

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

CRA-S-3528-SB-2012 (O&M)
Date of Decision: March 19, 2018

Piara Singh

... Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Preeti Sharma, Advocate
for the appellant.

Mr. Hittan Nehra, Addl. AG Punjab.

JAISHREE THAKUR, J.

The instant appeal has been filed against the impugned judgment/order dated 20.09.2011 passed by the trial court in FIR No.234 dated 24.10.2007, registered under Sections 363-A, 376 of Indian Penal Code at Police Station Sidhwan Bet, Ludhiana, whereby, the appellant has been convicted and sentence to undergo rigorous imprisonment of 03 years and to pay fine of Rs.1000/- under Section 363 of Indian Penal Code and to undergo rigorous imprisonment of 10 years and to pay fine of Rs.3000/- under Section 376 (2)(f) of Indian Penal Code.

2. The case of the prosecution finds its origin in the statement given by complainant-Binder Singh to ASI Surjit Singh on 24.10.2017, alleging therein that he is a labourer and has five daughters and one son. On 23.10.2007 at about 7.00, he along with his brother Surjit Singh were present in his house

and his two daughters, the victim (named withheld) and Lachhmi had gone to purchase some articles from a shop. They were passing near the house of Piara Singh son of Chanan Singh, whose house abuts on the backside of his house. He heard a hue and cry of his daughter, and his daughter Lachhmi came back to the house running and while crying disclosed that Piara Singh had caught hold of victim and had taken her in a room of his house. Then, he along with his brother and daughter Lachhmi went to the house of Piara Singh and heard the crying of his daughter from inside. He and his brother opened the door and saw that accused Piara Singh was raping his daughter. He and his brother rescued his daughter from the clutches of accused Piara Singh. His brother tried to catch the accused, but he fled away from there. He brought his daughter to Civil Hospital, Sidhwan Bet and got her admitted in the hospital at night. While he was going to police station for lodging the report, the police party met him on the way.

3. On the basis of aforesaid statement, the instant FIR was lodged. During the course of investigation, accused was arrested, rough site plan of the place of occurrence was prepared, medical of both the victim and the accused were got conducted, statement of witnesses were recorded under Section 161 Cr.P.C. and after completing the investigation, challan was prepared and presented in the court.

4. After supplying copies of the challan and other relevant documents, the case was committed to the Court of Session. Charge-sheet under Sections 363, 376 of Indian Penal Code was framed, to which accused pleaded not guilty and claimed trial.

5. During the course of trial, prosecution examined C. Naseeb Singh as PW1, Binder Singh complainant as PW2, Surjit Singh as PW3, victim

victim as PW4, Laxmi was PW5, SI Gurcharan Singh a PW6, Dr. Navjot Kaur as PW7, Dr. Sat Pal as PW-8, HC Surinder Singh as PW-9, Chiragdin as PW10, MHC Kuldip Singh as PW11. Thereafter, prosecution evidence was closed and statement of accused under Section 313 Cr.P.C. was recorded, in which accused denied the incriminating evidence against him. Accused examined Dharam Singh as DW1, Sukhdev Singh as DW2 and Binder Singh as DW3 in his defence.

6. After hearing learned counsel for both the sides, the trial court held the accused guilty under Sections 363 and 376(2)(f) of Indian Penal Code and convicted him to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/- and in default of fine to further undergo simple imprisonment for 15 days under Section 363 of Indian Penal Code and to undergo rigorous imprisonment for ten years and to pay fine of Rs.3,000/- and in default of payment of fine to further undergo simple imprisonment for 30 days under Section 376 (2)(f) of Indian Penal Code. Being aggrieved against the same, the instant appeal has been filed by the accused.

7. Ms. Preeti Sharma, learned counsel appearing on behalf of the appellant argues that the conviction and sentence of the appellant is liable to be set aside, as the trial court has ignored the fact that there was a delay in lodging of the FIR, which has not been explained by the prosecution. It is submitted that the trial court has not considered the defence of the appellant that there was a dispute between the children and he slapped victim and because of that reason, the instant case has been registered against him. It is contended that the appellant had examined Dharam Singh as DW1, Sukhdev Singh as DW2 and Binder Singh as DW3, but the trial court has ignored these witnesses examined by the appellant in his defence. It is also argued that version of the prosecution

witnesses has not been corroborated with the medical evidence, in fact, statement of the doctor falsify the case of the prosecution, but the trial court has ignored this aspect. It is also argued that both the victim and her sister Laxmi, who were minor at the time of occurrence, had been tutored by their parents, but the trial court has not scrutinized their deposition. It is also contended that the witnesses examined by the prosecution were interested witnesses, being a near relative of the victim and their testimony had not been supported by any independent witness. It is also submitted that there are material discrepancies in the statement of the prosecution witnesses, but the trial court has ignored the same. In the alternative, it is argued that the appellant has already undergone a sentence of 07 years, 10 months and 29 days, including remission of 01 year, 06 months and 20 days, out of the substantial sentence of ten years and if this court is not inclined to allow this appeal, the sentence of the appellant be reduced to the imprisonment already undergone by him. In support of her arguments, she relies upon judgments of Supreme Court in **Ram Ishwar Rai vs. State of Bihar, (Criminal Appeal No.188 of 2015, decided on 9.11.2017)**, of Allahabad High Court in **Gyasoo vs. State, 2017(5) All. LJ 205**, of Patna High Court in **Kanhaiya Kumar @ Kanhaiya Soni vs. The State of Bihar, 2017(3) EcrC 273**, of Rajasthan High Court in **Sunil @ Dinki vs. State of Rajasthan, 2015(7) RCR (Criminal) 296**.

8. Per contra, Mr. Hittan Nehra, learned counsel appearing on behalf of the respondent-State submits that there is no infirmity or illegality in the judgment passed by the trial court. It is argued that all arguments so raised have been duly dealt with by the trial court and no ground is made to interfere with the same. It is also contended that there is no prohibition in law to convict

the accused of rape on the basis of sole testimony of the victim whereas, in the instant case testimony of the victim (PW4) has been duly supported by Binder Singh (PW2-complainant), Surjit Singh (PW3) and Laxmi (PW5).

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

10. PW2 Binder Singh, who is the father of the victim as well as complainant in the present case has deposed that on 23.10.2017 at about 7.00 pm., he and his brother Surjit Singh were present at his residence and his daughters victim and Laxmi had gone to a shop to purchase something. However, when they reached in front of the house of Piara Singh, the (accused) lifted victim and took her to his room. His daughter Laxmi returned to the house crying and narrated the incident. Thereafter, he along with Laxmi and his brother Surjit Singh went to the house of accused. The door of the room was shut. They opened the door and found his daughter victim without underwear. The accused was inserting his penis in the vagina of his daughter. His daughter was under the accused. The accused was without underwear and Pajama at that time. The condition of the victim was very critical. The accused took his underwear and Pajama and fled. His brother Surjit Singh tried to catch the accused, but did not succeed, as he pushed his brother aside. They took victim to civil hospital Sidhwanbet and admitted her there and thereafter, the matter was reported to the police.

11. PW4 (victim) deposed that when she was 5 years old, she and her sister Laxmi were going to the shop through the street and then accused Piara Singh took her forcibly into his room. It was about 7 p.m., and he bolted the door from inside. He put off her clothes and he conducted rape with her. After that her father, her uncle and her sister Laxmi came to the spot. Her father

stopped the accused from doing rape with her. She further deposed that after that the accused ran away from the spot. After that her father and uncle took her in a hospital. She identified the accused present in the court.

12. Statement of PW2 Binder Singh (complainant) and PW4 victim (victim) are duly corroborated by PW3 Surjit Singh (uncle of the victim) and PW5 Laxmi (sister of the victim). Other formalities of investigation have been proved by PW6 SI Gurcharan Singh and PW9 HC Surinder Singh, since ASI Surjit Singh, Investigating Officer of the case had died.

13. The first argument raised by learned counsel for the appellant is that there is delay in lodging of the FIR. A reading of the complaint as well as statement of the witnesses goes to show that the occurrence took place in the evening of 23.10.2007 at about 7.00 p.m., and immediately thereafter, the victim was admitted to the hospital and in the morning of next day i.e. 24.10.2007, the matter was reported to the police. It was explained by the complainant (PW2) that after the occurrence, they took the victim to their residence and after arranging some transport, they took the victim to civil hospital. A perusal of the MLR of the victim (Ex.PC) goes on to show that the victim arrived at the hospital on 23.10.2007 at 10.50 p.m. (at night) and the MLR was prepared by the doctor on 24.10.2007. So, under these circumstances, it cannot be said that there is a delay in lodging of the FIR and this argument of learned counsel for the appellant does not find any force behind it.

14. The second argument raised by learned counsel for the appellant is that the trial court has not considered the defence of the appellant that there was a dispute between the children and he slapped victim and because of that reason, the instant case has been registered against him. It is also contended

that the appellant had examined Dharam Singh as DW1, Sukhdev Singh as DW2 and Binder Singh as DW3, but the trial court has ignored these witnesses. This court has perused the statement of these three witnesses examined by the accused in his defence. DW1 Dharam Singh and DW2 Sukhdev Singh have deposed in the court on verbatim. Both of them stated that on the day of occurrence, they were present at the spot. It was about 4 to 5 pm. The children of the complainant were playing along with their children. There was some altercation between the children. Piara Singh (appellant herein) gave a slap to victim due to altercation. After that elder sister of victim came there and she raised raula and proceeded towards their house. Thereafter, her father and uncle came there at the spot and they quarreled with Piara Singh. They tried to patch up the matter. After that complainant Binder Singh went to his house and in the night Binder Singh along with other persons came to the house of Piara Singh and picked Piara Singh from his house and tied him with a rope and Piara Singh released himself. Binder Singh again picked him and handed over to the police and a false case was registered. This sole defence of slapping victim and due to this reason, false implication in the present case, has been taken by the accused, while his statement was recorded under Section 313 Cr.P.C. This court has gone through the cross-examination of PW2 Binder Singh (complainant), PW3 Surjit Singh, PW4 victim (victim) and PW5 Laxmi, however, strangely what to talk of a question, even a single suggestion has not been put to these witnesses, in this regard. Further, prior to appearing as defence witnesses in this case, both DW1 Dharam Singh and DW2 Sukhdev Singh never represented to the police or to any authority that the appellant herein has been falsely implicated or that that they are witnesses to the occurrence in the present case. On the one hand, the appellant herein is taking a

particular defence during trial, when his statement was recorded under Section 313 Cr.P.C. and thereafter, he produced witnesses in his defence, to support his contention, whereas, on the other hand, he is not setting up this defence during the cross examination of the prosecution witnesses. Under these circumstances, the only conclusion which can be drawn here is that they are afterthought witnesses and thus, their testimony cannot be looked into. So far as DW3 Binder Singh is concerned, he deposed that he was present in the meeting called by the complainant at his house. The cousin sister of Binder Singh complainant was taken away by the granthi of the Gurdwara. Piara Singh accused was the Sewadar of that Granthi and due to this grudge, the complainant got planted a false case against the accused. However, there is not a single documents produced by DW3 Binder Singh in support of his deposition. Further, neither the name of alleged cousin sister of complainant nor the name of alleged Granthi has been disclosed. Only a bald statement has been given by DW3 Binder Singh in the court, without making reference to any document in support thereof. Under these circumstances, testimony of these defence witnesses examined by the accused, have no relevancy in the present case and their deposition is of no help to the appellant-accused.

15. The third argument raised by learned counsel for the appellant is that version of the prosecution has not been corroborated with the medical evidence. In the instant case, victim/victim was a minor girl about 05 years of age. PW7 Dr. Navjot Kaur, Medical Officer, who examined the victim in the present case, had proved on record the MLR of the victim as Ex.PC and her report as Ex.PD. As per deposition of PW7, she noted the following injuries “*A lacerated wound 1.75 cm long on the left cheek, directed medially about 2.25 cm lateral to the left ala of the nose. The wound was skin deep with reddish*

margins.” Local genital examination reads; “External; No evidence of any external injury in the perineal region. No evidence of fresh bleeding. Labia majora-normal looking. Margins opposes. Labia minora reddish with sero mucoid discharge lining the margins. Frenulum intact. Hymen intact. Cotton swab unadmissible.” After chemical examination report, PW7 has opined that spermatozoa were detected in the contents of exhibit A (II & III) i.e. Vulva and anal opening, which indicate the possibility that the accused attempted to either penetrate the annual opening or ejaculated before penetration. Thus, the possibility of an attempt to have sexual intercourse cannot be ruled out.

16. It is a settled principle of law that a conflict or contradiction between the ocular and the medical evidence has to be direct and material and only then the same can be pleaded. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. In light of the above settled canon of criminal jurisprudence, this court does not find any merit in the contention raised on behalf of the appellant with regard to discrepancy in the medical and the ocular evidence.

17. In the case, in hand there is a direct link of appellant with the commission of the crime and such conclusion is well established by statement of the complainant PW2 Binder Singh, his brother PW3 Surjit Singh, PW4

victim, PW5 Laxmi and medical/FSL report. Though penetration itself proves offence of rape, but contrary is not true i.e. even if there is no penetration, it does not necessarily mean that there is no rape. Penetration may not always result in tearing of hymen and same will always depend upon facts and circumstances of a given case. There may be limited penetration due to which probably hymen of victim girl was not ruptured. Keeping in view the facts and circumstances of the present case, presence of element of mens rea on the part of appellant cannot be denied. In this regard reliance can be placed on the judgment passed in ***Radhakrishna Nagesh vs. State of A.P., (2013) 11 SCC 688***. Further, it is well settled that on the sole testimony of the victim, an accused can be convicted and there is no bar in the same, whereas, in the instant case, the testimony of the victim has been corroborated by three other witnesses. In this regard, this court relies upon judgment passed in ***Mohd. Iqbal and another vs. State of Jharkhand, (2014) 4 Supreme Court Cases (Cri) 271, State of H.P. vs. Asha Ram, (2006) 2 Supreme Court Cases (Cri) 296, State of Haryana vs. Basti Ram, (2013) 2 Supreme Court Cases (Cri) 358***.

18. In view of the peculiar facts and circumstances of the present case and above ratios of law, this argument of learned counsel for the appellant is not tenable.

19. The forth argument raised by learned counsel for appellant is that both the victim and her sister Laxmi, who were minor at the time of occurrence, had been tutored by their parents, but the trial court has not scrutinized their deposition, while also submitting that the witnesses examined by the prosecution were interested witnesses and there are material discrepancies in their statements. A perusal of the record goes on to show that

the victim and her sister being child witnesses, the trial court, during the course of recording of their statements, put certain questions to them to assess their ability to understand to which they properly replied and were declared fit to make the statement. More so, no such question or suggestion was put to both them during their cross-examination in this regard by the counsel for the appellant-accused. So far as the argument raised regarding interested witnesses is concerned, it is settled proposition of law that testimonies of the relatives are equally credible as any other person. Further, during their cross-examination, nothing has come on record, which could point out that they were deposing falsely. More so, no such material discrepancies, which would lead this court to discard the testimony of the witnesses, has been pointed out in this case. So, this argument is not tenable.

20. The last argument raised by learned counsel for the appellant is that if this court is not inclined to allow this appeal, the sentence of the appellant be reduced to the period already undergone by him i.e. 07 years, 10 months and 29 days, including remission of 01 year, 06 months and 20 days, since the FIR in question pertained to the year 2007 and since then, the appellant is facing the protracted litigation. The appellant has been, apart from Section 363 of Indian Penal Code, has been convicted for the commission of offence under Section 376(2)(f) of Indian Penal Code, which envisages that whoever commits rape on a woman when she is under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Meaning thereby, the appellant-accused has been convicted for the minimum statutory period of ten years under that section. However, proviso attached that section provides that the court may, for adequate and special reasons to be mentioned

in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. In the present case, the appellant-accused has been found guilty of committing rape of minor girl, who was aged about 05 years at the time of occurrence. Keeping view the age of the minor victim and other factors of the case, no adequate and special reasons are made out in this case, to reduce the sentence of the appellant, to the period already undergone by him and this argument of the learned counsel for the appellant is rejected.

21. In view of the foregoing discussion, this court does not find any illegality or irregularity in the judgment passed by the trial court. Consequently, the appeal in hand fails and the same is hereby dismissed.

March 19, 2018

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

