

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

Criminal Appeal No.S-3964-SB-2014

Date of Decision:17.02.2018

Gurdial Singh

.....Appellant

V/S

State of Punjab

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Satish Garg, Advocate for the appellant.

Mr.Seena Mand, DAG, Punjab.

RITU BAHRI J. (ORAL)

This appeal has been preferred against the judgment of conviction dated 06.08.2014 and order of sentence dated 08.08.2014 passed by learned Addl. Sessions Judge, Bathinda, vide which the appellant has been held guilty under Section 376 of Indian Penal Code. He was sentenced to undergo RI for 10 years and to pay fine of Rs.30,000/-.

Prosecution version is that on 23.05.2013, ruqa was received from Civil Hospital, Talwandi Sabo on the basis of which ASI Gurmail Singh along with other police officials went to Civil Hospital, Talwani Sabo and after obtaining opinion of Medical Officer regarding fitness of victim her statement was recorded.

In her statement she stated that her mother Harpal Kaur died about 06 years ago. They are two sisters, no brother. Her father performed second marriage with Simarjeet Kaur about two months ago. After death of her mother, she remained mentally stressed. Her father called one Gurdial Singh son of Mohinder Singh, resident of Talwandi Sabo in order to give her spiritual

treatment. On 22.05.2013 after preparing the dishes, they called Gurdial Singh, who started reciting “Mantras”. She alongwith her mother, father sat near Gurdial Singh. Her mother went to call her cousin (Aunt's/Bua's son) and father was sent by Gurdial Singh in order to bring some material from market. At about 10.P.M. Gurdial Singh with bad intention finding her alone, caught her arm on the pretext that he would exorcise the ghost (evil spirit) which are inside her and took her to room. Gurdial Singh made her lay down on ground by holding her from hair and forcibly opened the string of her “Salwar” and committed rape without her consent. When she felt pain, she started crying but he gagged her mouth. In the meantime, her mother, father and Gurbir Singh (cousin) came at the spot. On seeing them, Guridal Singh ran away from the spot by trying his 'Chadra'). On next morning, she was got admitted at Civil Hospital.

After recording the statement of victim, it was read over to her, who signed the same in token of its correctness. It was duly attested by Investigating Officer. Ruqa was sent to police station on the basis of which FIR under Section 376 IPC was registered. Investigating Officer went to the place of occurrence and prepared rought site plan. HC Jasvir Singh produced one parcel with seal bearing impression “SG” before Investigating Officer which was sent to the office of Chemical Examiner. Statements of the witnesses were recorded. During investigation, the accused was arrested on 24.05.2013. After completion of investigation, report under Section 173 Cr.P.C. was presented in the Court.

On appearance of accused in the Court, copies of documents were supplied to the accused free of costs, as required under Section 207 Cr.P.C.

Finding sufficient evidence against the accused, charge-sheet under Section 376 IPC was served upon accused by the then learned Addl. Sessions Judge, Bathinda vide order dated 31.08.2013 to which the accused pleaded not guilty and claimed trial. Thereafter, the prosecution was called to lead evidence.

In order to prove its case, the prosecution examined PW1 Cr. Avtar Singh, Medical Officer, Civil Hospital, Talwandi Sabo, PW2 ASI Gurmail Singh (Investigating Officer), PW3 Dr. Sonia Gupta, Medical Officer, SDH, Talwani Sabo, PW-4 Paramjit Kaur, Headmistress, Govt. Khalsa High School, Talwani Sabo, PW5 HC Jasvir Singh, PW6 Dulla Singh (father of the victim) PW7 victim (name withheld), PW8 HC Iqbal Singh. No other witness has been examined by the prosecution and the evidence was closed.

After closure of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein all the incriminating evidence appearing against the accused was put to him. The accused denied all the allegations and pleaded false implication.

No evidence was led by the accused in defence despite availing opportunity.

The version of the victim when appeared as PW-7 and the complainant PW-6 (father of the victim) has been accepted as it has been corroborated with the medical evidence given by Dr. Sonia Gupta (PW-3), SDH, Talwandi Sabo, who has conducted the medico legally examination of the victim and proved report Ex.P3. PW-1 Dr. Avtar Singh, Medical Officer, Civil Hospital, Talwandi Sabo, conducted the medical examination of accused Gurdial Singh and gave his opinion vide MLR Ex.P.1 that there was nothing to

suggest that he was not capable of performing sexual act. The age of the victim was proved by PW-4-Paramjeet Kaur, Headmistress, Govt. Khalsa High School, Talwandi Sabo. She deposed that the victim was admitted in 5th standard and her date of birth was 10.06.2002 and she left the school on 30.03.2013 as per school leaving certificate Ex.PW4/A. On the date of the incident, she was 11 years old. PW-2 ASI Gurmail Singh (Investigating Officer) and PW-5 Jasvir Singh are formal witness who deposed that with regard to investigation carried out and site plan prepared and samples of clothes of victim with sealed impression were deposited in the office of Chemical Examiner.

In the report Ex.PW3/A of Chemical Examiner, it is opined that “no spermatozoa were detected in the contents of exhibit II, but spermatozoa were detected in the contents of exhibit I”.

It appears from the evidence, PW6 Dulla Singh(father of the prosecutrix) that accused, who imposed himself as empowered by supernatural power assured him to treat his daughter and asked to make preparation for 'Karahi'(Puja) (Sukh Sukhna), of 'Halwa', meat(non-veg) and liquor (whiskey) and thereafter, intentionally accused firstly send his wife and children out of house and in the late night he sent PW6 Dulla Singh(father of the victim) in order to bring 'Dhoof'. Testimony of this witness has been duly corroborated by the victim PW7 and the misdeeds/conduct of the accused who is aged about 60 years under the garb of supernatural power committed rape on a minor girl, has been narrated by victim herself while stepping into the witness box. There no suggestion put to the witness, nor any witness has been examined in defence that accused is not, imposing himself in the area as blessed with the

supernatural power. Rather, he himself stated in statement under Section 313 Cr.P.C. that father of victim came to him for treatment of victim. So in such like circumstances, there is no ground to disbelieve the prosecution story particularly statement of the victim, who has been subject to lengthy cross-examination, but the defence counsel failed to shatter the testimony of the victim.

In statement under Section 313 Cr.P.C., it has been categorically admitted by accused that when the victim was passing through the lane of her house, he saw that victim is in indecent condition and thereafter he was called by the father of victim to treat her, since was surrounded by some evil spirits. Meaning thereby, it is admission on the part of the accused about his presence around house of victim and he used to treat the people by imposing himself blessed with the supernatural powers.

In view of the above, the accused-Gurdial Singh is held guilty for the commission of offence punishable under Section 376 IPC and convicted thereunder and sentenced him for 10 years rigorous imprisonment.

After going through the evidence and materials on record, this Court is of the opinion that the order of the trial Court does not reflect any material irregularity or perversity which warranting any interference. Hence, the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

17.02.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No