

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2467-SB-2015 (O&M)
Date of decision: 14.12.2018

Virender ... Appellant

versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rohit Kaushik, Advocate and
Mr. Pankaj Gupta, Amicus curiae
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal is directed against the judgment of conviction dated 15.04.2014 and order of sentence dated 16.04.2014 passed by learned Addl. Sessions Judge(Exclusive Court), Jhajjar wherein the accused-appellant has been convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Virender	354 IPC	Rigorous imprisonment (RI) for 01 year	₹ 500/-	One month
	377 IPC	RI for 05 years	₹ 2,000/-	Six months

Both the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 12.10.2012 the complainant – Joginder (PW-1) moved an application to the police alleging that on 06.10.2012 when his elder daughter 'X' (hereinafter referred to as 'victim') aged 5 years was playing in front of his house, his neighbour

appellant Virender enticed away his daughter to his house where he sexually assaulted her by thrusting his penis forcibly into her mouth. The victim narrated the incident to her mother (PW-2), who in turn informed her husband i.e. complainant. The complainant further submitted that due to the stigma and shame attached qua such acts as well as for the honour of the family, they had kept silent for the past few days. On the statement of complainant, formal FIR Ex.PW-7/A was recorded at Police Station Sadar, Bahadurgarh by SI Satbir Singh (PW-7). Thereafter, the investigation was set into motion and the appellant was arrested soon after on the same day. The accused-appellant was medico-legally examined vide MLR Ex.PW-4/B at General Hospital, Bahadurgarh. On completion of investigation, report under Section 173 Cr.PC was filed against the accused-appellant and charges were framed under Sections 354/377 IPC and 3(1)(xi) SC/ST Act, 1989 to which the appellant pleaded not guilty and claimed trial.

3. The prosecution examined as many as nine witnesses including the victim as PW-5 to prove its case.

4. All the incriminating circumstances appearing against the appellant in the prosecution evidence were put to him under Section 313 Cr.PC to which he alleged false implication. No evidence was adduced by him in his defence.

5. Learned counsel for the appellant has firstly challenged the impugned judgment on the ground of inordinate delay in reporting the matter to the police by the parents of the victim. He has further argued that this delay has been utilized by the complainant to falsely implicate the appellant since the complainant had entered into an agreement with the

appellant for the sale of his property and had received ₹ 2 lakhs as earnest money from him but later on the complainant became greedy as he was offered a higher price for the said property. When the appellant thus, demanded back the earnest money of ₹ 2 lakhs from the complainant, he was falsely implicated in the case in hand. Besides this, my attention was also drawn to the discrepancies and contradictions in the deposition of the prosecution witnesses.

6. Learned State counsel, on the other hand, argued that in the case in hand the victim was a minor girl of tender age, who had been subjected to sexual assault by the appellant. There was enough cogent evidence on record against the appellant to establish his guilt.

7. I have heard learned counsel for the appellant as well as State counsel. I have also gone through the evidence and all other material available on record.

8. Both the parents of victim PW-1 Joginder and PW-2 Kavita have fully corroborated the prosecution version on all the material aspects of the case.

10. The victim, who was examined in camera, has given a detailed and vivid account of the sexual assault, which was committed on her by the appellant. A perusal of her testimony cannot by any stretch of imagination, be said to be a tutored deposition. A victim of molestation and indignation is in the same position as a stamped injured witness and hence, her testimony would carry the same weight. She not only identified the appellant in the Court while stepping into the witness box but withstood the test of cross-examination without any dent being created by the defence in

her deposition. This five year old victim is, in fact, the star witness. She is the person, who faced the assault and hence, the discrepancies and contradictions, which were pointed out by the learned counsel for the appellant in the testimonies of the parents i.e PW-1 Joginder and PW-2 Kavita are of no consequence. Since the testimony of the victim inspires confidence, it would not be necessary to look for corroboration.

11. As far as the argument of learned counsel for the appellant qua delay in registration of FIR is concerned, the same deserves to be outrightly rejected.

As observed earlier, the victim was a 5 year old girl. It would not have been easy for the parents of the victim to lodge a complaint of this nature and thereby expose their daughter to the risk of social stigma, which is till prevalent in Indian society. The delay in lodging the FIR in cases of such nature cannot be equated with the cases involving other offences as the honour of the family is at stake and thus, there is great reluctance on the part of the immediate family to report the matter to the police. One can visualize what the parents and family members of the victim would have gone through on learning about the deplorable act and assault having been committed on their child. It can be well appreciated that for keeping the honour of their family intact, they would have chosen to keep mum till they finally mustered the guts and courage to come out and report the matter to the police on 12.10.2012. A perusal of the testimonies of the parents of the

victim i.e PW-1 Joginder and PW-2 Kavita reveals that due to the stigma and shame attached to the act, they were reluctant to report the matter to the police. It has also come in the testimony of PW-2 Kavita that on the day when the victim came crying home after the assault, she had taken her maternal uncle namely Laxmi Narain into confidence. No parent from whatever strata of society he/she may belong to, would ever concoct or weave a story of sexual assault on their daughter just to avoid return of the earnest money as suggested by the defence in the cross-examination during trial. Moreover, this plea of the defence is only a suggestion on paper without anything in support thereof. Hence, in this background the argument of learned counsel for the appellant qua the inordinate delay is devoid of any merit.

12. In the light of the aforementioned discussion, I do not find any perversity in the case of the prosecution from which it can be said that the guilt of the appellant has not been proved beyond the reasonable doubt. The same is accordingly dismissed. The impugned judgment of conviction and order of sentence dated 15/16.04.2014 is accordingly upheld.

Section 327 Cr.PC imposes a clear cut bar that the name or identity of a victim whether adult or a child, of sexual assault or abuse has to be protected and his/her identity should not be disclosed.

Unfortunately, in the impugned judgment, the identity of the victim has not been concealed as per the provisions of Section 327 Cr.PC.

A perusal of the evidence adduced before the trial Court as well as in the

impugned judgment reveals that the name of the victim has been freely and frequently used, which should not have been done. A copy of this order be sent to the concerned Addl. Sessions Judge, who passed the impugned judgment and order with an advisory that in future she should refrain from disclosing the name of the victim and instead use pseudonymous name e.g. X or Y or any other coded identity as has been time and again directed by the Hon'ble Supreme Court as well.

14.12.2018
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No