

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

CRA-S No.2004-SB of 2003
Date of decision: 4th February, 2019

Sajan Kumar

... Appellant

Versus

State of UT Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gurveer Sidhu, Advocate
as Amicus Curiae for the appellant.

Mr. Rajiv Sharma, Addl. Public Prosecutor UT Chandigarh
for the respondent/State.

FATEH DEEP SINGH, J.

The present appellant Sajan Kumar who has been convicted by the Court of learned Additional Sessions Judge, Chandigarh under Sections 376 and 363 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹500/-, in default of payment of fine to further undergo rigorous imprisonment for two months under Section 376 IPC, whereas under Section 363 IPC to undergo rigorous imprisonment for five years and to pay a fine of ₹500 and in default of payment of fine to further undergo rigorous imprisonment for two months; has come up in this appeal against judgment of conviction dated 01.09.2003.

The precise allegations of the prosecution are that on 09.09.1999 around 7:00 p.m. when the complainant Vinod (PW-1) father

of a minor girl aged around six years (PW-3), had gone to the market along with his wife Meena (PW-4), it is alleged that the accused who resides in the neighbouring Jhuggi, came and on the pretext of offering the minor child a toffee, took the girl and defiled her which fact was revealed when the parents returned back and found the victim in a naked state with blood oozing out from her private parts. Upon registration of the FIR and completion of investigation, the accused was put up to trial wherein the prosecution examined complainant Vinod PW-1; Dr.Usha Bansal PW-2; the victim PW-3; Meena Devi mother of the victim PW-4; Govind brother of the victim PW-5; Dr.Deepak Sharma PW-6; Constable Yash Pal PW-7; HC Gurmail Singh PW-8; SI Labh Singh PW-9; SI Prem Chand PW-10; Constable Sewa Singh PW-11 and SI Om Parkash PW-12. The accused denied the allegations in his stand taken under Section 313 Cr.P.C. and established his defence plea that there was a dispute between the accused who was a labour contractor and the complainant and a false case has been got registered and thus, had examined DW-1 Tej Pal and DW-2 Rajinder and thereafter, the impugned findings were got recorded.

Upon hearing Mr. Gurveer Sidhu, Advocate appearing as Amicus Curiae for the appellant, Mr. Rajiv Sharma, Additional Public Prosecutor, UT Chandigarh for the respondent/State and on perusal of the records.

It is by no means displaced either in the evidence or in the statements of the appellant side that the victim was aged around six years at the time when the offence was committed. The victim has been examined by the prosecution as PW-3 and who has underlined the fact how the accused had taken her away while she was playing and has detailed the manner of this beastly act of the accused. Learned counsel for the appellant could not pinpoint even a single serious remiss in her testimony which could be of any help to the stand of the defence. The allegation on the accused taking away the victim, is adequately corroborated by Govind PW5, brother of the victim, and the manner in which the victim was found by her parents on their return to home is well detailed in the testimonies of the complainant PW1 Vinod and his wife PW4 Meena Devi. The most material deposition has come about by the statement of PW2 Dr.Usha Bansal who on police request Ex.PA had medico-legally examined the victim and found her undergarment smeared with semen which was taken into police possession and the parcel was sent to the laboratory. There is categorical statement of the doctor that at the time of examination of the victim, milky discharge was coming out through her vaginal opening; fourchette was torn and lacerated; labia majora and labia minora had fresh laceration; hymen was torn with fresh torn edges; and thus, leaves no scope to doubt the very allegations of the prosecution. Furthermore, the vaginal swabs give the

final nail to the coffin of the defence whereby through report Ex.PJ it has come about as to presence of seminal fluids.

The contention that is sought to be raised that the victim in her testimony has tried to state that the accused has put a finger in her private parts, certainly stands negated from the enormous medical evidence which has remained unrebutted and being a child, the victim may not have the adequate understanding to term the means by which penetrative sexual assault had come about. The testimonies of the defence witnesses that have come about, especially DW1 Tej Pal rather undermines the defence as a plea is sought to be raised that the accused at the time of the occurrence happen to be in his village in Bihar and in view of this plea of alibi, the onus certainly shifts upon the defence to prove its case in the light of provisions enshrined under Section 103 of the Evidence Act, which they have miserably failed and rather goes to the disadvantage of the defence. Further stand of the defence through DW2 Rajinder as to the fact that there was some money dispute between the accused and the complainant, is not at all materially brought on the record and rather reflects the manner in which the accused has tried to wriggle out of this by taking up a false stand.

Learned counsel for the appellant at the end has sought to make a prayer that leniency be shown to the accused who has suffered enormously on this score. Keeping in view the gravity of the offence for which the accused has been hauled up, certainly deters this Court to show

any leniency and rather this Court is of the opinion that such barbaric acts need to be sternly dealt with. No worthwhile lacuna or remiss could be pointed out by the appellant side in his arguments and rather this Court holds that there has been totally correct and appropriate appreciation of evidence and the law by the trial Court. There is no illegality or perversity in the impugned findings, which could necessitate interference by this Court. Finding no merit, the appeal stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 4, 2019

rps

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