

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.12.2019

1. CRA-D-497-DB of 2016 (O&M)

SurjitAppellant

Vs.

State of Haryana ...Respondents

2. CRA-D-462-DB of 2016 (O&M)

SonuAppellant

Vs.

State of Haryana ...Respondents

3. CRA-S-970-SB of 2016 (O&M)

Bijender @ BabalAppellant

Vs.

State of Haryana ...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN**

Present:- Mr. Naresh Kaushik, Advocate, and
Mr. Randeep S. Dhull, Advocate,
for the appellant in CRA-D-462-DB of 2016.

Mr. Ashwani Bhardwaj, Advocate,
for the appellant in CRA-D-497-DB of 2016.

None for the appellant in CRA-S-970-SB of 2016.

Mr. Randhir Singh, Addl. A.G., Haryana.

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ALKA SARIN, J.

This common judgment shall dispose of the above-mentioned three
criminal appeals, which have arisen from a common judgment dated 05.02.2016

and order of sentence dated 06.02.2016 passed by the Court of Additional

Sessions Judge, Jind, vide which appellants, namely, Surjit, Sonu and Bijender were convicted and sentenced as follows :-

Offences under Sections	R.I (each)	Fine	In default of payment of fine R.I (Each)
<u>Convicts Surjit and Sonu</u>			
376-D IPC/ 6 of POCSO Act	20 years	`50,000/-	Two months
<u>Convict Bijender</u>			
354-B/34 IPC 8 of POCSO Act	03 years	`50,000/-	One month
<u>All convicts Surjit, Sonu and Bijender</u>			
341/34	01 month	`500/-	Seven days
506/34	02 months	`1000/-	Ten days.

All sentences were ordered to run concurrently.

As per the case of prosecution, on 20.06.204 an application was received through post from the complainant-Saraswati, wife of Balwan for taking legal action against Surjit, Bablu, Pawan, Sonu and Michku alias Sumit. It is stated in the complaint that her younger daughter victim/prosecutrix “P” aged 14 years, who is an athlete, along with her sister prosecutrix “K” aged 16 years, used to go for jogging in the morning. As per the complaint both “P” and “K” stopped going for jogging after 23.05.2014. On 8.06.2014, prosecutrix “K” is said to have told the complainant that when on 22.05.2014 at about 5:15 AM both she and “P” had gone for jogging they were stopped by Bablu, Sonu, Surjit, Michku @ Sumit, Pawan and Babbal on the kacha road. Babbal was carrying a countrymade pistol and Surjit was having knife in his hand. They all snatched the Dupatta of the prosecutrix “K” and caught hold of her. They further threatened to kill her and her family if she did not do as she was told. When she protested all the accused

persons lifted the prosecutrix “K” and locked her in a room along with Surjit. Surjit, thereafter, committed rape upon her against her wishes. It was further the case of the prosecution that Sumit caught the prosecutrix “P” by her hand and touched her private parts, whereas, Pawan gagged her mouth and co-accused Babbal kissed her and touched her private parts. Further, it was stated that Surjit and Michku also forcibly got clicked their photographs with prosecutrix “K” and “P” after threatening them and thereafter uploaded the photos on the internet. On the basis of the complaint, case under Sections 376-D, 354-B, 506, 341 of Indian Penal Code, 1806 (hereinafter referred to as 'IPC'), Sections 6 and 8 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' Act), Section 67 of The Information Technology Act, 2000 (hereinafter referred to 'I.T Act') and 25 of Arms Act, 1959 was registered against the accused persons.

Charges under Sections 376-D of IPC and under Section 6 of the POCSO Act were framed against Sonu and Surjit, under Section 354-B of IPC and under Section 8 of POCSO Act against Michku, Pawan and Bijender alias Babbal, under Sections 341 and 506 IPC against all the accused and charges under Section 67 of I.T Act against accused Michku alias Sumit, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Sunila Malik, Branch Incharge Jat Senior Secondary School, Jind as PW-1, Dr. R.K. Sharma as PW-2, Dilbag Singh HC as PW-3, victim “K” as PW-4, victim “P” as PW-5, Narender Singh EHC as PW-6, Dr. Nisha Medical Officer as PW-7, Hawa Singh ESI as PW-8, C. Virender Singh as PW-9, SI Richhpal as PW-10, LHC Reena as PW-11, Shri Narender Pal, the then ACJM, Jind as PW-12, Ram Mehar ASI as

as PW-16 and Karambir Singh Inspector as PW-17. Also, the prosecution has relied upon the documents Ex.PA to Ex.PO and thereafter, on 14.09.2015 prosecution evidence was closed vide separate letter of Public Prosecutor.

All the incriminating circumstances appearing in the evidence of the prosecution were put to the accused persons during recording their statements under Section 313, Cr.P.C. but they denied the same and reiterated their innocence and false implication. They, however, did not lead any evidence in their defence except for photographs Mark-DB to Mark-DD. The prosecutrix “K” and “P” appeared as PW-4 & PW-5 and reiterated the allegations as set out in the complaint.

PW-16 Saraswati, mother of prosecutrix “P” and “K” testified that that “K” was aged 16 years and “P” was about 14 years at time of occurrence. She also reiterated the case as set out in the complaint made by her.

Prosecutrix “K” was medically examined by Dr. Nisha Medical Officer, who stepped into the the witness box as PW-7 and tendered her evidence by way of affidavit Ex.PF. She proved on record a copy of MLR of prosecutrix “K” as Ex.PG. She opined that in the present case possibility of sexual intercourse with the prosecutrix could not be ruled out. She also identified the Salwar as Ex.P6, which was taken by her at the time of medico-legal examination of prosecutrix “K”. She also identified vial containing two vaginal swab of prosecutrix “K” as Ex.P7 and vial containing public hair which were handed over to the police by her. During the cross-examination, PW-7 deposed that the prosecutrix was fully conscious at the time of her medical check up. She asked her about all the injuries and examined the body of prosecutrix carefully. There was no external mark of injury on any part of the body of prosecutrix. As per

prosecutrix if the forcible intercourse was done on a hard surface. At the time of medical examination there were no blood stains found on the salwar or on any other apparel of the prosecutrix “K”.

After taking into consideration the evidence on the record Additional Sessions Judge, Jind vide judgment of conviction dated 05.02.2016 and order of sentence dated 06.02.2016, convicted and sentenced the accused persons as mentioned above.

Aggrieved by the judgment of conviction dated 05.02.2016 and order of sentence dated 06.02.2016, the appellants have preferred the present appeals. Vide order dated 09.09.2019 passed by this Court appeals were directed to listed together in motion hearing for final disposal.

We have heard learned counsel for the parties and have also gone through the record of the trial Court with their able assistance.

Complainant – Saraswati PW-16 (mother of the prosecutrix “P” and “K”) mentioned in her complaint that it was only on 18.06.2014, prosecutrix “K” told Saraswati that when on 22.05.2014 at about 5:15 AM both she and “P” had gone for jogging they were stopped by Bablu, Sonu, Surjit, Michku @ Sumit, Pawan and Babbal on the kacha road. Babal was carrying a countrymade pistol and Surjit was having knife in his hand. They all snatched the Dupatta of the prosecutrix “K” and caught hold of her. They further threatened to kill her and her family if she did not do as she was told. When she protested, all the accused persons lifted the prosecutrix “K” and locked her in a room along with Surjit. Surjit, thereafter, committed rape upon her against her wishes. It was further the case of the prosecution that Sumit caught the prosecutrix “P” by her hand and touched her private parts whereas Pawan gagged her mounth and co-accused

and Michku also forcibly got clicked their photographs with prosecutrix “K” and “P” after threatening them and thereafter uploaded the photos on the internet. On the basis of the complaint, case under Sections 376-D, 354-B, 506, 341 of IPC, Sections 6 and 8 of POCSO Act, Section 67 of I.T. Act and 25 of Arms Act was registered against the accused persons.

During the cross-examination PW-16 Saraswati deposed that houses of convicts – Pawan, Sonu and Bijender are at a distance of 2-3 killas from her house. Pawan is a Barbar and his shop is about 4-5 houses away from her residence. She stated that she did not know Michku but deposed that convict – Surjit used to visit the shop of Pawan. She further stated that all the accused never misbehaved with her daughters prior to the present incident. Photographs Mark “DB” to Mark “DD” were also shown to her at the place of occurrence.

PW-16 has further deposed that accused – Sonu clicked photographs of her daughter “K” with accused Surjit and also clicked photographs of her daughter “P” with accused Michku. The accused threatened 'P' and 'K' that they would make photographs public on the internet. In the cross-examination photographs mark DB to mark DE were put to PW-16 who admitted that the photographs are of 'K' and Surjit.

The prosecutrix 'K' testified as PW-4. In her examination-in-chief she has testified that after committing rape on her accused told her and 'P' to get photographs clicked with them in a position as suggested. Accused Sonu clicked her and Surjit's photographs in a position as suggested by the accused. Thereafter the photograph of 'P' and accused Michku was clicked in the same manner. In her cross-examination PW-4 deposed that photographs referred by her in examination-in-chief had not been shown to her on that day. She has stated that

confronted with the photographs marked DB to DE, she admitted that she was visible in the said photographs mark DB along with the accused. However, she did not know how and when the said photograph was taken. She further admitted that cloths of the boy and girl seen in the photographs mark DE were different from those worn by the boy and girl in mark DB.

Prosecutrix 'P' testified as PW-5. She also stated that after committing the crime accused Sonu clicked her photographs with accused Michku in a manner suggested by the accused. She also stated that Sonu also clicked photographs of her sister with accused Surjit in the same manner. In cross-examination when confronted with the photographs mark DB, DC and DE she stated that they were not taken on the day of occurrence though she admitted that in the photographs mark DC and DE the girl seen was her sister.

Sunila Malik, Branch Incharge Jat Senior Secondary School, Jind was examined as PW-1, who testified the date of birth of 'K' as 12.01.1998 and that of 'P' as 21.02.2000. She testified that the name of the prosecutrix 'K' was struck off as she was absent since 23.05.2014.

PW-14 Mukesh Kumar HC testified that during the arrest of all the five accused one mobile phone and seven photographs were recovered from the pocket of accused Sumit, which were taken into possession vide recovery memo Ex.PM. From the perusal of the evidence further it appears that the photographs seized at the time of arrest were not produced.

However, Sh. Kaptan Singh ACP PW-15 stated in his deposition that during the arrest one mobile phone and seven photographs were recovered from the possession of accused Sumit. In his cross-examination he stated that the said photographs mentioned by him in his examination-in-chief were not available.

However, the photographs mark DB to DE are big prints of the same alleged

photographs.

Learned counsel for the appellants argued that offence under Section 376-D IPC was not made out inasmuch as the evidence led by the prosecution was totally belied by the photographs which were produced as mark 'DB' to 'DE'. He further argued that it is the admitted case of the prosecutrix 'K' and 'P' that photographs mark 'DB' to 'DE' were not taken on the day of the occurrence and the only conclusion one can draw is that the prosecutrix and the accused were known to each other and had, in fact, been on friendly terms. It was further argued that there was no medical evidence confirming whether rape was committed or not upon the prosecutrix much emphasis was also laid upon the fact that there was delay in lodging of FIR.

Learned Deputy Advocate General, Haryana, on the other hand, submitted that the case of the prosecution was clearly made out from the testimonies of the prosecutrix 'K' and 'P' and statements of the other prosecution witnesses. She further submitted that evidence led by the prosecution leaves no manner of doubt that accused had rightly been convicted by the trial Court.

Both the counsels were *ad idem* that both the prosecutrix were minor at the time of the occurrence.

After going through the entire evidence on the record and after hearing learned counsel for the parties, we are of the considered opinion that both the prosecutrix 'P' and 'K' have very clearly testified that they had been subjected to rape and sexual assault, respectively. Their testimonies are credible and reliable and we see no reason to disbelieve their statements. Further, Sunila Malik, Branch Incharge Jat Senior Secondary School, Jind, who was examined as PW-1 had testified that the name of the prosecutrix 'K' was struck off as she had

the prosecutrix, who had stated about the incident having taken place on 23.05.2014. Much emphasis has been laid upon the photographs mark 'DB' to 'DE' by the learned counsel for the appellants. Merely the fact that accused may have known prosecutrix 'P' and 'K' would not given them the right to commit rape and sexual assault. The photograph mark 'DB' to 'DE' in no way help the case of the appellants.

In the present case even if we are to believe that the prosecutrix 'K' and 'P' were known to the accused that by itself would not absolve the accused of the crime committed by them. The counsel for the appellants has not been able to show any reason as to why the testimonies of the prosecutrix 'P' and 'K' ought to be disbelieved.

In view of the above, all three appeals stand dismissed and the conviction and sentence awarded by the trial Court are upheld.

Appellant- Bijender @ Babal is already on bail. His bail bonds/surety bonds stands cancelled and he be taken into custody forthwith to serve his remaining sentence.

Since the main appeals have been decided pending criminal miscellaneous applications, if any, would stand disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

20.12.2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No