

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

CRA-S No.228-SB of 2004

Date of decision: 19th August, 2019

Vijay Pal @ Mirchu

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.P. Chahar, Advocate for the appellant.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

In case got registered by way of FIR No.58 dated 13.10.2002 under Sections 376, 506, 120-B IPC at Police Station Kalanaur, two persons namely present appellant convict Vijay Pal alias Mirchu and his co-accused Ram Avtar (whose trial has been separated being a juvenile) were arraigned as accused on the complaint of PW-13 Dharambir, father of a minor girl PW-11, a student of eighth class aged around 13 years. In his complaint Ex.PF, the complainant alleged that on 27.08.2002 around noon time while the prosecutrix was returning from her school to have meals during recess period, was forcibly dragged by accused Ram Avtar into a shop and after closing the door against the wishes of the girl, ravaged her. It was PW12 Ram Niwas, co-villager of the complainant, who on coming to know of it, informed the father of the girl and it is thereafter, the complainant along with his wife PW14 Babita rushed to

the place and finding the door of the shop locked from outside, heard screams of the prosecutrix and after procuring keys from the present appellant Vijay Pal alias Mirchu when opened the door, saw the accused Ram Avtar coming out armed with a pistol who under threat managed to escape and the couple discovered their daughter lying naked on the floor and who disclosed how the accused had forcibly defiled her. PW-15 ASI Om Parkash after receiving the complaint made his endorsement Ex.PF/3 which led to recording of the FIR Ex.PF/1 by HC Jai Bhagwan PW-4 and that is how the investigations were set into motion and the special report was dispatched through PW-8 Constable Ram Dhari.

The investigating officer prepared rough site plan Ex.PF, recorded statement of the victim and other witnesses and got the prosecutrix examined from PW-2 Dr.Kamla Verma, who through MLR Ex.PB gave her opinion and along with it handed over parcels of shirt Ex.P1 and salwar Ex.P2, and parcels containing swabs etc. which were taken into police possession through memo Ex.PJ were deposited in the laboratory through PW-5 MHC Surat Singh.

The accused was medico-legally examined by PW-1 Dr.Daya Nand who gave his opinion Ex.PA that the accused was fit for sexual intercourse. The report of FSL Ex.PD opined presence of semen on salwar Ex.P2. During the course of investigations, the investigating officer took into police possession the birth certificate of the prosecutrix Ex.PK showing date of birth of the prosecutrix to be 20.12.1988. Scaled

site plan Ex.PE was prepared and on completion of investigation, challan was submitted in the Court. The prosecution, at the trial against present appellant, examined Dr.Dayanand PW1; Dr. Kamla Verma PW2; C. Samit Kumar PW3; HC Jai Bhagwan PW4; HC Surat Singh PW5; SI Pawan Kumar PW6; C. Jagbir Singh PW7; C. Ramdhari PW8; C. Mahabir Singh PW9; Vir Bhan PW10; the victim as PW11; Ram Niwas PW12; complainant Dharambir PW13; his wife Babita PW14 and ASI Om Parkash PW15.

The accused appellant in his stand under Section 313 Cr.P.C. pleaded innocence and claimed that the complainant had taken away a TV and VCR from the shop of his co-accused Ram Avtar and on account of dispute they have been falsely implicated. However, the accused did not lead any evidence in defence.

That is how the present appellant was found guilty by the Court of learned Additional Sessions Judge, Rohtak who vide judgment and order dated 26.09.2003 convicted the appellant for offence punishable under Section 120-B read with Section 376 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for one-and-a-half years.

Heard Mr. S.P. Chahar, Advocate for the appellant; Mr.Amrik Narwal, Deputy Advocate General, Haryana representing the respondent State and perused the records of the case.

The accused appellant in his defence does not deny the fact that he was in possession of the shop in which the occurrence has taken place. Rather the testimony of the prosecutrix as PW-11 has detailed how the accused had dragged her inside the shop where they were running a video-parlor and bolted the door from inside and someone had put out the lock on the outside. She has detailed how and in which manner the accused threatened her with a pistol and not to raise voice else he would kill her, and had defiled her. Nothing tangible has come in the cross-examination of this witness which could be of any material help to the defence. Rather the most distressing feature that has come as a suggestion put to this witness in the cross-examination that she was in a relationship with the co-accused Ram Avtar. The other witness PW-12, eye-witness Ram Niwas has specifically stated that it was Vijay Pal appellant who had handed over the keys of the shop with which they opened the door from outside. Furthermore, the deposition of PW-13 Dhrambir, complainant and father of the girl, had given the ocular version and how the girl told him the manner in which she was forced into shop and defiled. Similar is the testimony of mother of the prosecutrix, Babita PW-14 who along with her husband, the complainant, had rescued the girl and has in a similar tone detailed the role of the accused, present appellant, how he handed over the keys and rather a suggestion has come about to this witness that the girl was never found in the shop of Ram Avtar when the eye-witnesses have testified it so. The deposition of

Dr.Kamla Verma PW-2 who examined the prosecutrix, had drawn the samples and has categorically stated that possibility of sexual intercourse could not be ruled out and has on the basis of report of FSL Ex.PD, which opined presence of human semen on the salwar of the prosecutrix Ex.P2, had given her opinion to that effect. The birth certificate which could not be controverted by the defence side, shows the date of birth to be 20.12.1988 and thus, the victim at the time of this occurrence which took place on 27.08.2002, was a minor. Learned counsel for the appellant has sought to lay much stress on the findings of PW-2 Dr. Kamla Verma that there could be occasion of other instances of sexual intercourse by the prosecutrix, does not come to the rescue of the appellant, firstly on the ground that the victim is a minor and even if, as is sought to be projected by the appellant side, it was consensual one, the consent by a minor is of no consequence and further that the irrefutable evidence of the prosecution leads to irresistible conclusion that it was none but the accused appellant who helped his co-accused in defiling the girl and were caught red-handed. Even otherwise, by virtue of Section 114A of the Evidence Act (un-amended) since in the present case, the prosecutrix has categorically denied that she did not consent to this, the Court has a bounden duty to presume that she never consented it so, though the same is sought to be refuted on behalf of the appellant side.

The fact that the shop is in occupation of the appellant Vijay Pal alias Mirchu and where the occurrence has taken place and when the

witnesses reached the spot, it was none but the appellant convict who handed over the keys of the shop to them, which was opened from outside, are matters which are clear cut pointers that there was some sort of arrangement and agreement between appellant Vijay Pal alias Mirchu and his co-accused Ram Avtar, the latter being the real perpetrator of this crime. This arrangement was certainly for attaining an unlawful purpose and these circumstances so proved on the record by the prosecution witnesses including SI Pawan Kumar PW-6 and ASI Om Parkash PW-15 leave no scope to doubt over the veracity and credibility of prosecution story. Moreover, the accused had failed to give any explanation to rebut the same and therefore, by virtue of Section 114 of the Evidence Act enables this Court to raise factual presumption against the appellant accused. The learned Court below has delved the evidence of the prosecution very minutely and has come to a totally justifiable conclusion as to the culpability of the accused and thus, there is no scope to show any interference. The appeal being hopelessly without merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 19, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No