

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-780-SB of 2014 (O&M)

Date of decision : 26.9.2018

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Rinku

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Vijay Laxmi, Advocate
for the appellant.

Ms. Aditi Girdhar, AAG, Haryana.

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H. S. Madaan, J.

Accused – Rinku faced trial by Additional Sessions Judge (Exclusive Court of the cases of Heinous Crime against Women), Karnal, for offences under Sections 376, 451, 506 IPC, on the allegations that on 24.7.2012, at about 12.00 at night, he trespassed in the house of complainant Shyam Lal s/o Phool Chand r/o village Bahri, District Karnal, and committed rape upon his daughter -victim prosecutrix (name withheld to conceal the identity) aged about 11 years, who was sleeping in a room of the house and accused threatened her that in case she disclosed the incident to anybody, then he would kill her. In the meanwhile, mother of the complainant got up and she observed the accused while he was escaping. On the basis of written complaint submitted by

complainant, formal FIR in the matter was recorded.

Investigation in the case began. The victim was got medico legally examined. The Investigating Officer recorded the statements of the witnesses and arrested accused Rinku.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then the accused was charge sheeted for the offence under Sections 451, 376 and 506 IPC, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined as many as thirteen witnesses, namely, PW-1 EHC Vir Shakti Singh, PW-2 Lady Constable Monika, PW-3 Dr. Manju Pathak, PW-4 Shyam Lal, father of the victim, PW-5 Dr. Arun Bhatti, PW-6 victim, PW-7 Smt. Dhanno, grandmother of the victim, PW-8 Constable Ranjit Singh, PW-9 EASI Suresh Kumar, PW-10, ASI Pawan Kumar, Investigating Officer, PW-11, victim (earlier victim was examined as PW-6 when she gave short statement and on her request that her condition had deteriorated, further examination-in-chief was deferred and again she was examined), PW-12 Raj Kumar and PW-13 Inspector Mohd. Jamal. With that the prosecution concluded its evidence, after tendering FSL report as Exhibit P-7.

Statement of the accused was recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations, pleading innocence. During his defence evidence, the accused tendered certified copy of judgment dated 2.8.2008 passed by SDJM, Assandh, in case FIR No. 445 dated 2.11.2017, under Sections 323, 324, 325 read with Section 34 IPC, Police Station Assandh as Exhibit DC, copy of report under Section 173 Cr.P.C. in said case as Exhibit DD, copy of list of witnesses as Exhibit DE, copy of FIR as Exhibit DF, copy of statement of Ajit Singh as Exhibit DG and copy of statement of Dhanno Devi as Exhibit DH and thereafter, closed the defence evidence.

After hearing arguments, the trial Court vide its judgment and order dated 1.2.2014, convicted and sentenced the accused, as under:-

<i>Offence u/s</i>	<i>Sentence</i>
U/s 451 IPC	Rigorous imprisonment for a period of one year and fine of Rs.1,000/-. In default of payment of fine to further undergo simple imprisonment for two months.
U/s 376 IPC	Rigorous imprisonment for a period of ten years and fine of Rs.10,000/-. In default of payment of fine to further undergo simple imprisonment for one year.
U/s 506 IPC	Rigorous imprisonment for a period of one year and fine of Rs.1,000/-. In default of payment of fine to further undergo simple imprisonment for 2 months.

All the substantive sentences were ordered to run concurrently. The sentence awarded in default of payment of fine was in addition to the substantive sentence.

The abovesaid judgment and order of his conviction and sentence left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant, learned

State counsel, besides going through the record.

I find that there is absolutely no merit in the appeal. The star witness of the prosecution happens to be the victim, who appearing as PW-6, fully supported the prosecution story, stating that on 24.7.2012, while she was sleeping with her grandmother on a separate cot, at about 12.00 midnight, accused Rinku who resides in their neighbourhood came there, gagged her mouth, untied string of her *salwar* and committed rape upon her. While she tried to remove his hand, in the meanwhile her grandmother woke up and she identified the accused. The victim stated that the accused while leaving the place had threatened her that if she disclosed the incident to anyone, then he would kill her. PW-7 Smt. Dhanno, grandmother of the victim supported the version given by her granddaughter PW-6 victim, on material aspects.

I find deposition of PW-6 and PW-7 Smt. Dhanno to be free from any blemish, inspiring confidence and worthy of reliance. Both the PWs were cross examined at length on behalf of the accused, but they stuck to their guns and could not be shattered on any material point. No reason has been suggested or proved, prompted by which they might have involved the accused wrongly or deposed against him falsely, to secure his conviction.

PW-4 Shyam Lal, complainant also lend support to the case of prosecution.

PW-1 EHC Vir Shakti Singh , draftsman, has proved scaled site plan of the scene of occurrence, which he prepared on the pointing out of victim. He proved such site plan as Exhibit P1.

PW-2 Lady Constable, Monika, deposed regarding taking into possession of various articles by the Investigating Officer in her presence.

PW-3 Dr. Manju Pathak, Medical Officer, who had medico legally examined the victim on 26.7.2012, after going through the FSL report Exhibit P-7, opined that possibility of sexual assault in this case cannot be ruled out. She proved various other documents.

From the testimony of PW-5 Dr. Arun Bhatti, Medical Officer, who had examined accused Rinku, as per police request on 26.7.2012, it comes out that he was fit to have sexual intercourse.

PW-8 Constable Ranjit Singh, happened to be a formal witness, who had taken special reports to the higher police Officers and SDJM, Assandh, deposed in that regard.

PW-9 EASI Suresh Kumar, Malkhana Moharir of Police Station Assandh, with whom case property was deposited by the Investigating Officer, had deposed in that regard. Whereas PW-10 ASI Pawan Kumar, was the Investigating Officer, who had carried out investigation in this case. PW-12 Raj Kumar, Incharge, Government Senior Secondary School, Bahri, proved school certificate of victim showing her date of birth as 2.1.2002.

PW-13, Inspector Mohd. Jamal, had just prepared the final report under Section 173 Cr.P.C.

The judgment rendered by the trial Court, is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The prosecution has successfully proved its charge against the accused beyond a shadow

of reasonable doubt, as such the trial Court was justified in convicting and sentencing the accused.

As regards the sentence part, considering the seriousness and gravity of the allegations in as much as, the accused went to the house of the complainant at night and raped his minor daughter aged about 11 years, sleeping there, there is no occasion to reduce the sentence, lest that would encourage the potential criminals to tread the path of crime.

Learned counsel for the appellant has referred to the following judgments:-

1) State of Karnataka vs. F. Nataraj 2015 (4) RCR (Criminal) 641;

2) Soni vs. State of Punjab 2016 (4) Law Herald 3180;

3) Gulzar Singh vs. State (U.T.) Chandigarh 2016 (5) RCR (Criminal) 750; and

4) Bali @ Bahal Singh vs. State of Rajasthan 2001 CriLJ 909

However, these authorities are not applicable to the facts and circumstances of the present case and does not help the appellant-accused in any manner.

Finding no merit in the appeal, the same stands dismissed.

26.9.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No