

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

CRA-S-3510-SB of 2012 (O&M)

Date of decision: 27.01.2018

Vijay Kumar

...Appellant(s)

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Arvind Galav, Advocate/Legal Aid Counsel
for the appellant.

Mr. Kuldeep Singh, Sr. DAG, Punjab
for the State.

Jitendra Chauhan, J.

Appellant has filed the present criminal appeal assailing his conviction and sentence ordered by Sessions Judge, Ludhiana, vide judgment of conviction and order of sentence dated 03.10.2012, whereby the appellant was convicted under Section 376 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution as set in para Nos.2 to 8 of the impugned judgment of the trial Court is as under:-

“2. The case of the prosecution, in brief, is that the PW-2 Alzabith resides at Mohalla Peeru Bandha, Ludhiana. Her daughter the PW1 was 14/15 years old in

May 2007. The PW-1 was studying in 7th class at Noor Niwas High School, Hissar. The PW1 had come to Ludhiana to meet the PW-2 and spend her holidays. In the same house, the accused resides with his family. The accused is son-in-law of the PW-1's sister Agnes. During May 2007, the PW-2 would go to her job leaving behind the PW-1. During this period, when the PW1 was alone at home, the accused raped her forcibly and against her will. He committed rape on her several times. He threatened that if she discloses the matter to anybody, he would kill the PW1 and her entire family. The PW1, therefore, did not disclose the matter to anyone and in July, 2007, she went back to Hissar to attend her school. There she realized that she has conceived on account of the sexual intercourse in question. On 29.10.2007, she came to Ludhiana to her mother. She disclosed the matter of pregnancy to the PW2.

3. It is also alleged that on 01.11.2008, the PW11 SI Beant Juneja was posted as SHO, Police Station Salem Tabri, Ludhiana and on that day, he along with other police officials was present at Chowk Sabji Mandi, Ludhiana, in connection with patrolling. The PW2 and her sister Vallet met him. The PW2 narrated the above said story to the PW11. The PW11 recorded the same as Ex.PA. The PW11 made his endorsement Ex.PA/2 over it and sent it to the police station whereupon the FIR ExPZ/2 was registered regarding the incident.

4. It is further alleged that the PW11 then went to the place of occurrence and drew the site plan Ex.PR at the instance of the PW1 and the PW2. He also recorded the statements of the witnesses.

5. It is further alleged that the PW11 made the request Ex.PF to the authority concerned for the medical examination of the PW1. Accordingly, the PW5 Dr. Anantjit Kaur, Medical Officer, Civil Hospital, Ludhiana,

examined the PW1 medico-legally. The PW5 detected that the PW1 was pregnant by 5 months and 11 days and that she had her last menses on 21.05.2007. She took vaginal swabs of the PW1, packeted and sealed them and sent them for chemical examination. The Board prepared the medico legal report Ex.PH. Ultra sound was then conducted by the PW4 for confirmation of pregnancy. PW4 declared that on that day the pregnancy was of 22 weeks and three days old. The PW4 also investigated and found that the age on that of the PW1 was between 14 to 16 ½ years.

6. It is also alleged that the PW11 arrested the accused on 01.11.2007 itself. Various memos indicating his formal arrest were prepared.

7. It is also alleged that the PW11 collected Chemical Examiner's report, recorded statements of witnesses and concluded the investigation.

8. On conclusion of the investigation, the challan was presented before the learned Illaqa Magistrate.”

3. On presentation of challan, the trial Court finding prima facie evidence against the accused-appellant, framed charge for the offences punishable under Sections 376 and 506 of the Indian Penal Code to which the accused pleaded 'not guilty' and claimed trial.

4. In support of its case, the prosecution examined the following witnesses:-

PW-1, prosecutrix herself stepped into the witness box and deposed regarding the act committed by the appellant with her. She stated that she was studying in 7th class in Noor Niwas High School, Hisar. During the holidays, she along with her sister Shabnam came to Ludhiana

at their residence in mohalla Peeru Banda. She further stated that the accused (her jija) is son in law of her mother's sister Agnis. Her maternal aunt Agnis along with family of accused are residing in their house. The accused used to commit rape on her forcibly and under threat when she was alone in the house. The accused used to threat her that in case she disclosed the fact to anyone, he would kill her and her family. She had disclosed her date of birth as 10.05.1992.

PW-2-Alzabith, the complainant corroborated the version of FIR recorded by her. She stated that the prosecutrix had told her that when she came in May 2007 to Ludhiana, the accused used to commit rape on her under threat and in case she disclosed to anyone, she would face dire consequences. She further stated that her statement, Ex.PA was recorded by the police which was read over to her and thumb marked by her after admitting the same to be correct. She identified the accused in Court.

PW-3 Dr. Ramesh Kumar, medically examined the appellant and submitted his report Ex.PC/1 to the effect that the accused was conscious, cooperative, well oriented to time, place and person; his BP was 120/80, pulse was 72 and on examination, secondary sexual character were fully developed. He further stated that there was nothing to suggest that the person examined was unable to perform sexual intercourse.

PW-4 Dr. Hitinder Kaur, conducted X-ray and ultra sound pelvis upon the prosecutrix and in her opinion, the radiological bone age

of the prosecutrix is between 14 and 16 ½ years. She further stated that as per ultra sound report, single intrauterine foetus seen with cardiac activity. BPD was 54.5 m 22 weeks 3 days plus minus one week five days.

PW-5 Dr. Anantjit Kaur medico-legally examined the prosecutrix and proved on record copy of MLR (Ex.PH) wherein it has been mentioned that no external mark of injury was seen on the body. The prosecutrix had amenorrhoea of five months and 11 days. Her LMP was May, 21, 2007. On examination, height of the uterus was 24 weeks.

PW-6 HC Amrik Singh, tendered his duly sworn affidavit Ex.PK into evidence; PW-7 HC Devinder Singh also tendered his duly sworn affidavit Ex.PL into evidence; PW-8 ASI Harsukhdev deposed regarding the investigation conducted by SHO Beant Juneja; PW-9 Ravon Bhishwas, brought the record from Church of North India, Diocese of Delhi, Baptism solemnized at CNI Church, Santokh Majra, District Kaithal and proved on record the date of birth of the prosecutrix to be 10.05.1992; PW-10 Anita Sharma from Noor Niwaj High Scholl, Hissar, had also proved on record the date of birth of the prosecutrix.

PW-11 SI Beant Juneja, the investigating officer, testified the manner of whole investigation to the effect that on 01.11.2007, he was posted at PS Salem Tabri, Ludhiana as SHO and was present at Chowk Sabji Mandi, Ludhiana in connection with patrolling and checking on a Government vehicle. Complainant along with her sister Vallet met to the police party where the statement of the complainant was got recorded by

him, on the basis the FIR was registered.

5. The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, he examined DW-1 Agnish, DW-2 Parshotam Lal and DW-3 Chander Shekhar.

6. After hearing learned State counsel and counsel for the accused and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction and sentence rendered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 13.12.2012. The sentence of the appellant was suspended on 08.04.2013.

8. Learned counsel for the appellant/accused has submitted that the learned trial Court erred in convicting the appellant and has misread the oral as well as documentary evidence. He has laid much emphasis qua the delay in lodging the FIR and has argued that as per allegations, the occurrence took place in May, 2007, whereas the matter was reported to the Police in first week of November, 2007 without any cogent explanation. It is asserted that this period was utilized by the prosecution to tutor the prosecutrix to depose against the appellant.

9. It is further contended that the prosecutrix has miserably failed to prove on record that the appellant had been residing in the house where the incident had taken place. The finding of trial Court that the accused had been residing in the same house, the house occupied by the

prosecutrix, merely based on assumption and there is no documentary evidence to support the finding given by the trial Court, which belies the story of the prosecution. The house wherein the prosecutrix and her family had been residing was owned by the mother in-law of the appellant and the dispute qua the same house was/is going on between mother in-law of the appellant and the complainant party. In fact, the appellant has been made a scapegoat to pressurize his mother in-law to leave her claim over the house and has been falsely implicated in the present FIR.

10. The next submission made by learned counsel for the appellant is that the prosecutrix was major at the time of occurrence and had a love affair with the appellant. In this context, the learned counsel has referred to the testimony of PW-4-Dr. Hitinder Kaur who had conducted the radiological test upon the prosecutrix and opined the age of prosecutrix to be between 14 to 16 ½ years, therefore, the learned counsel has submitted that that the prosecutrix was not only more than 16 years or she could be of 18 years.

The trial Court has failed to take into consideration the contradictions and inconsistencies in the statements of the prosecution witnesses. The trial Court has totally ignored the defence evidence led by the appellant. There is no trustworthy evidence against the appellant, rather the facts on record goes to establish the false implication of the accused in the present case.

11. Lastly, the learned counsel for the appellant has submitted

that the appellant has undergone more than the substantive sentence. He is poor person and is only bread winner for his family. The appellant is facing the agony of trial as the FIR was registered on 01.11.2007, therefore, he prays that the sentence of appellant may be reduced.

12. On the other hand, learned State counsel has contended that the case of the prosecution has been duly proved by virtue of credible evidence and material on record. The prosecutrix has supported the prosecution version. Her statement is duly supported and corroborated by way of medical evidence whereby it has been proved that the prosecutrix was minor at the time of occurrence. The act of the accused has been duly proved by way of medical evidence, therefore, learned State counsel prays for the dismissal of the present appeal.

13. I have heard learned counsel for the parties and have gone through the record.

14. The case of the prosecution rests upon the version of prosecutrix, PW-1, who has duly corroborated the act committed by the accused/appellant. As per her testimony, the accused repeatedly committed rape against her wish and threatened her not to disclose the matter to anyone, or else he would kill her and her family members. The matter came to light after the prosecutrix conceived from the loins of the appellant. As per testimony of PW-5 Dr. Anantjit Kaur, the prosecutrix was carrying 5 months and 11 days pregnancy. The submission of learned counsel for the appellant that the prosecutrix being major had a love affair is of no consequence. As per version of PW-10, Anita Sharma, who

produced the school record, the date of birth of the prosecutrix was 10.05.1992 showing that the prosecutrix was minor at the time of occurrence. The prosecutrix herself and her mother had also stated the age of the prosecutrix to be 14 years. The version of prosecutrix being minor has been duly corroborated by way of documentary evidence as well as by medical evidence. The accused/appellant has failed to rebut the factum of prosecutrix being minor.

15. As regards to the argument of learned counsel for the appellant qua the delay is concerned, the same is hereby repelled as the matter came into picture after the pregnancy of the prosecutrix. The prosecutrix being minor and under the threat could not muster courage to share the fact of rape with her family members. Otherwise also, even it is shared by the victim the family normally does not report the matter immediately due to the fear of stigma and social ostracism which follows.

16. Another point raised by learned counsel for the appellant that finding of the trial Court is based on assumption that the accused was residing in the same house, is also not tenable as the accused himself had given the address to the police. The wife of accused had been also shown herself to be the resident of the same house while she lodged DDR Ex.D1. Further, false implication of the accused has been pleaded on the ground that the complainant's party had litigation with mother in-law of the accused/appellant, however, a bare perusal of record would reveal that the present occurrence took place in May, 2007, whereas, DW1-Agnis, mother in-law of accused while appearing in the witness box, though had

admitted the fact of dispute, however, it has come on record that the matter to the police regarding dispute was reported on 30.08.2007 and 11.09.2007.

17. The prayer for reducing the sentence on the ground that the appellant/accused is a poor man and he is the only bread winner of his family is declined as the accused who is a married man and also jija of the prosecutrix had repeatedly committed rape upon minor, therefore, the appellant does not deserve any leniency.

18. From the oral as well as documentary evidence, this Court comes to conclusion that the prosecution has successfully established its case beyond reasonable doubt against the accused/appellant.

19. There is no illegality or impropriety in the impugned judgment of conviction and order of sentence dated 03.10.2012 and the same, is, hereby upheld and affirmed. There is no merit in the appeal which is hereby dismissed.

20. It is pertinent to mention here that as per custody certificate dated 02.12.2017, issued by Superintendent, Central Prison, Ludhiana, the sentence of the appellant was suspended and he was released from jail on 17.04.2013. Therefore, the order dated 08.04.2013 is recalled and the Chief Judicial Magistrate, concerned is directed to issue warrants of arrest against the appellant/accused to undergo remaining part of the sentence.

27.01.2018

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No