

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-373-DB-2016
Reserved on : 13.02.2019
Date of decision : 15.02.2019

Ajit Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR.JUSTICE KULDIP SINGH

Present: Mr.Ashok Giri, Advocate
for the appellant.

Mr. S.P.S. Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 09.03.2016 rendered by the learned Additional Sessions Judge, SAS Nagar Mohali, in Sessions Case No.54 of 04.05.2015 whereby the appellant, who was charged with and tried for offences punishable under Sections 376, 506, 323 of the Indian Penal Code (in short 'IPC') and under Section 6 of the Protection of Children from Sexual Offences Act, 2012, was convicted and sentenced as under:-

Under Section	Sentence
323 IPC	To undergo rigorous imprisonment for a period of 6 months and to pay a fine of Rs.2000/-, in default of payment of fine, he shall further undergo rigorous imprisonment for one month.
376(2) (f) IPC	To undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.50,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.
6 of the Protection of Children from Sexual Offences Act, 2012	To undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.50,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution in a nutshell is that on 28.02.2015, a minor daughter (name withheld) of accused Ajit Singh levelled allegations of commission of penetrative sexual assault upon her on the intervening night of 27/28.02.2015. She alleged that her father had maintained physical relations with her for the past one year. He used to rape her forcibly. The prosecutrix was medically examined. The investigation was completed. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of accused was recorded under Section 313 Cr.P.C. He denied the case of prosecution. The appellant was convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. Statement of PW-1 prosecutrix (name withheld) was examined on oath. She testified that she was studying in 8th standard in Mount Carmel School, Chandigarh. She was staying with her father Ajit Singh. Her mother Anita died in an accident in the year 2011. Her father solemnized second marriage with Amarjit Kaur in December 2014. Her father was working in Punjab Police. Her grand mother Mohinder Kaur was also staying in the said house. Her father used to touch her by calling her in his room. He was committing sexual intercourse with her for the last one year without her

consent. She did not narrate this incident to anybody due to fear. On the night of 27.02.2015, her father came home in drunken condition at about 11.00 P.M. Her brother was sleeping. He gave her severe beatings and committed rape with her. The grand mother was not at home. Her father removed her clothes. He also asked her to suck his penis. She refused to do so. He gave her beatings. She was tortured and assaulted throughout the night. She was beaten by her father with cricket bat. She narrated this incident to her aunt Sunita Malik. She came home and called the police. Her statement was recorded under Section 164 Cr.P.C. The statement of the prosecutrix is Ex.PD. In her cross-examination, she deposed that when her father asked her not to use phone, she did not use the phone. She did not show school papers / comments to her father. She admitted that her father had no talking terms with her maternal parents and aunts. Her step mother was very nice to her. Her father was paying her tuition fee. All necessities of life were being provided to her by her father. When she was taken to the hospital, she was accompanied by her maternal uncle and aunt.

8. PW-2 Dr. Kuldeep Singh deposed that he was posted at Civil Hospital, Phase 6 Mohali on 01.04.2015. He medically examined the appellant. He took blood sample of the prosecutrix in EDTA vial and sealed it. He handed over the same to police.

9. PW-3 Dr. Vijay Bhagat had radiologically examined the prosecutrix. According to him, the radiological age range of the prosecutrix was 14 to 16 years as the upper limit of fused bones was 16 years and lower limit of non fused bones was 14 years. He proved the X-ray report Ex.PW3/A.

10. PW-4 Sunit Malik deposed that she was serving in Government

College, Sector 11, Chandigarh as Athletic coach. Her sister Anita was married with accused. She died in an accident in the year 2011. On 28.02.2015 the prosecutrix made call to her. She disclosed her that her father maintained physical relations with her. For the last one year he was committing rape with her. Her father gave beatings to her in drunk condition at about 11.00 P.M. and had committed rape with her. The entire incident was narrated to her and her sister. In her cross-examination, she deposed that she did not immediately inform the police and rather she confided this matter to her parents. In cross-examination, she reiterated the incident told by the prosecutrix, wrong doings by the accused, beatings given by the father of prosecutrix and also about her earlier sexual exploitation by her father.

11. PW-7 Harpreet Singh has proved the copy of birth certificate of the prosecutrix Ex.PW7/A. The date of the prosecutrix was 29.04.2001.

12. PW-8 Joy Thomas has proved the copy of school leaving certificate of the prosecutrix Ex.PW8/A.

13. PW-9 LHC Reeta Rani deposed that the statement of the prosecutrix was recorded. Thereafter the FIR was registered. The prosecutrix was pregnant and also having injuries on her person. Pregnancy test was found negative. The prosecutrix was produced in the Court and her statement was recorded.

14. PW-10 Sub Inspector Jasmine Kaur deposed that the prosecutrix made statement Ex.PA. FIR Ex.PW10/B was registered by ASI Balraj Singh. She reached the house of the appellant. The prosecutrix was taken to the hospital for medical examination by HC Reeta Rani. She produced the prosecutrix before the Magistrate. Her statement Ex.PD was

recorded. The accused was arrested. The accused made disclosure statement Ex.PW10/H. He got the bat recovered from under the double bed.

15. PW-12 Dr.Tammana had medically examined the prosecutrix.

She noticed the following injuries on the body of the prosecutrix:-

1. Multiple bruises present on body as described below.

The bruises are red to bluish red in colour.

- i) 6 x 8 cm on outer aspect of left upper arm in the middle of it.*
 - ii) Triangle shaped 8 x 8 x 8 cm on back of right shoulder (middle area is clear).*
 - iii) 20 x 8 cm on outer aspect of right hip.*
 - iv) 10 x 6 cm on lateral aspect of middle of right thigh (middle area is clear).*
 - v) 10 x 6 cm on anterior aspect of right thigh (in its middle).*
 - vi) 10 x 3 cm on anterior aspect of right thigh in lower 1/3 rd*
 - vii) Multiple bruises present on left thigh and left hip.*
- 2) Abrasions (red colour with scab) present as described.*

- i) 2 x 0.2 cm on dorsum of right wrist joint.*
- ii) 2 small abrasions 0.6 x 0.2 cm and 0.3 x 0.2 cm below injury No.(i) on ulnar side.*
- iii) 1.2 x 0.2 cm just below the medial end of right clavicle.*
- iv) 1.4 x 0.2 cm on left breast near sternum 4 cm from nipple.*
- v) shaped 2 x 0.3 cm extending from midline to right breast at the junction of upper 2/3rd and lower 1/3rd of sternum.*
- vi) Abrasion 0.5 cm x 0.3 cm on left cubital fossa.”*

She proved the computerized copy of medical report Ex.PW12/D. She proved the report of CFSL of DNA Ex.PW12/E. She gave her opinion on the DNA report Ex.PW12/F on the police request Ex.PW12/G. According to her, possibility of sexual intercourse with the prosecutrix could not be ruled out. In her cross-examination, she deposed that no injury was found on the private parts of the patient. However, voluntarily stated that there were bruises and abrasions on thighs, hips and other parts of the body.

16. PW-13 ASI Jarnail Singh deposed that he along with other police officials was present on turning point of Sector 66 Mohali on 28.02.2015. The prosecutrix met them. The statement of the prosecutrix was recorded. FIR was registered.

17. The date of birth of the prosecutrix is 29.04.2001. The date of birth has been proved by PW-7 Harpreet Singh and PW-8 Joy Thomas. The prosecutrix was examined on oath. She has categorically deposed that she was raped by her father in the night of 27.02.2015. Her father administered severe beatings to her. She was beaten up with the cricket bat. She was medically examined. The doctor had noticed numerous injuries on her body. The radiological age range of the prosecutrix was found between 14 to 16 years. Her statement was recorded under Section 164 Cr.P.C.

18. PW-4 Sunita Malik has also corroborated the statement of PW-1 prosecutrix. She testified that the prosecutrix informed her about the incident. She reached the spot. Thereafter the matter was reported to the police. There was no occasion for the prosecutrix to make false allegations against her father. She is matured and intelligent girl. According to her she was being raped for the last one year. She could not narrate this incident to

anyone due to fear and shame. The bat was recovered at the instance of the appellant. The injuries were noticed on thigh, legs, feet and breast of the prosecutrix. According to PW-12 Dr.Tammaana, hymen was ruptured. The CFSL report is Ex.PW12/E. The statement of prosecutrix is duly corroborated by CFSL Ex.PW12/E as well as medical evidence.

19. The learned trial Court has correctly appreciated the ocular as well as documentary evidence. Thus there is no occasion for us to interfere in the well reasoned judgment and order of the trial Court. Accordingly, the appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

February 15, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No