

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRA-S-2788-SB of 2016(O&M)
Date of Decision: July 02, 2018

Sukhwant Appellant
Versus
State of Haryana Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vishal Nehra, Advocate
for the appellant.
Mr. Ramesh K. Ambavta, AAG., Haryana.

LISA GILL, J (Oral).

Appellant has been convicted for the offences punishable under Sections 376, 506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') by the learned Additional Sessions Judge, Special Court, Sonipat, vide impugned judgment dated 19.07.2016 and by a separate order dated 21.07.2016 he has been sentenced as under:-

Offence u/s	Sentence
4 of POCSO	Rigorous imprisonment for 07 years; besides pay a fine of ₹10,000/- and in default thereof to further undergo SI for one year.
506 IPC	Rigorous imprisonment for 01 years; besides pay a fine of ₹1000/- and in default thereof to further undergo SI for three months.

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

Brief facts essential for the adjudication of the case are that FIR No. 45 dated 06.02.2015, was registered on the basis of a written complaint submitted by the prosecutrix/complainant. It was stated that the prosecutrix was 16 years old and had completed her studies till 8th standard. She had

gone towards the Khera (vacant land of the Panchayat) for collecting wood (firewood) along with her sisters on 05.02.2015 at about 2.00.p.m. While collecting wood, her sisters got left behind and the present appellant, who is a resident of her village came in an inebriated condition. He caught hold of her, gagged her and forcibly took her to the sugarcane fields. The appellant then committed rape upon her. It is further averred that the victim raised alarm, but none heard her. At night, the appellant took her to the 'Paral' and kept her there overnight. The next day i.e. 06.02.2015, at about 11.00.am., family members of the victim reached the fields while looking for her. Appellant fled from the fields while threatening the victim not to disclose anything to anyone or else he would kill her. Family members of the victim rescued her. She disclosed all the facts to them. The victim along with her father and uncles came to the Police Station and prayed for action to be taken against the appellant. Formal FIR Ex.PW7/A was registered on the basis of this complaint.

PW-21-Vinod Kumar-ACP, Faridabad, deposed that he was posted as Deputy Superintendent of Police, at Gohana on 06.02.2015. Facts of the case were disclosed to him. He inquired about the same from the victim, victim's father (PW-2), uncle (PW-3). PW-18-LPSI Kavita, was directed to get the medico legal examination of the victim conducted and to get her statement recorded under Section 164 Cr.P.C. He further stated that the appellant's house was raided where the appellant was found present. He was formally arrested and got medico legally examined.

The matter was assigned to LPSI Kavita (PW-18), after registration of the case. Prosecutrix was medico legally examined by moving application Ex.PW-18/A. Sealed parcel handed over by the doctor after medical examination was taken in possession vide memo Ex.PW9/A. The

prosecutrix was produced before the Area Magistrate for recording of her statement under Section 164 Cr.P.C. Her statement under Section 164 Cr.P.C (Ex.PW20/D) was recorded on 06.02.2015 itself. Custody of the prosecutrix was handed over to her parents. PW-18-LPSI Kavita, visited the spot on 07.02.2015. Rough site plan Ex.PW18/C was prepared. Photographs of the place of occurrence Ex.P-1 to Ex.P-6 were taken. F.S.L. team was called at the spot. Pieces of broken bangles found at the spot, were taken in possession vide memo Ex.PW10/A. Final report under Section 173 Cr.P.C., on completion of investigation was presented against the appellant.

Charge under Sections 376(2) (i) IPC, Section 3 (2) (V) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') and Section 4 of the POCSO Act, against the appellant was framed on 09.04.2015, to which appellant pleaded not guilty and claimed trial.

It is relevant to note, at this stage, that the victim in this case committed suicide on 04.03.2015. Cause of death was reported to be asphyxia due to hanging. FIR No. 78 dated 04.03.2015, under Section 306 IPC and Section 3 of SC & ST Act, was lodged against the appellant for the death of the prosecutrix. The appellant, it is submitted has since been acquitted of the said charges on 19.07.2016 by the learned Additional Sessions Judge, Special Court, Sonipat

Prosecution examined as many as twenty two (22) witnesses as well as tendered certain documents to prove its case.

The appellant in his statement under Section 313 Cr.P.C., while denying the incriminating evidence put to him pleaded innocence and false implication. However, no evidence was produced in defence.

The learned trial Court, while taking into consideration the

evidence on record as well as the entire facts and circumstances of the case concluded that the prosecution had successfully proved its case against the appellant beyond reasonable doubt. Consequently, the appellant was convicted and sentenced as detailed in the foregoing paras.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the learned trial Court has grossly erred in convicting the appellant for the offences as mentioned above. First and foremost, it is argued that the victim/prosecutrix in this case has not been examined. Therefore, conviction of the appellant cannot be based on her statement under Section 164 Cr.P.C. It is further argued that there is no evidence on record to prove that the victim in this case was minor. The witnesses it is submitted have given a discrepant account of the incident. Thus, the appellant should be acquitted of the charges.

Learned counsel for the appellant vehemently argues that the material witnesses in this case i.e. father (PW-2), sisters (PW-1 and PW-12), uncles (PW-3 and PW-16) of the prosecutrix have given a version which does not indicate the culpability of the appellant. PW-2, father of the prosecutrix has not even named the present appellant. Three other persons, who were not even proceeded against were named by PW-2. PW-2, specifically stated that the appellant was falsely implicated in this case. PW-2, has declared hostile and subjected to cross-examination by the Public Prosecutor. PW-3, Mahender, uncle of the prosecutrix, also did not support the prosecution case.

PW-1, sister of the prosecutrix stated that her sister (the prosecutrix) was subjected to rape by four persons including the appellant. It is urged that apart from the fact that the material witnesses have come up

with an inconsistent narration of facts, even if version given by PW-1 is accepted, the same is not substantiated by the medical evidence on record, which shows that no external or internal injury was detected on the person of the prosecutrix. It is argued that in case, rape had been committed by three or four persons, it is not possible that the victim would not have received any injuries. Moreover, the appellant, it is argued has been acquitted of the charge under Section 306 IPC for which he was tried separately. It is thus prayed that the present appeal be allowed and the appellant be acquitted of the charges against him.

Per contra, learned counsel for the State submits that there is clear and cogent evidence on record, which points to the guilt of the appellant. It is submitted that non-examination of the victim on account of her committing suicide can be of no avail to the appellant. The so called inconsistent version by the witnesses cannot be of any benefit to the appellant in view of the stand of the victim in her statement under Section 164 Cr.P.C. Learned trial Court has convicted the appellant after considering the evidence on record vide a well reasoned and logical judgment. There is thus no ground to interfere with the same. The appeal, it is thus prayed, be dismissed.

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

The abovesaid FIR (Ex.PW7/A) was registered on a complaint (Ex.PW8/A) with the allegations that when the victim was going to collect wood along with her sisters, her sisters were left behind. The appellant-Sukhwant, resident of the same village forcibly took the victim to the sugarcane fields. He was in an inebriated condition. He gagged the victim and committed rape upon her. The victim raised alarm but none heard her.

At night, the appellant took the victim on the 'Paral'. When her family members reached the fields while searching for her in the morning on 06.02.2015 at about 11.00.a.m., the appellant fled. The appellant threatened to kill her, in case, she disclosed the facts to anyone. It is relevant to note that the FIR in question was registered immediately on 06.02.2015 itself. Medical examination of the victim was conducted on the same day by Dr. Mishu Mangla (PW-14). Statement of the victim under Section 164 Cr.P.C., (Ex.PW-20/B) was also recorded on 06.02.2015, itself. The victim in her statement under Section 164 Cr.P.C., has clearly reiterated the version given by her in the complaint. PW-20-Sukhdev Singh, Judicial Magistrate Ist Class, Gohana, has proved that the said statement was recorded before him. It is specifically mentioned that before recording the statement of the prosecutrix, all the persons including police officials were directed to vacate the camp office.

PW-1, a twelve (12) year old sister of the prosecutrix, was found to be a competent witness by the learned trial Court. PW-1 deposed that she accompanied her elder sister on 05.02.2015 for collecting wood. Four persons i.e. the appellant, one Satish, Pappa and Samma were seen consuming liquor by them at about 2.00.p.m. PW-1 stated that the appellant had taken away her sister. They were ahead of their sister at that time. When they could not find her sister, family members were informed, who tried to search for her, but in vain. PW-1, further stated that her sister was found in the fields of Samma on the next day. Her sister revealed to them that four persons had committed rape upon her i.e. the appellant, Satish, Pappa and Samma.

PW-12, another sister of the prosecutrix, stated that she alongwith the victim and other sister had gone to collect woods on

05.02.2015. Four persons i.e. the appellant, Samme, Pappe, Maruti were found consuming liquor. She alongwith her sister-PW-1, were ahead of the victim, who was later found to be missing. The victim, it is stated was found on 06.02.2015 in the mustard fields of Samme in an unconscious condition.

PW-2, father of the victim, stated that his daughter, the victim had gone to the fields to bring woods on 05.02.2015. Two of his daughters returned back, but the victim went to the house of her paternal aunt (Bua). PW-2, called up his brother-in-law (PW-3), who replied that the victim was at his home and he would bring her back on the next day. It is stated that on reaching home his daughter (the victim) informed that she was subjected to rape by Samey, Pappe and Satish. It is stated that he alongwith his daughter went to the Police Station, but no action was taken in the matter. Instead of taking action against the three persons named, the present appellant was picked up and falsely implicated. PW-2, further stated that his daughter (the victim) committed suicide on 04.03.2015 due to the humiliation caused to her by the abovesaid three persons. PW-2 denied his statement Ex.PW2/B before the police though he admitted his signatures at point A on the statement of the victim recorded on 06.02.2015. PW-2 denied that he deposed falsely due to a compromise with the appellant. The said witness was declared hostile.

PW-3, uncle (Phufa) of the prosecutrix, stated that on 05.02.2015, the victim reached his home. His wife informed that rape had been committed upon the victim by three persons. PW-3 stated that he called the father of the victim and disclosed about the incident. Thereafter, the police authorities were informed. PW-3 denied having suffered the statement PW-3/A before the police to the effect that when the victim did not return home on 05.02.2015, he alongwith the victim's father and PW-16

went to look for or that she was found on 06.02.2015 in mustard fields of Sukhwant or that she revealed the commission of rape upon her by the appellant. PW-3 denied that he was deposing falsely due to a compromise effected with the appellant. The said witness was also declared hostile.

PW-16, another uncle (Phufa) of the prosecutrix, has testified before the learned trial Court. He stated that on 05.02.2015, he alongwith his brother while searching for the victim, found the appellant standing in the mustard fields. The appellant tried to conceal himself on seeing them. They caught hold of him, but the other three persons accompanying the appellant managed to flee. The victim was found in an unconscious condition in the fields. First aid was given to her and she revealed that the appellant along with Samme, Jai Bhagwan and another person committed rape upon her.

PW-14-Dr. Mishu Mangla, examined the victim on 06.02.2015, itself. It is recorded that there is an alleged history of sexual assault six times in the last two days. No injury, external or internal, was found on the person of the victim. On local examination, hymen was found to be ruptured but it appeared to be an old tear. No fresh tear or bleeding was present. PW-14, opined that possibility of sexual intercourse could not be ruled out.

It is to be noticed that it is only the present appellant, who was proceeded against. The witnesses i.e. the sisters, father and uncles of the victim while raising allegations against three other persons in their testimonies before the learned trial Court did not name the said persons or at any stage in the interregnum.

The victim in this case was about 16 years of age. The argument that age of the victim has not been proved is not borne out from the record. Certificate from the Government Middle School, Bilblan, Tehsil Gohana, was exhibited, wherein the date of birth of the victim is stated to be

10.08.1998. The said certificate has been duly proved by PW-22, Mahabir Dutt, SS Master, Govt. Middle School Bilblan, Tehsil Gohana. PW-22 was working as in-charge of the School as no headmaster was posted at that time. There is nothing on record to suggest that the said certificate is fraudulent or incorrect.

The victim unfortunately passed away on 04.03.2015. Therefore, her statement could not be recorded before the learned trial Court. However, in such a situation, it cannot be said that the appellant cannot be convicted on the basis of the available record. The victim in her complaint has narrated the events as they unfolded in a clear and cogent manner. In her statement under Section 164 Cr.P.C., which was recorded promptly without any delay on 06.02.2015 itself, the victim has reiterated her stand in a consistent manner. The victim stated in no uncertain terms that she was subjected to rape by the appellant. She did not name any other person as the accused. As per the F.S.L. report Ex.PX, human semen was found on the Salwar, shirt, vaginal swab of the prosecutrix as well as the undergarments of the appellant.

In my considered opinion, the appellant cannot derive any benefit whatsoever from the discrepant statements of two sisters, father and uncles of the victim. The father of the victim-PW-2, has done a complete volteface while stating before the learned trial Court that the appellant has been falsely implicated in this case at the instance of the police authorities. Both the sisters of the victim PW-1 and PW-12 in their statements before the learned trial Court have deposed about the commission of rape by the appellant though along with three other persons. PW-1 was duly confronted with her statement Ex.DA wherein she stated that the victim was recovered from the mustard fields of the appellant on 06.02.2015 at about 11.00.a.m.,

by her father and uncles. PW-1 and PW-12 have not negated the commission of the offence by the appellant even while stating that three other persons were involved in the crime.

PW-16 one of the uncles of the victim has specifically deposed about the commission of the offence by the appellant though alongwith three others.

A perusal of the record reveals that in their initial statements, the said witnesses did not reveal that the victim disclosed anything about rape being committed upon her by three or four persons. Allegations were raised solely against the appellant. Presence of three other persons has been introduced by the said witnesses at the time of deposing before the learned trial Court. Moreover, there is nothing on record to show that any protest whatsoever had ever been raised either by the appellant, the victim or her father against inaction of the authorities against the other three persons, who are alleged to have committed rape upon the victim. It is opposed to all probabilities that such a studious silence would have been maintained and there would have been no action against the so called false implication of the appellant as suggested by the father of the victim in his statement before the learned trial Court.

It is noticed that as per photographs Ex.P1 to Ex.P-6, pieces of broken bangles were indeed recovered from the spot. This is so verified by PW-18-LPSI Kavita. Argument of learned counsel for the appellant that absence of injuries on the victim negates any element of force, is devoid of any merit. The Hon'ble Supreme Court in **Gurcharan Singh Vs. State of Haryana, 1972 AIR (SC) 2661**, has held that absence of injuries in itself does not indicate the negation of allegations of rape.

In the present case, the victim herself raised allegation of rape

qua the appellant only and not against three or four persons. Moreover, the plea of consent was never raised by the appellant. He has pleaded innocence and false implication. Thus, the argument regarding consent raised by learned counsel for the appellant is unacceptable. Such a plea was never taken or proved. Furthermore, the victim in this case is proved to be a minor. The appellant was admittedly a married person having two children as well. The question of consent or otherwise in the factual matrix of the case is irrelevant.

Similarly, acquittal of the appellant for the commission of the offence under Section 306 IPC, in respect to the death of the victim, cannot be of any avail to him. Absence of ingredients of Section 306 IPC do not automatically mean that the offence under Section 376 IPC, is not made out against the appellant. In my considered opinion, the appellant has been rightly convicted by the learned trial Court for the offence punishable under Sections 376, 506 IPC and Section 4 of the POCSO Act. Prosecution has indeed succeeded in proving its case beyond reasonable doubt against the appellant. No other arguments has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction dated 19.07.2016 and order of sentence dated 21.07.2016, passed by the learned Additional Sessions Judge, Special Court, Sonipat. The said judgment and order dated 19.07.2016 and 21.07.2016, are accordingly upheld.

Consequently, this appeal is dismissed.

July 02, 2018
s.khan

[LISA GILL]
Judge

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