

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-688-DB-2016

Sumit

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-786-DB-2016

Naveen @ Panna

... Appellant

Versus

State of Haryana

... Respondent

Reserved on : 22.08.2019
Date of decision : 27.08.2019

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

Present: Mr.V.S. Rana, Advocate
for the appellant in CRA-D-688-DB-2016.

Mr. Baljinder Singh, Advocate
for the appellant in CRA-D-786-DB-2016.

Mrs. Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in both these appeals, therefore these are taken up together and disposed of by a common judgment.

2. These appeals have been instituted against the judgment and order dated 08.07.2016 and 12.07.2016 rendered by the Additional Sessions Judge, Rohtak, in Sessions Case no.40/2014 whereby the appellants were

charged with and tried for offence punishable under Section 376-D of the Indian Penal Code (in short 'IPC') read with Section 9(g) of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The appellants were convicted and sentenced to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months for offence punishable under Section 376-D of the IPC.

3. The case of the prosecution in a nutshell is that on 02.04.2014 Lady Assistant Sub Inspector (L/ASI) Sudesh along with other police officials was present in front of gate of Police Station in connection with law and order duty. The prosecutrix (name withheld) along with her father Pehlad Singh and her mother Saroj accosted her. She moved an application to the effect that she was resident of village Gharonthi. Her date of birth was 15.12.1998. On 26.03.2014 at about 04.30 P.M. when she was alone at her home and her parents had gone for their work, Naveen @ Panna son of Dharambir caste Dhanak, resident of village Gharonthi came to her house. He told her that her mother was cutting fodder in the sugarcane field of Raju. She had called her there. The prosecutrix went there. Panna and Sumit met her. They caught hold of her. They removed her *salwar* forcibly. They committed rape upon her turn by turn. She raised alarm. Mukesh son of Haria came on the spot. Accused fled away from the spot on seeing Mukesh. She came back her home with Mukesh. She narrated the incident to her mother. Her father had gone outside. He came back on 02.04.2014. Thereafter FIR was registered. The prosecutrix was medically examined. Accused were arrested. FSL team also visited the spot. Site plan was got

prepared. Case property was deposited with FSL on 04.04.2014. The certificate of date of birth of the prosecutrix was collected. The investigation was completed. Challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of accused were recorded under Section 313 Cr.P.C. They had denied the case of the prosecution. The accused had examined two witnesses in support of their defence. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

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

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

8. PW-12 Dr.Rajni Gupta had medically examined the prosecutrix. She led her evidence by filing affidavit Ex.P25. According to her opinion, the possibility of sexual intercourse with the prosecutrix could not be ruled out. In her cross-examination, she deposed that she had not noticed any mark of external injury. Hymen was torn. She handed over to the police pink shirt, blue *salwar*, grey coloured underwear and two vaginal swabs and pubic hair in 2 vial.

9. PW-1 Lady Constable Bindu deposed that on 02.04.2014 she took the prosecutrix to General Hospital, Rohtak, for her medical

examination.

10. PW-2 is the prosecutrix. According to her, on 26.03.2014 accused Sumit and Naveen @ Panna came to her house. They told her that her mother was in the fields of Raju. She was peeling green fodder for cattle. She was calling her for lifting the same. Thereafter, they left the home. She went to fields of Raju. The accused were already present. She asked them about whereabouts of her mother. They told that she was in the sugarcane fields. She went inside the fields. Accused caught hold her forcibly and gagged her mouth. They removed her *salwar* and committed rape with her one by one. She raised alarm. Mukesh son of Hariya came on the spot. Both the accused fled away. Mukesh brought her back to her house. Her mother was already present there. She narrated the incident to her mother. Her mother did not report the matter to police. Her father came back after attending the marriage after 7-8 days. Her father took her to the police station on 02.04.2014. Police took her to the General Hospital, Rohtak, for general examination. Her statement Ex.P-3 was recorded under Section 164 Cr.P.C. In her cross-examination, she deposed that her father had gone to attend the marriage of son of her Bua Pangi. She did not remember the date of marriage. She had gone to the police station with her parents and uncle on 02.04.2014.

11. PW-3 Saroj is the mother of the prosecutrix. According to her she went to the house of some neighbourer. Her daughter was alone at home. She noticed huge crowd in her house. Mukesh was present. On her enquiry, her daughter started to weep. She told her that in her absence she was called by accused Naveen @ Panna and Sumit in the fields of Raju. She

visited there. Accused raped her in the sugarcane fields. Mukesh came on the spot. Accused ran away.

12. PW-5 Shilak Ram deposed that he visited the spot. He prepared scaled site plan Ex.P7.

13. PW-6 HC Satish Kumar deposed that accused Naveen made disclosure statement Ex.P8. Accused Sumit also made disclosure statement Ex.P9. Accused led the police party to the place of occurrence, i.e. fields of Raju. Investigating Officer prepared demarcation memo Ex.P10 and P11.

14. PW-11 Dr.Saroj Dahiya had prepared report Ex.P22.

15. PW-13 Pushpa Sharma had proved the birth certificate of the prosecutrix Ex.P5. According to Ex.P5, the date of birth of prosecutrix was 15.12.1998.

16. PW-14 HC Sukhbir Singh had taken accused Naveen and Sumit to the General Hospital, Rohtak, for medical examination.

17. PW-15 Sukhpreet Singh had recorded the statement of the prosecutrix under Section 164 Cr.P.C. He passed the order Ex.P31. The prosecutrix was made aware that she was not bound to make any statement and in case of making statement, it may be used as evidence against her.

18. PW-17 Lady ASI Sudesh deposed that she was posted as ASI in Police Station Lakhan Majra, District Rohtak on 02.04.2014. The prosecutrix along with her parents came. She made complaint Ex.P2. She made her indorsement Ex.P33. FIR Ex.P34 was recorded. She along with the prosecutrix and her parents went to the field. She recorded the statement of the prosecutrix and Mukesh. The accused and the prosecutrix were taken to General Hospital, Rohtak. Accused made disclosure

statements on the basis of which they got the spot inspected. Demarcation memo was prepared. She also got the statement of the prosecutrix recorded under Section 164 Cr.P.C. In her cross-examination, she deposed that she did not join Raju in the investigation.

19. PW-18 Mukesh had not supported the case of the prosecution. He was declared hostile.

20. DW-1 Sanjay deposed that his father was owner in possession of 10 acres of agricultural land. His brother Ashok used to drive truck and remain out of the village. He and Naresh used to do agricultural work. On 26.03.2014, the prosecutrix, Naveen and Sumit had not come to their fields. No act was committed in their field. He attended the Panchayat in the village regarding the false implication of accused Naveen and Sumit. He told in the Panchayat that no sugarcane crop was there in the field of Raju.

21. DW-2 Ram Bhagat deposed that he knew the prosecutrix and the accused. Panchayat was convened by the respectable persons of the village after registration of the case. There was dispute qua the election. Raju was also summoned in the Panchayat and inquiries were made from him. No sugarcane was found standing in his fields.

22. FSL report is Ex.P4. According to the contents of FSL report, human semen was detected on exhibit-1b (*salwar*) and exhibit-2 (underwear). However, semen could not be detected on rest of the exhibits.

23. Learned counsel for the appellants have drawn the attention of the Court to the Crime Scene Visit Report Ex.P22, wherein it was mentioned that the spot as shown by I.O. was harvested field of sugarcane. However, according to site plan Ex.P36, Mark A shown in the site plan was the place

where rape has been committed.

24. The birth certificate of the prosecutrix is Ex.P5. Her date of birth as per affidavit was 15.12.1998 which was duly proved by PW-13 Pushpa Sharma.

25. The prosecutrix was allured by the accused. She went to the field. She was raped on 26.03.2014. Her father had gone to attend the marriage. Her mother due to shame did not report the matter to the police. The prosecutrix along with her parents went to the Police Station on 02.04.2014. She was medically examined by PW-12 Dr. Rajni Gupta. According to Dr.Rajni Gupta's opinion, possibility of sexual intercourse with the prosecutrix could not be ruled out. Human semen was detected as per FSL report, on exhibit-1b(*salwar*) and exhibit-2 (underwear). The prosecutrix was minor at the time of incident. The statement of prosecutrix was also recorded under Section 164 Cr.P.C. vide Ex.P3. It was recorded by PW-15 Sukhpreet Singh. She has corroborated the statement made under Section 164 Cr.P.C. when she appeared as PW-2 in the Court. There was some delay in lodging the FIR. Mere delay in lodging the FIR may not prove fatal to all the cases. The father of the prosecutrix was away to attend the marriage. He came back on 02.04.2014. Immediately FIR was registered. The Court can take judicial notice of the fact that at that time there was hesitation in lodging FIR by the parents of girl. The prosecution has proved the spot where the rape was committed. DW-1 Sanjay and DW-2 Ram Bhagat have deposed about their attending Panchayat but no record was placed of convening the Panchayat by way of resolution. Thus, the prosecution has proved the case against the appellants beyond reasonable

doubt.

26. Accordingly, there is no merit in the appeals and the same are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 27, 2019.
Davinder Kumar

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