

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

CRA-S No.2105-SB of 2003
Date of decision: 10th July, 2019

Sher Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Saroha, Advocate for the appellant.

Mr. Ripudaman, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

Initially in case bearing FIR No.130 dated 06.09.2002 under Sections 452, 363, 354, 376, 511, 216, 366-A IPC pertaining to Police Station Loharu, three persons namely Sher Singh, Kurda Ram and Suresh were put up for trial and the Court of learned Additional Sessions Judge (Fast Track Court), Bhiwani through impugned findings acquitted accused Suresh and Kurda Ram whereas convicted the present appellant Sher Singh for commission of offences punishable under Sections 376, 511, 366A, 363, 451 IPC and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹300/- for the offence under Section 376 read with Section 511 IPC and in default of payment of fine to further undergo simple imprisonment for three months. Under Section 366-A IPC he was sentenced to undergo rigorous

imprisonment for seven years and to pay a fine of ₹300/- and in default of payment of fine to further undergo simple imprisonment for three months. He was also sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹200/- under Section 363 IPC and in default of payment of fine to further undergo simple imprisonment for two months. Under Section 451 IPC he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹100/- and in default thereof to further undergo simple imprisonment for one month. All the sentenced were ordered to run concurrently. It is against these findings, the appellant has come up in this appeal.

The allegations have come about by complainant Rajbir Singh alleging that his youngest daughter aged around six years, was sleeping in the courtyard of the house along with her mother Santosh. It is alleged that between 11:00 and 11:30 p.m., the mother woke up and found the girl missing and who raised the alarm and along with the complainant the family went out to search for her and heard cries from the adjoining shamlaat land and when they went there in light of the torch, they saw accused Sher Singh, present appellant, running away while the victim's salwaar had been removed and there were teeth bites on her cheeks. The victim revealed the role of the accused and on the basis of which, present case was got registered.

Upon completion of investigations and at the trial prosecution examined the complainant Rajbir as PW1, the victim as PW2, her mother

Santosh as PW3, Sarif as PW4, Har Nand as PW5, Dr.Suman Bhaskar as PW6, SI Ram Kumar as PW7, MHC Om Parkash as PW8, Constable Jitender Kumar as PW9, Dr.Randeep Punia as PW10, Lakhi Ram draftsman as PW11, Ram Kumar Patwari as PW12, Ram Chander Headmaster as PW13 and lastly examined SI Om Parkash as PW14. The prosecution proved documents Ex.PA, Ex.PB, Ex.PB/1 to Ex.PL and Ex.PL/1, and thereafter closed the evidence. The accused in his statement under Section 313 Cr.P.C. denied the allegations but did not lead any evidence in defence and that is how the conviction has come about.

Upon hearing Mr. B.S. Saroha, Advocate for the appellant; Mr. Ripudaman, Asstt. Advocate General, Haryana on behalf of the respondent/State and on perusal of the records.

It has come in evidence of the prosecution that PW4 Sarif had seen the victim being carried by the accused appellant and who disclosed it to the complainant and thereafter they reached the spot and found the victim crying lying naked and the accused running away from the spot. These allegations have been sought to be strengthened by the testimonies of the victim as PW2 followed by material corroboration by the testimony of her mother PW3. The most material witness that lends corroboration to the case of the prosecution is the deposition of PW6 Dr.Suman Bhaskar who on police request Ex.PB had medico legally examined the victim and proved her report MLR Ex.PB/1 and has detailed contusions on account of bites on the body of the victim. The

articles by way of clothing which were taken into police possession in this case have been duly proved to have been dispatched with Forensic Science Laboratory, Madhuban and thus, the plea that while the accused was in the process of defiling her, had removed the clothes of the victim and therefore is a material evidence which lends credence to the case of the prosecution. Though, learned counsel for the appellant has sought to rake up the plea that it was a consensual relationship of the victim and the accused, does not augur well for the prosecution in the light of submissions of the learned State counsel who has categorically harboured on the testimony of the family that the girl was aged around six-seven years, and which is there in the deposition of PW13 Ram Chander Headmaster of the Primary School, where the girl has studied and on the basis of the school record, has proved the date of birth of the girl as 12.01.1996, the occurrence having taken place on 06.09.2002 bears out that the girl was aged around six years at the time of commission of the offence and therefore, the plea of being a consensual relationship fades into oblivion. The victim being a minor and the accused a grown-up mature person aged above 30 years, is rather a distressing feature for the defence. The fervor with which learned counsel for the appellant has sought to bring about that there was a history of enmity between the complainant and the accused side, certainly to the mind of this Court does not stand established by any means. Even in his stand under Section 313 Cr.P.C. the appellant convict has merely stated that he has been falsely

implicated on account of enmity. What enmity or by what means it has come about, is not brought about in the evidence of the defence and rather the defence has failed to lead any evidence to strengthen the same. The learned trial Court has given a well reasoned finding based on the oral testimonies of the material witnesses and which is corroborated by the medical evidence, leaves no scope to doubt that the minor victim was taken away from the lawful guardianship of the parents and an attempt to rape her was made by the accused. Learned trial Court has rightly drawn the conclusion that accused convict Sher Singh has tried to commit rape upon the minor girl, and therefore, learned counsel for the appellant could not bring about anything adverse to the case of the prosecution which could help the appellant's case in any manner. In the light of what has been detailed and discussed above, this Court does not feel inclined to show any indulgence. The appeal being hopelessly without merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 10, 2019
rps

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