

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

310

**CRA-S-1509-SB-2014 (O&M)
Date of Decision : 20.07.2019**

Banti @ Bant

... Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms.Rajwinder Kaur, Advocate for
Mr. Sandeep Lather, Legal Aid counsel for the appellant.

Mr. R.K.Singla, AAG, Haryana.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment of conviction dated 22.11.2013 and order of sentence dated 26.11.2013 passed by the Additional Sessions Judge, Sirsa, vide which the appellant, namely, Banti @ Bant has been convicted and sentenced in case FIR No. 34 dated 21.02.2013 under Sections 363, 366-A, 376 of the Indian Penal Code (for short 'IPC') and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO, Act') registered at Police Station Ding.

As per the prosecution case, on the complaint of Hans Raj, the above mentioned FIR was registered with the allegations that on 19.02.2013, his daughter, Rekha, aged about 15 years, who had studied up to 6th class, and was already engaged with one Mangat Ram, was alone in the house as he had left for work in the fields. When he came back, he found his daughter missing and on search, no clue was found. As per the complainant, an unknown boy had enticed his daughter.

After completion of investigation and necessary formalities,

challan was presented against the appellant.

Charge was framed against the appellant under Sections 363, 366-A, 376 of IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 11 witnesses.

In the statement recorded under Section 313 Cr.P.C., the appellant-accused denied the charges and pleaded innocence but led no evidence in defence.

While passing the impugned judgment, the trial Court determined whether the accused took away the prosecutrix from lawful guardianship of her parents and committed rape upon her by committing the offence punishable under Section 376 of IPC and Section 4 of the POCSO, Act.

Prosecutrix, herself stepped into the witness box as PW-2 and deposed that her date of birth was 01.07.1998 and appellant-Banti used to visit her house, being neighbourer. She further deposed that on 18.02.2013 at about 1:30 a.m. he telephonically contacted her and later took her to a vacant plot and thereafter took her to various places in Punjab and Himachal Pradesh, where the appellant-Banti committed rape upon her without her consent. Complainant-Hans Raj also appeared as PW-3 and stated that his daughter had been traced out after 22 days from the confinement of the appellant and thereafter, she had been medico-legally examined. The prosecution had also placed on record date of birth certificate of the prosecutrix as PA/1 which stood proved through Mr. Inder Singh, Headmaster, Government High School, Baruwali-U-I(Sirsa).

To support the case of the prosecution, Dr. Savneet Gill, also

appeared as PW-11. He had medico-legally examined prosecutrix and proved her MLR as Ex.PW11/B.

After taking into consideration the evidence on record, the Additional Sessions Judge, Sirsa, vide judgment of conviction dated 22.11.2013 and order of sentence dated 26.11.2013, convicted and sentenced the appellant as under:-

<i>Section</i>	<i>Rigorous Imprisonment</i>	<i>Fine imposed</i>	<i>Rigorous imprisonment if fine not paid</i>
363 IPC	For a period of 1 year	Rs.1,000/-	1 month
366-A IPC	For a period of 2 years	Rs.2,000/-	2 months
376 IPC	For a period of 7 years	Rs.7,000/-	7 month
4 of POCSO Act	For a period of 7 years	Rs.7,000/-	7 months

Aggrieved of the said judgment and order, the appellant preferred the present appeal.

I have heard learned counsel for the parties and have also gone through the record of the Courts below, with their able assistance.

Learned counsel for the appellant has argued that a school certificate does not prove the actual date of birth of the prosecutrix because the same cannot be treated to be an evidence which can be relied upon by the Court and the age mentioned in the school certificate is not the actual date of birth. The alleged certificate Ex.PA/1 was issued on the basis of the record of the Chowkidar of the village. Since, the prosecution did not examine the Chowkidar, the authenticity of this certificate issued by Headmaster, Government High Court, Baruwali-I (Sirsa) had been wrongly taken into consideration while convicting the appellant. Learned counsel for the appellant has further argued that the trial Court has ignored the fundamental proof of criminal prudence while recording conviction of the

appellant as guilt of the appellant has to be proved beyond the shadow of doubt by the prosecution. From the perusal of the testimonies proved on record regarding age of the prosecutrix, the prosecution has miserably failed even to remotely connect the appellant with the commission of offence. Still further, it has been argued that the prosecution has failed to prove even a single prosecution witness stating that the appellant had committed sexual intercourse with the prosecutrix and had also failed to prove the motive. Thus, learned counsel for the appellant has vehemently argued that the appellant has been falsely implicated in the present case.

Per contra, learned State counsel has argued that the present case had been registered under Section 4 of POCSO Act and the date of birth of the prosecutrix is 01.07.1998 which stood proved on record vide Ex.PA/1. Even the prosecutrix, while stepping into the witness box as PW-2 stated that the appellant was his neighbour and had committed rape upon her against her wishes by taking her to the various places in Punjab and Himachal Pradesh. Learned State counsel has further argued that PW-11, Dr. Savneet Gill, Medical Officer had examined the prosecutrix and had also proved on record her MLR and that since the prosecutrix was minor, the trial Court has rightly convicted the appellant. Learned State counsel has further argued that there are ingredients of kidnapping and/or unlawful confinement of the prosecutrix. Learned State counsel has further submitted that the statement of the prosecutrix (Ex.PC) cannot be taken into consideration as she was under fear when the said statement was recorded.

It is a case in which the appellant had enticed the minor and committed rape upon her against her wishes. Statement of the prosecutrix under Section 164 Cr.P.C. had also been recorded before the Judicial

Magistrate Ist Class, Sirsa, which is Ex.P-B. Learned Judicial Magistrate Ist Class, Sirsa had also put questions to the prosecutrix on 11.03.2013 at 6:10 p.m., which is Ex.PC. The observation/remarks of the Judicial Magistrate Ist Class, Sirsa written on 11.03.2013 at 6:15 p.m. are reproduced hereunder:-

“It is certified that the prosecutrix Rekha d/o Hans Raj Kamboj, was brought before me by ASI Des Raj, PS-Ding, for recording her statement, and he moved an application for it and to get a copy of her statement. I made her to take her time before making any statement and I also made it clear to her that the statement may be used as an evidence against her. She took her time to brood over and then voluntarily suffered her statement, which I wrote down in question-answer form. After getting her statement recorded out of her will, she put her signatures in Hindi under the same, which was identified by ASI Des Raj, PS-Ding. The recording in writing so made by me contains full and true account of the statement made by her. She also expressed to go at her home.”

Other than this, the birth certificate has been duly proved on record by PW-1, Mr. Inder Singh, Headmaster, Government High School, Baruwali-I (Sirsa), which is based on the record prepared by the Chowkidar of the village. Even before the trial Court, the prosecutrix had been examined as PW-2 and above all the Doctor, who had medico-legally examined the prosecutrix and also proved her MLR Ex. PW11/3 on record was examined as PW-11. The appellant failed to produce any evidence to the contrary as to how the prosecutrix was above 18 years of age at the time of commission of the offence. Since the prosecutrix was minor and she was taken away by the appellant and the FSL report coupled with the medical

examination has also confirmed the act committed by the appellant on the minor, the learned trial Court has rightly convicted and sentenced the appellant, as noticed above.

In the case in hand, since the prosecutrix was of 15 years of age, the question that she had gone with appellant of her own accord and stayed with him for some days is meaningless. The prosecutrix has categorically deposed before the Magistrate as well as during the trial that she was taken away by the appellant and he had committed rape upon her. Thus, there is no reason to doubt the statement of prosecutrix.

A co-ordinate Bench of this Court in ***Shiv Shankar Vs. State of Haryana***, 2018(3) R.C.R. (Criminal) 637, while considering similar somewhat factual and legal position, has held that where the victim has categorically narrated the incident, the guilt on the part of the accused stands proved. It was held as under:-

“16. The case laws relied upon by learned counsel for the appellant are not applicable to the facts and circumstances of the present case and are totally distinguishable. In Abhay Singh's case (supra) there were allegations of rape levelled by the child victim against her own father and in that case, the child victim had made improvements while recording her statement under Section [164](#) Cr.P.C., 1973 from her version given in the complaint. Considering the peculiar facts and circumstances of that case coupled with the medical evidence, punishment was altered from Section 376 to 376/511 of Indian Penal code. The case in hand is distinguishable to the extent that in the instant case there is no improvement in the statement of the child victim and her version is consistent throughout. Further, in the present case medical evidence clearly proves that the

offence as described under Section 6 of POCSO Act has been committed, which was not so in Abhay Singh's case (*supra*). In **State (Govt. of NCT of Delhi) v. Mohd. Rihan** (*supra*) the accused persons were acquitted by the trial court taking into account the material improvements and contradictions in the testimonies of the prosecutrix, her mother and her father, which were not supported by any other evidence and the said judgment of the trial court was upheld by the Apex Court. Whereas, in the instant case, the testimony of the victim, her mother and her father are consistent and do not contradict one another in any manner and fully support the prosecution version, as such, judgment rendered in the case referred to is of no help to the appellant. In **Vijay v. The State of Maharashtra** (*supra*), the Apex Court while noting the material contradictions and omissions in the statement of the prosecutrix, coupled with the ill-treatment meted out to the accused in that case by the police and the fact that accused was not capable of performing sexual intercourse, had acquitted the accused. On the other hand, in the instant case, as already stated the statement of the child victim is consistent. Furthermore, in Vijay's case (*supra*) there was specific opinion of PW6 Dr. Ravikiran Pore that the accused therein was incapable of performing sexual intercourse, which formed one of the basis for acquittal of the accused, however, in the instant case as per MLR of appellant Ex.PF, the doctor has opined that he was capable of performing sexual intercourse, as such, facts of Vijay's case (*supra*) are distinguishable. In **State v. Mahender Sahni** (*supra*), the accused took the defence of a monetary dispute pending between him and his brother on one side and parents of the victim on the other and also examined two witnesses to support the same, however, despite being cited as a witness, father of

the prosecutrix was not examined and the statement of the prosecutrix was not found believable upon material points of the case, having been tutored by her parents, coupled with the medical evidence. Considering the totality of the peculiar facts and circumstances of the case, the accused in that case was acquitted, whereas, in the instant case the statement of the child victim and her parents inspire confidence of the court being consistent on all material points. Moreover, the accused failed to establish on record any previous enmity with the parents of the child victim nor has he led any evidence in his defence to this effect. In Tameezuddin @ Tammu's case (supra) statement of two or three persons who were present in the factory premises, where the occurrence in that case took place, were recorded under Section [161](#) Cr.P.C., 1973 during the course of investigation, however, both these witnesses were not examined in the court. In that case, blood samples of the accused were also not taken, to match the same with the semen detected upon the vaginal swabs and salwar of the victim. Therefore, acquittal in that case was based on the fact that the medical evidence was qualitatively flawed and that the independent witnesses of the occurrence, despite being cited as witnesses, had not been examined. However, in the instant case, there are no such infirmities found in the prosecution case.”

Taking into consideration the above facts and circumstances, this Court is not inclined to interfere in the well reasoned judgment passed by the trial Court . Hence the present appeal stands dismissed.

(HARNARESH SINGH GILL)
JUDGE

20.07.2019

pooja saini

Whether speaking/reasoned?

Yes

Whether reportable?

Yes