

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-466-SB of 2014(O&M)
Date of Decision: December 19, 2018

Amandeep Singh @ Aman Appellant

Versus

State of Punjab Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Aman Dhir, Advocate
for the appellant.

Mr. Jagmohan Ghumman, DAG., Punjab.

LISA GILL, J.

Appellant has been convicted for the offence punishable under Sections 376 and 342 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Additional Sessions Judge, Amritsar, vide impugned judgment dated 25.03.2013 and by a separate order of conviction of even date, he has been sentenced as under:-

Offence u/s	Sentence
376 IPC	Rigorous imprisonment for 10years; besides pay a fine of ₹5000/- and in default thereof to further undergo RI for 01 month
342 IPC	Rigorous imprisonment for 01years; besides pay a fine of ₹1000/- and in default thereof to further undergo RI for 15 days

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

Brief facts essential for the adjudication of this case are that FIR no. 131 dated 26.06.2012 (Ex.PW4/C) was registered on the statement of

father of the victim. It was stated that the complainant was a labourer having four (04) children i.e., three girls and one boy. The victim was stated to be the youngest of all children, aged about 13 years. The complainant's wife was stated to have gone to Mysore in Nirankari Sammelan on 22.06.2012. All the four children were present at home. The complainant's elder daughter went to the market on 25.06.2012 for purchasing medicine. They left his youngest daughter at the house of their maternal aunt (Massi) near Barna Sahib Gurudwara. At about, 06.00.p.m., when the complainant went to his sister-in-law's house for bringing back his youngest daughter and as he entered through the door, he heard shrieks of his daughter from inside. He knocked upon the door and the present appellant, who is the son of his sister-in-law rushed out, pushed the complainant and threw the complainant on the ground. Complainant went inside and saw his daughter lying in a pool of blood, which was oozing from her private parts. He brought back his daughter to their house and narrated the incident to his wife. He took his daughter to Civil Hospital for treatment. She was sent to Guru Nanak Dev, Hospital, where she was still under treatment. Legal action against the appellant was prayed for.

PW-4-ASI-Harjit Singh revealed that he received an MLR relating to the victim on 26.06.2012. Pursuant thereto he along with other officials went to Guru Nanak Dev, hospital, Amritsar, where the victim was admitted. Father of the victim recorded his statement Ex.PW2/A, on the basis of which FIR (Ex.PW4/C) was registered. Rough site plan (Ex.PW4/E) was prepared. Sealed parcels handed over by the doctor were taken in police custody. The complainant produced the blood stained clothes of the victim on 27.06.2012, which were taken in police custody vide separate recovery memo Ex.PW2/B. The appellant was arrested on 27.06.2012. Disclosure

statement (Ex.PW4/H) was suffered by the appellant leading to recovery of blood stained jute bag, which was used at the time of commission of the offence. Medical examination of the appellant was conducted on an application dated 28.06.2012. Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') on completion of investigation was presented against the appellant. Charge under Sections 376, 342 IPC against the appellant was framed on 19.01.2013, to which appellant pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined ten (10) witnesses.

Appellant in his statement under Section 313 Cr.P.C., while denying the incriminating evidence put to him pleaded innocence and false implication. Two defence witnesses were examined by the appellant in defence.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that prosecution successfully proved its case beyond reasonable doubt against the appellant. Consequently, the appellant was convicted for the offence punishable under Sections 376, 342 IPC 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 evidence on record does not prove the guilt of the appellant beyond reasonable doubt. There are material discrepancies in the statement of the victim herself, which points to the innocence of the appellant. It is submitted that PW-2, the victim, stated that her maternal aunt (Massi) was present in the house, whereas the complainant who testified as PW-3 stated that none other than the complainant, his daughter and the appellant who fled from the

spot were present at the time of the incident. It is further argued that the victim stated that she was gagged by the appellant and could not raise any noise, whereas the complainant stated that he heard shrieks of his daughter. It is vehemently urged that the victim is a tutored witness. It is further argued that age of the victim is not proved to be 13 years. She was above 16 years old at the time of the accident. The appellant was falsely implicated merely on account of vindictiveness and political vendetta. The victim under the influence of her parents deposed falsely. Defence evidence, it is submitted was not properly appreciated by the learned trial Court. It is thus prayed that this appeal be allowed and conviction of the appellant be set aside and he be acquitted of the charges against him.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear and cogent evidence on record, which clearly reveals the commission of the offences by the appellant as charged. The appellant has been rightly convicted for the offences punishable under Sections 376, 342 IPC and sentenced accordingly. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment of conviction and order of sentence dated 25.03.2013, which is based on sound appreciation of the evidence on record.

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

It is relevant to note that the complainant as well as the victim clearly described the incident as it unfolded. PW-3, the complainant specifically stated that when he went to his sister-in-law's house on 25.06.2012 to pick up his daughter, he heard shrieks of his daughter. The appellant ran out of the house while pushing him. He saw his daughter lying on the ground with her clothes blood stained. She was admitted to the Civil

Hospital for treatment. Blood stained clothes of the victim were presented by him before the police. PW-2, the victim has given a version which is in consonance with her statement under Section 164 Cr.P.C (Ex.PW2/A). The victim categorically stated that rape was committed upon her by the appellant. Much stress has been laid by learned counsel for the appellant on the questions put to the said witness whether she had been taught by her father or anyone else and her reply that she was taught by her father and mother, to suggest that the victim was a tutored witness. Wholesome reading of the testimony of the victim reveals that the answers to the said question do not lead to an inference that the victim had been tutored. The same to the contrary, reflects that the victim in normal course of life was taught by her parents like any other child. The victim of tender age withstood lengthy and searching cross-examination, but nothing fruitful could be derived by the appellant in his favour therefrom. The perceived discrepancies regarding the presence or otherwise of the maternal aunt at the time of the accident and gagging of the victim by the appellant, is not relevant in the facts and circumstances of the case.

An attempt has been made to urge that testimony of the victim cannot be relied upon as the complainant himself referred to the victim as a simpleton. It is to be noticed that the learned trial Court has inquired about the eligibility of the said witness and has specifically opined that the victim was a competent witness. She had answered the Court's questions in a rational manner. Victim was certified to be a competent witness by the learned trial Court in accordance with law. There is no reason whatsoever to doubt the said certification.

Similarly, the appellant cannot derive any benefit from the medico legal report (Ex.PB) of the victim. Learned counsel for the appellant

submitted that no injuries were detected on the victim's person, therefore, there was no question of the complainant seeing the victim lying in blood. However, a perusal of the MLR (Ex.PB) indicates that the victim was menstruating at the time of examination. As per the Medical Examiner's Report (Ex.PG), spermatozoa was detected on the vaginal swabs. Therefore, there is no occasion to doubt the version set-forth by the complainant and the victim. Furthermore, PW-1-Dr. Upaasna, Lecturer OBST and Gynae, Bebe Nanki Mother and Child Centre, Government Medical College, Amritsar, specifically opined that the victim was subjected to sexual intercourse. She has further specified that it is possible to detect spermatozoa on the victim's swab as it was the 4th day of menstruation of the victim.

Learned counsel for the appellant further sought to urge that the victim was over 16 years of age while relying upon the radiological report (Ex.PW5/A), wherein it is opined that radiological age of the victim is between 13 to 17 years. It is relevant to note that the said report gives a wide variation which in itself is unacceptable. The complainant as well as the victim herself have mentioned her age to be 13/14 years. Her age in the MLR is recorded as per the age disclosed by the mother of the victim. It is further relevant to note that not even a suggestion was put to the complainant or the victim to suggest that the victim was over 16 years of age.

Furthermore, oral testimony in the shape of DW-1-Sarabjit Singh @ Sawinder Singh @ Shabba Darji, DW-2-Charan Singh son of Karnail Singh to the effect that the victim is a mentally retarded child, is not sufficient to prove the same. Defence has indeed failed to prove any such circumstance which points to the false implication of the appellant. There is no evidence whatsoever, available on record, which indicates the reason for involving such a close relative for the commission of the offence. It is not

explained as to what was the vindictiveness or the political vendetta, the complainant could possibly have against the appellant and his family. Therefore, commission of the offence is clearly proved. Appellant has been rightly convicted by the learned trial Court for the offences punishable under Sections 376, 342 IPC. Prosecution has indeed succeeded in proving its case beyond reasonable doubt against the appellant.

At this stage, learned counsel for the appellant prays that as the appellant himself is a young person, he may be shown leniency and the sentence of 10 years imposed upon him be reduced.

Keeping in view the facts and circumstances of the case, I do not find any mitigating circumstances to reduce the sentence imposed upon the appellant by the learned trial Court. Victim in this case was merely thirteen or fourteen years of age. She was left at her maternal aunt's home in order to ensure her safety and security in the absence of her parents and siblings. The appellant, who is none other than the victim's cousin brother (maternal aunt) Massi's son committed a dastardly act. Sentence imposed upon the appellant is commensurate with the gravity of the offence and calls for no reduction therein.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and order of sentence dated 25.03.2013, passed by the learned Additional Sessions Judge, Amritsar. The said judgment and order dated 25.03.2013, is accordingly upheld.

Consequently, this appeal is dismissed being devoid of any merit.

The accused-appellant is on bail. His bail stands cancelled and

bail bonds forfeited. Necessary steps be taken to secure his custody.

December 19, 2018

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.