

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3232-SB-2015 (O&M)
Pronounced on:-July 02, 2019.

Jagat Singh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Argued by:- Mr. Chandeeep Singh, Advocate for the appellant.

Mr. Vikas Chopra, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

Rape with a tiny tot, aged about 7 years is always treated as grievous and heinous crime.

The facts of this case as are folded by the minor prosecutrix shocked the judicial conscious.

The family of the minor prosecutrix is from the lower strata of society. They migrated from Uttar Pradesh for the purpose of better livelihood in State of Haryana.

The minor prosecutrix, aged about 7 years was sleeping with her mother on the roof of the house on 23.8.2014. The adjoining rooms have been rented out to the different tenants and one of them happens to be appellant – Jagat Singh.

While the minor was sleeping with her mother, she was

stealthily picked up by the petitioner, who took her to his room, removed her underwear (nicker) and put his male organ in her vagina which caused unbearable pain and the child had shrieks.

The accused then left her on her mother's bed and escaped therefrom. The mother woke up immediately on hearing the cries of her kid. On an inquiry, mother of the minor prosecutrix told that their neighbor/tenant Jagat Singh had taken the minor prosecutrix and she was subjected to sexual assault.

The mother reported the matter to the police in the morning. Statement of the minor prosecutrix was recorded and on the basis of the same, formal FIR was registered for the offence under Section 376 IPC along with Section 4 of the The Protection of Children from Sexual Offences Act, 2012. After issuance of FIR, the police came into action and visited the place of occurrence. Minor prosecutrix was sent to Civil Hospital for medical examination. There she was medico-legally examined. Her underwear was taken into possession which was sent to Forensic Science Laboratory for examination. It was detected that it contained human semen. On 24.8.2014, the minor prosecutrix was produced before the Judicial Magistrate, who recorded her statement under Section 164 Cr.P.C. wherein the minor prosecutrix has categorically stated that accused appellant subjected her to sexual intercourse.

Accused was arrested and subjected to medical examination. His underwear was taken into possession. The underwear recovered from the accused and the underwear worn by the minor prosecutrix were sent to Forensic Science Laboratory and it was reported that both the clothes were

report under Section 173 Cr.P.C. was submitted and the case was submitted to the trial Court.

After completion of prosecution evidence, accused was examined under Section 313 Cr.P.C. and all the incriminative evidence appeared against him during the trial was put to him which he had denied and took the plea of innocence and false implication. However, he did not examine any witness in the defence evidence. On appreciation of evidence, the accused was convicted and sentenced as under:-

<i>Name of convict</i>	<i>Offence under which accused held guilty</i>	<i>Period of (sentence)</i>	<i>Fine imposed (Rs.)</i>	<i>Sentence awarded in default of fine</i>
Jagat Singh	376 IPC	Rigorous Imprisonment ten years	25,000/-	Rigorous imprisonment for one year
	4 POCSO Act	Imprisonment for seven years	10,000/-	Rigorous imprisonment for six months

I have heard the learned counsel for the parties and have gone through record.

Learned counsel for the petitioner submitted that prosecutrix was not a competent witness due to her tender age; that no DNA test was got conducted which caused prejudice to the defence of the petitioner, that the evidence of the minor prosecutrix and her mother is not acceptable and trial court has failed to properly appreciate the evidence placed on record. In support of his contention, he placed reliance on the following Hon'ble the Supreme Court's judgments:-

1. Ms. Satwantin Bai Vs. Sunil Kumar and another reported in 2015 Cri. L.R. 541.

2. Krishan Kumar Malik Vs. State of Haryanareported in 2011 (7) SCC 130.

**3. K. Venkateshwarlu Vs. The State of Andhra Pradesh
reported in 2012 (3) R.C.R. (Criminal) 990.**

On the other hand, learned State counsel vehemently contended that minor prosecutrix was a kid of 7 years, her testimony inspired confidence and she immediately narrated the facts to her mother who lodged the FIR and her evidence is also acceptable. According to him, the prosecution evidence is reliable, without any blemish and it inspires confidence.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties. There is no dispute with regard to the age of the minor prosecutrix. Her mother as well as her teacher have categorically stated that she was minor. PW-3 Smt. Rabiya, the Principal of the school where the minor prosecutrix has studied and she proved the date of birth of the prosecutrix as 19.09.2006. School certificate (Ex.PB) of the minor prosecutrix has been prepared by the school authorities in the discharge of the official duties and the same is reliable. Apart from it, at the time of recording her deposition, learned trial court has categorically given the observation the the minor prosecutrix was about 7 years of age. Thus, this Court is also satisfied that the age of the prosecutrix was about 7 years at the time of occurrence and her date of birth is 19.9.2006.

Now coming with regard to the fact of sexual assault:-

Firstly minor prosecutrix was produced before the Judicial Magistrate, who recorded her statement under the provisions of Section 164 Cr.P.C. wherein the prosecutrix has stated that accused lifted her and took

organ into her private part.

The child used the word “sussu” (to denote the male organ) and the same was inserted into her private part. This description given by the minor prosecutrix is sufficient to establish that she was subjected to sexual intercourse.

Immediately after the occurrence, the minor prosecutrix rushed to her mother while crying and narrated these facts to her. This part of narration to her mother is part of *res gestae* and is admissible into evidence. Thus, on the analysis of the ocular evidence, it is well established that the minor prosecutrix was subjected to the sexual intercourse by the accused.

Now coming to the medical evidence:-

Minor prosecutrix was medico legally examined by lady doctor Ms. Rajni Chauhan (PW-7). She submitted her affidavit Ex.PW7/A and therein she has stated that possibility cannot be ruled out that the minor prosecutrix was subjected to sexual intercourse.

Learned counsel for the petitioner while relying on the cross-examination submitted that there was no internal or external injury on the private part of the minor prosecutrix, therefore, the prosecution story is to be discarded on this score. This Court has considered this contention but it carries no weight. This Court would like to reproduce the deposition of Dr. Rajni Chauhan (PW-7) which is as under:-

“I tender into prosecution evidence my duly sworn affidavit Ex.PW7/A which may be read as part and parcel of my evidence, along-with copy of MLR of victim/prosecutrix is Ex.PF which bears my signatures. Police request in this context is Ex.PF/1.

XXXXX by S/Shri Anwar Khan and Rajesh Gautam,

learned defence counsels.

It is correct that if a bodied person have an sexual intercourse with a such type of minor girl aged about 7 years there is possibility of injury in her vagina and as per my MLR there was no any injury on the private part of the prosecutrix. I have mentioned thee redness around the vaginal introits which has been mentioned in my affidavit. It is wrong to suggested that I have not personally examined the witness.”

Doctor explained that there was redness around the vaginal introits.

After examining the evidence, this Court is of the view that it stands proved that the kid was stealthily lifted by the accused in sleeping form from the cot and taken to his own room and when he had tried to insert his penis into her private part but she started crying loudly and her shrieks might have cautioned the accused, who then had left her in the room of her mother.

As per the amended provision of Section 375 IPC (substituted by the Criminal Law (Amendment) Act, 2013) the wider connotation has been given to legal term “rape”. Relevant part of this provision reads as under:-

375. Rape. - A man is said to commit “rape” if he -

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman

so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:- XXXX-XXX-XXX”

Thus, a bare perusal of the above quoted provisions of Section 375 IPC shows that the penetration is not necessary. But herein there is evidence of penetration as the doctor opined that there was the redness on the introits.

After medical examination, the underwear of the victim as well as the accused was sent to the Forensic Science Laboratory and human semen was detected thereon. Thus, the ocular evidence is supported by medical evidence.

The petitioner was also medically examined and it has been reported that he was capable of performing sexual intercourse. This further strengthens the prosecution case.

Learned counsel for the petitioner relied on the judgment of Hon'ble Supreme Court in ***Ms. Satwantin Bai Vs. Sunil Kumar and another (supra)***. The facts of that case are distinguishable. In that case, there was no identification of the accused who was an unknown person, who committed rape upon the prosecutrix and no identification parade was conducted. But in the case in hand, the prosecutrix was well known to the appellant who was her neighbour and tenant. She knew him by name.

Similarly the facts of the case relied by the learned counsel for the appellant in ***K. Venkateshwarlu Vs. The State of Andhra Pradesh***

(*supra*) are also distinguishable. In that case, Hon'ble the Supreme Court observed that evidence of child witness is subject to closet scrutiny. It has been observed in para No.9 as under:-

“9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it.”

But in the case in hand, the evidence of the minor prosecutrix is corroborated by her mother which is part of *res gestae* and also supported

by medical evidence

Similarly the facts of the case relied by the learned counsel for the appellant in ***Krishan Kumar Malik Vs. State of Haryana (supra)*** are also distinguishable. In that case, the prosecutrix did not know the name of the accused and name of the accused was missing from the FIR. She only gave description of the accused as *gittha* (short structured). It was held that identification of the accused was not properly proved and in this situation, mere detection of the semen is of no benefit unless corroborated by DNA test.

In the case of ***Shyam Narain Vs. State of NCT of Delhi R.C.R (Criminal) 102***, the facts are similar to the facts of the case in hand. In that case, a victim of 8 years was subjected to sexual assault. Her testimony was accepted. Hon'ble the Supreme Court has observed in para 22 as under:-

“22. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten

years, has also provided that the sentence may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying “child is a gift of the providence” enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilized norm, i.e., “physical morality”. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone’s mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the

other; some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."

On the independent analysis of the evidence, this Court is of the view that prosecution evidence is acceptable and it is without any blemish.

prosecution has been able to bring guilt to the home of the accused.

On the critical examination of the evidence, this Court is of the view that this appeal is devoid of merit and deserves dismissal. The sentence imposed by the trial court is maintained.

Dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

July 02, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.