

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRA-D-10-DB-2015 (O&M)

Date of Decision : 10.9.2019

Kamal @ Kallu

..... Appellant

Versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present : Ms. Poonam Josan, Advocate
for the appellant.

Mr. Randhir Singh, Addl. A.G., Haryana

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment of conviction dated 18.11.2014 and order of sentence dated 21.11.2014 passed by the Additional Sessions Judge, Special Court for Crime Against Women, Palwal, whereby the appellant was convicted under Section 376 IPC Section 4 of Protection of Children from Sexual Offences Act, 2012(for short 'the Act')and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 25,000/- and, in default of payment of fine, to further undergo RI for three months; under Section 376 IPC, to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- and, in default of payment of fine to further undergo rigorous imprisonment for three months and for life under Section 4 of the Act in case FIR No.65 dated 28.2.2014 under Sections376 IPC and 4 of the Act at P.S.Chandhut, Palwal. Both the sentences were ordered to run concurrently.

2. Brief facts of the case are that on 28.2.2014 at 5:00 pm, the

complainant appeared before the Police, wherein he asserted that he was a labourer and had four children. On that particular day, since it was drizzling, he did not go for work. At about 1:00 pm, when his daughter was playing outside, he heard her cries. He came outside of the house and saw that the appellant was committing rape upon his daughter, but before the complainant could reach the spot, the appellant ran away. The child was taken to the hospital at about 10:30 pm, where the Doctor noticed as follows :-

“That on external Genital examination P/V-bleeding +admitting tip of finger no external signs of injury seen. Hymen torn”.

3. The appellant was arrested and sent up for trial. The complainant and his wife, as well as the Doctor appeared to testify. Ultimately, the appellant having been convicted and sentenced, as referred to above, has filed this appeal.

4. The first contention of the learned counsel for the appellant is that the appellant is suffering from 70% motor disability of spastic paraparesis with flaccid deformity both knees and unable to walk and stand (who is otherwise healthy) and it was unbelievable that the complainant saw him committing rape upon his daughter and then allowed him escaped despite his disability.

5. Alternative argument developed by the learned counsel for the appellant is that even medical evidence does not establish rape. As per her, had the child been raped, the vagina would not have admitted only tip of finger. As per the statement of PW-4 i.e. Dr. Rama Narula, if sexual assault is committed upon a female, the lower portion of vagina sustains injury and if fingers are inserted forcibly in vagina, she will

bleed. Moreover, as detailed in Ex.PW 4/B, no external sign of injury was found.

6. On the last date of hearing, we had directed the presence of the appellant to see the nature of his disability. He was presented before us and we find that though he is disabled, but it cannot be said that he cannot move.

7. Learned Additional Advocate General has argued that as per the rough site plan Ex. P-5, by the time the complainant heard the cries of his child and reached the place, the appellant had already effected his escape and at that time, the complainant would naturally be more interested in looking after the welfare of the child, rather than chase the appellant.

8. Learned counsel for the appellant has also tried to argue that the appellant has been falsely implicated, but has given no reason why the appellant was falsely implicated because there is no history of any enmity between the parties. She has further argued that there is no independent witness of the occurrence, though the occurrence took place during the day time in a crowded village.

9. Learned Additional Advocate General has countered the argument by stating that in such cases, it is not unknown fact that the people become reluctant to appear before the Court as a witness.

10. In our considered opinion, the argument of the learned counsel for the appellant must fail. The medical evidence definitely proves assault and once there was no motive for the complainant and his wife to falsely implicate the accused, their story has to be believed.

Alternative argument of the learned counsel for the appellant however,

may not suffer the same fate. In this connection, the FSL report Ex.PX is also revealing because it shows that though blood was detected on the clothes and vaginal swabs of the victim yet semen was detected on the underwear of the appellant but no semen however was detected on the clothes and swabs of the victim.

11. A perusal of the injuries as detailed in Ex. PW4/B especially shows that no external injury was visible and that vagina was admitting only tip of finger. Even in her testimony, Dr. Rana Narula deposed that bleeding could occur even by forcible insertion of fingers. The medical evidence coupled with the testimony of the Doctor (PW-4) makes it clear that more likely it was a case of assault rather than rape.

12. In these circumstances, while we alter the conviction of the appellant from rape to attempt to rape and Section 4 of the POCSO Act and reduce the sentence from life imprisonment to 10 years of Rigorous imprisonment. The interim order dated 6.1.2015 regarding stay of fine stands vacated. The sentence regarding fine shall remain same.

13. The appeal stands disposed of.

14. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

10.9.2019
anuradha

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