accused and on that account, he slapped her. Due to this reason, the appellant alongwith co-accused has been falsely implicated by the victim with the help of her parents. There were no marks of injuries on the person of victim and, therefore, it cannot be established that rape was committed with her. Lastly states that in view of the discrepancies in the case of the prosecution, the appellant deserves to be given the benefit of doubt.

Per contra, learned State counsel opposed the contentions made by learned counsel for the appellant and contended that ocular version of the victim as well as medical evidence go to prove that the victim was subjected to rape. Learned State counsel further submits that since the prosecutrix was minor at the time of alleged occurrence, the discrepancies

discrepancies, if any, do not materially affect the true account of prosecution version given by the witnesses and, therefore, this was not a case where any benefit could be given to the accused. She further contended that the prosecution has proved its case beyond reasonable doubt and the accused-appellant has been rightly convicted and sentenced by the trial Court.

I have considered the rival contentions raised by learned counsel for the parties.

As per the statement of PW 11- Charanjit Kaur, Math Teacher, Govt. Girls, Senior Secondary School Samrai, the date of birth of the prosecutrix, recorded in the school record, is 5.4.1999, whereas as per the report Ex.PC, prepared by PW3 Dr.Jasmeet Walia, and Dr.AS Riar, Dental, the age of the prosecutrix has been noticed to be between 14-15. In the circumstances, no benefit can be given to the appellant for not carrying out the DNA test, particularly when the identity of the parties is not in dispute and the parties are known to each other.

Section 375 IPC provides that sexual intercourse by a man with a woman without her consent will constitute the offence of rape and punishment of rape is provided in Section 376 IPC.

It is the case of prosecution that the appellant had committed sexual intercourse with the victim. To determine this issue, it is necessary to examine the deposition of victim (PW-1). She clearly stated that on the day of occurrence, she was present in the house alongwith her family.

There was a party in the house of accused-Vasu @ Sandeep Kumar. Her

came to their house and told her mother to collect food which was lying extra in their house. She accompanied Sandeep Kumar to his house. His mother was not there. She further stated that Sandeep Kumar pushed her inside the room and the other boy Dahu @ Krishan Kumar was already present there. Sandeep Kumar bolted the door from inside. He committed rape upon her whereas the other boy Krishan Kumar misbehaved with her and touched her in a wrongful manner. She screamed for help and **pleaded** to leave her. Accused Sandeep Kumar slapped her and tied her hands. In the meantime, her mother reached there and knocked at the door. Both the accused persons ran away from there by opening the door. She was taken to the Court where her statement was recorded by the Magistrate. She was also taken to the hospital for her medical examination.

The conviction for the offence under Section 376 IPC can be recorded even on the solitary statement of prosecutrix (without corroboration) if her testimony is found to be credible.

In State of Himachal Pradesh vs. Asha Ram (2005) 13 SCC 766 Hon'ble the apex Court has observed that minor contradictions and insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

Similarly in **Om Parkash vs. State of U.P. (2006) 9 SCC 787** Hon'ble the Supreme Court has observed:

"The courts while dealing with such cases 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."

In the instant case, testimony of prosecutrix is worthy of credence and could not be shaken in her cross-examination. Moreover, there is sufficient corroboration to the testimony of the prosecutrix. The corroboration is provided by testimony of PW 2 Kiranjit Kaur, mother of victim, PW 4 Amrik Singh, father of victim and PW 9 Dr. Parminder Kaur, who medico-legally examined the prosecutrix. A person may tell lie but circumstances do not. Even if for the sake of arguments, it is assumed that the victim had tried to commit theft in the house of appellant and on that account, he had slapped her, had no occasion for the parents of victim to depose falsely and implicate the appellant-accused by staking the honour and prestige of their daughter. They could not have been ignorant of the fact that they may even have difficulty in finding a suitable match for their daughter once it is known that she had been subjected to rape in her childhood. Therefore, it is presumed that what they deposed, was absolutely true and correct. The ocular version of prosecutrix was corroborated by the medical evidence. PW 9 Dr. Parminder Kaur, who medico-legally examined the victim stated that the patient alleged to have been raped on 14th August 2011 at 4.00 p.m. approximately. She further stated that on the basis of report of Chemical Examiner, she opined that since the chemical examiner's report shows presence of spermatozoa in vaginal swabs and vaginal slides, possibility of sexual intercourse cannot be ruled out.

Further, there is no merit in the argument of the learned counsel

prosecutrix. It is true that injury is not a *sine qua non* for deciding whether rape has been committed or not, but it has to be decided on the factual matrix of the each case. Certainly, it is an important factor and if the prosecutrix's version is not credible, then there would be need for corroboration. As regards the facts and circumstances of the present case, the presence of the element of *mens rea* on part of the accused cannot be denied. He had fully prepared himself for committing the offence. He was a neighbour and when the prosecutrix went to his house to collect the food, he pushed her inside the room and bolted from inside and thereafter, the accused committed sexual intercourse with her. Absence of injuries in the context of the present case would not justify drawing of any adverse inference against the prosecution, but on the contrary would support the case of the prosecution, as she being of tender age was overpowered by the appellant. To the contrary, the prosecutrix has given a vivid and detailed account of the act committed by the appellant. She has withstood the test of cross-examination and her testimony inspires confidence of this Court, which passes the litmus test.

In the considered opinion of this Court, evidence of the prosecutrix is consistent and it stands amply corroborated from evidence of her parents and the medical evidence. There is no material infirmity in the prosecution case so as to justify granting the benefit of doubt to the appellant.

In view of the foregoing narration, this Court finds no substance in this appeal and as such, it is dismissed and the impugned

18.8.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Yes / No

Yes / No