

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

CRA-S-531-SB-2015

Date of decision:-29.8.2018

Umed

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.M.S. Randhawa, Advocate
for the appellant.

Mr.Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

Accused Umed faced trial by learned Additional Sessions Judge, Narnaul, who vide judgment dated 10.12.2014 convicted him for the offences under Sections 452, 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012(hereinafter referred to as *the Act*) and vide order dated 12.12.2014 sentenced him as under:

Under Section	Sentence Awarded
452 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of three months.
506 IPC	Rigorous imprisonment for six months and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of three months.
4 of the Act	Rigorous imprisonment for seven years and to

	pay a fine of Rs.50,000/- and in default thereof, to further undergo simple imprisonment for a period of one year.
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All the sentences were ordered to run concurrently.

The accused-convict – Umed, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that on 20.6.2014, the prosecutrix/victim (name not being mentioned to conceal her identity and referred to as *the prosecutrix*) daughter of Shyam Sunder, resident of village Sirohi Bahali, aged about 16 years got her statement recorded with police of Police Station Nangal Choudhary. Legal Aid counsel was summoned to the police station. In her statement, the prosecutrix stated that on 20.6.2014 at about 2:30 p.m. while she was alone at her home since her mother had gone to her sister's house and she was watching television, in the meanwhile Umed son of Ratan Lal, her uncle in relations, came to the room, bolting it from inside and then he forcibly performed sexual intercourse with her. According to the prosecutrix, when she raised an alarm, accused ran away from the spot; that Meena wife of Sunil, sister-in-law of the prosecutrix had seen the accused running away.

Formal FIR was recorded. The prosecutrix was got medico legally examined from Government Hospital. Bed-sheet from the place of incident was taken into possession vide a recovery memo. On 21.6.2014, the statement of prosecutrix was got recorded under Section

164 Cr.P.C. from Judicial Magistrate Ist Class, Narnaul. Accused Umed was arrested in this case on 21.6.2014. During the course of interrogation, he suffered a disclosure statement, wherein he admitted that on 20.6.2014, he had committed rape upon the prosecutrix at her house and he demarcated the place of occurrence. A memo in that respect was prepared. He was got medically examined from the Government Hospital, Nangal Choudhary and the doctor opined that there was nothing to suggest that he was unable to perform sexual intercourse. The underwear, shirt, trouser (salwar), vaginal swabs, pubic hair of the prosecutrix etc. taken by the doctor at the time of medical examination of prosecutrix, were forwarded to FSL, Madhuban. Similarly bed-sheet recovered from the place of occurrence, underwear of the accused taken into possession were also sent to FSL, Madhuban. During the course of investigation, the Investigating Officer recorded statements of witnesses, and took into possession various documents.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Narnaul.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Narnaul, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 376 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Narnaul committed the case to the Court of learned Sessions Judge, Narnaul vide order dated 2.8.2014, from where it was entrusted to the Court of learned Additional Sessions Judge, Narnaul.

On receipt of case in the Court, learned Additional Sessions Judge, Narnaul observing that prima facie charge for offences under Sections 452, 506 IPC and Section 4 of the Act or in the alternative Section 376 IPC was disclosed against accused, he was charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as 10 witnesses i.e. PW1 Dr.Jitender Yadav, PW2 L.C. Suman Devi, PW3 Constable Sanjay Kumar, PW4 HC Yudhvir Singh, PW5 SI Smt.Meenakshi Devi, PW6 the prosecutrix, PW7 Smt.Meena, PW8 Smt.Saroj Devi, PW9 ESI Satbir Singh and PW10 Dr.Anjli Saini.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him, but he denied the allegations contending that he is innocent and has been falsely implicated in the case.

In defence evidence accused examined Rahul Saini, Data Processing, Assistant, Office of Chief Medical Officer, Narnaul as DW1.

After hearing arguments, learned trial Court convicted and sentenced accused Umed as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the present appeal.

The prosecution has successfully proved its charge against

the accused conclusively and convincingly. The star witness for the prosecution happened to be PW6 - the prosecutrix, who supported the prosecution story on material aspects. Though she was subjected to lengthy cross-examination but she stuck to her guns and could not be shattered on any material point.

No previous enmity between the complainant and the accused has been alleged or proved, prompted by which she might have embarked upon treading the dangerous path of false implication to wreak vengeance. The prosecutrix had produced on record her original matriculation certificate showing her date of birth as 16.8.2000, which points out that at the time of incident, she was aged less than 14 years, as such a minor.

PW7 Smt.Meena, a sister-in-law of the prosecutrix in relations, having her house adjacent to that of prosecutrix, had also deposed that on 20.6.2014 at around 2:30 p.m., she heard screams from the house of prosecutrix and rushed there observing that accused was running away from there; that she went inside the house of prosecutrix and found that the prosecutrix was sitting there and weeping; that she told her that Umed had come there and had committed sexual intercourse with her against her wishes and had also threatened to kill her. That provides corroboration to the version of the prosecutrix on very important points. The presence at the spot of Smt.Meena is natural and probable having her house near house of the prosecutrix. She being a housewife, there was nothing unusual for her to be at home at around 2:30 p.m. She could very well hear the noise coming from the house of complainant and being a neighbour and close relative rushing to the spot

to see as to what had gone wrong there. She having observed accused running away and on reaching the spot the prosecutrix telling her that accused had raped her clinches the matter for the prosecution, since all these things happened as a part of transaction and the deposition of PW7 Smt.Meena is admissible being *res gestae*.

The medical evidence in this case corroborates the ocular evidence. PW1 Dr.Jitender Yadav, who had medically examined the accused had come to the conclusion that there was nothing to suggest that he was incapable of performing sexual intercourse, to put it straightly he was capable of performing sexual intercourse. PW10 Dr.Anjali Saini had proved the MLR of the prosecutrix stating that in her opinion possibility of sexual intercourse could not be ruled out.

Report from the FSL Ex.PX goes to show that human semen was detected on the bed-sheet and underwear of the accused. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction. The remaining evidence corroborates the prosecution story.

It may be mentioned here that during the course of cross-examination of prosecutrix, a suggestion was given to her that she herself had called the accused and did not raise any protest at the time of sexual intercourse by the accused. That clinches the matter for the prosecution. The prosecutrix being a minor, even if for a moment, it is taken that she was a consenting party to the sexual intercourse, her consent is immaterial and does not nullify or dilute the offence

committed by the accused.

Furthermore, learned counsel for the appellant has put forward the contention that the human semen found on the bed-sheet and underwear of the accused was not got analyzed to prove that traces of semen found there as well as on the clothes of prosecutrix belonged to the accused. This contention is not much material. Though such test if got conducted, would have fully nailed the accused but absence thereof, does not effect the prosecution case adversely. The police of this region is not known for scientific investigation. Even otherwise, due to faulty investigation in a criminal case, the accused cannot derive any benefit. Nevertheless there is overwhelming evidence available on the record to prove case of the prosecution against the accused beyond a shadow of reasonable doubt.

Although, learned counsel for the appellant raised a plea that the accused has been roped in wrongly on account of a dispute between his family and that of prosecutrix regarding partition of joint land, but neither there is any cogent and convincing evidence adduced by the accused in that regard nor the plea seems convincing. No family would like to invite stigma on the moral character of its young female member for such a small reason, therefore, motive suggested is highly unconvincing.

One more argument put forward by learned counsel for the appellant was that there was no external mark of injury on the person of the prosecutrix as well as that of accused and if accused had indulged in having forcibly sex with the prosecutrix, then in normal course marks of struggle and injuries would have been there on the body of prosecutrix

as well as on the accused. However, I am not impressed by this contention. As already observed, the prosecutrix being a minor girl, her consent if any, is of no value. Furthermore, putting a girl in fear and while she is in state of shock, subjecting her to sexual intercourse when she is not in fit state of mind to offer resistance, cannot be taken to be consent on her part.

The prosecution had successfully proved the charge against the accused beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The accused by committing rape on an innocent minor female girl causing a nightmare and horrible trauma to her, deserves to be dealt with sternly, so as to send a signal in the society that such type of criminals would have to face harsh punishment. I do not see any reason to reduce the sentence of imprisonment in any manner. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

29.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No