

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

CRA-D-831-DB-2017 (O&M)
Reserved on : September 16, 2019
Date of Decision: January 09, 2020

Jagdish ...Appellant

Versus

State of Haryana ...Respondent

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

Present: Mr. N.S.Shekhawat, Advocate for the appellant.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 18.07.2017/25.07.2017 rendered by the Ld. Additional Sessions Judge-cum-Special Court for Heinous Crimes against Women, Hisar in Sessions Case No.136-SC of 2015, whereby the appellant, who was charged with and tried for offence punishable under Section 376 IPC and Section 6 of The Protection of Children from Sexual Offences Act, 2012 and Section 3 of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been convicted and sentenced as under:

Offence under Section	Rigorous imprisonment	Fine	In default of payment of fine
376(2)(i) IPC	14 years	10,000/-	Two months
4 of POCSO Act	10 years	5,000/-	One month

3 of SC/ST Act	3 years	5,000/-	One month
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2. The sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 02.09.2015 complainant/prosecutrix (name withheld to conceal her identity) alongwith her family members visited the police station and got recorded her statement to the police in the presence of Ms.Rekha Mittal, Legal Aid Counsel alleging therein that she was 7th class pass and used to do labour work. She was unmarried. On 31.08.2015 at about 9.00 AM Sunita wife of Jagdish son of Sheo Chand (appellant), resident of Gaibipur came to her house and took her mother to her fields to pick up the cotton crop. While leaving the house, her mother asked the prosecutrix to get meals for her to the fields. At about 10.30 a.m. the prosecutrix was taking the meals for her mother to the fields of accused. But she did not know the exact location of the fields. Therefore, she asked the accused about the location of his fields but accused intentionally did not disclose the exact location of his fields. Rather he sent her to the wrong location to mislead her. Accused reached there prior to prosecutrix. When, the prosecutrix reached near the said field, he caught hold of her and gagged her mouth with her chunni. Thereafter, he committed rape with her. He also threatened her with dire consequences if she disclosed about the incident to anybody. Due to fear, she did not disclose about the incident to anybody. However on the next day i.e., 01.09.2015 she was suffering from fever. On being asked by her aunt-Banto she disclosed about the incident to her. Thereafter the matter was reported to the police. On the basis of this statement FIR was registered. The matter was investigated. Prosecutrix was

produced before the Magistrate and her statement under section 164 Cr.P.C. was recorded. Accused was arrested. Medical examination of accused as well as that of prosecutrix was got conducted. Site plan of the place of occurrence was prepared. Statements of witnesses were recorded. The samples collected at the time of medical examination were sent to the Forensic Science Laboratory Madhuban for chemical examination. After completion of investigation, challan was presented to the court.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded innocence. He stated that he had been falsely implicated in this case. The salwar which was recovered by the police on 06.09.2015 was the salwar of his wife. The color of that salwar was dark brown and green.

5. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 the prosecutrix deposed that she did not know her date of birth. She was studying in seventh class. She had left studies in seventh month of year 2015 and had again taken admission in school in January, 2016. On 31.08.2015, at around 9.00 a.m. Sunita wife of Jagdish (appellant) came to her house and she alongwith her mother went to the fields to work there. Her mother had asked her to bring food for her in the fields. Thereafter, after preparing food for her mother, she left home at around 10.30 a.m. to take over food to her mother. She had no

idea in which field her mother had gone. Therefore, when she was passing from the front of the house of Jagdish and saw him standing on the roof, she asked him as to in which field her mother had gone. He had not disclose the correct field to her but intentionally sent her to some other field, where he had hidden himself in the cotton crop. As soon as she reached that field he caught her. He forcibly broke the string of her salwar. When she tried to raise alarm he gagged her mouth with her dupatta and ravished her. He also threatened to kill her in case she disclosed about the incident to anyone. Jagdish had told her that her mother is working in his field. She went there but could not see her mother. She threw tiffin there and returned home. She started suffering from fever. When her aunt Banto inquired from her she disclosed about the entire incident to her the same day.

8. Next day, she along with her parents and family members went to the police station where her statement Ex.PA was recorded, in presence of Lady Advocate, by lady police. It bears her signatures at Point A and Point B. She was also produced before Judicial Magistrate and her statement was got recorded. She proved her statement Ex.PB which bore her signature at Point A. She was also medico- legally examined at General Hospital, Hisar. Police had also taken her to the place of occurrence and she had shown the place of occurrence to the police.

9. In cross examination, she denied the suggestion that she was more than 18 years of age at the time of incident. She stated that house of Jagdish was at a distance of 7 to 8 killas from their house. Her mother had gone to the field at 9.00 a.m. Her mother and Sunita had alone. No other lady was with them. She stated that the field of Jagdish was near to the *abadi*. However, she could not tell

in which direction it was. She stated that Jagdish had one big field of 40 killas. She had not inquired from her mother in which field she was going for work. Prior to the incident also her mother used to go for work in the field along with Sunita. However, she had never gone with them. She stated that there are other houses near the house of Jagdish but his house is the last one in the abadi. She could not tell whose fields were situated near the field of Jagdish. She stated that cotton crop in the field of accused was grown towards the village *abadi*. The entire land of Jagdish was of cotton crop. The incident took place in the middle of the field of Jagdish. Accused had dragged her by holding her hands towards the field from the *rasta* for a distance of about 2 killas, where he committed the crime against her. She had not suffered any injury marks from the crop when she was dragged. Her clothes did not tear due to dragging as he had dragged her from the passage of drain. There was no water in the drain. There was only some grass. Her clothes were smeared with blood. She had not caused injuries to the accused when he was dragging her as she was holding tiffin at that time. The place where she was ravished had thick cotton crop which was damaged. She could not raise alarm when the accused dragged her, as accused had gagged her mouth with one hand and was dragging her with the other. She was wearing brown coloured salwar-kameez at the time of the incident. She had not sustained injuries. She had not raised alarm in the field as she was in bad shape. At that time there was nobody in the surrounding fields. Her mother was at a distance of 4 to 5 killas from the place where she was ravished. When accused ravished her, her clothes were not stained with blood. The house of Banto is just adjoining to her house.

She had returned back from the field at about 11.00 am and Banto was present at

home at that time. She had disclosed the incident to Banto after 15 minutes of her return. Banto had informed her family members including her father about the incident just after the complainant had narrated the incident to her. Village Giabbipur is at a distance of about 6 kms from Barwala. She stated that they had all gone to the Police Station on the next day at about 6.00 p.m. and her statement was recorded about one hour thereafter. Her statement before the Magistrate was recorded the same day. She was taken to the hospital on the next day at about 3.00 p.m. She stated that she was the third child of her parents and that her eldest sister was 19 years and had been recently married. Her father is a labourer. On the day of the incident he was present at home. She denied the suggestion that the accused had not ravished her as alleged and that he had been falsely implicated at the instance of her aunt Banto Devi. She denied that Banto had ever fought the election of Panch or Sarpanch.

10. PW2 Krishan Kumar, JBT Teacher, Government Primary School, Gaibbipur brought the original admission and withdrawal register of Government Primary School, Gaibbipur from the year 2009 onwards. As per the record prosecutrix was admitted in their school in 1st class on 27.07.2009. Her date of birth was 24.07.2001. Entry in this regard was in the original admission and withdrawal Register at Serial No.4909 dated 27.07.2009. She remained in their school upto 29.03.2014. He proved photocopy of certificate issued by Headmaster, Government Primary School, Gaibbipur Ex.PC, which was true and correct as per the admission and withdrawal Register. In cross examination he stated that Chhindo Devi-the mother of the prosecutrix had not produced any certificate of the Civil Hospital or from any other authority regarding the date of

birth of prosecutrix. The date of birth was entered as verbally disclosed by her.

11. PW3 Dalip Singh, Patwari stated that on 15.09.2015 he prepared the scaled site plan Ex.PD on the pointing out of ASI Rajbala with correct marginal notes. He used the scale 40 karam 1 inch.

12. In cross examination by counsel for accused he stated that police had accompanied him to the place of occurrence and had pointed out point 'A' in Ex.PD. There was no broken crop of cotton when he visited the place of occurrence. He had not mentioned the name of the owner of Killa No.149/20 in Ex.PD. The police has not asked for any Jamabandi, khasra Girdawari or revenue record regarding this land. The place Ex.PD is adjoining to the village *abadi* and there is a thickly populated area.

13. PW4 HC Rakesh Kumar tendered in evidence his affidavit Ex.PW4/A deposing that on 02.09.2015, he was posted as MHC, Police Station Barwala. On that day, the Investigating Officer, ASI Rajbala deposited in the Malkhana a parcel of clothes of the prosecutrix, one parcel containing glass vial pertaining to the prosecutrix, one envelope containing papers, all sealed with the seal of Doctor. On 06.09.2015, one parcel containing clothes of prosecutrix bearing seal RB, one parcel containing blood sample of prosecutrix bearing seal of the doctor was deposited in the Malkhana. On 06.09.2015, ASI Dharambir deposited with him one parcel containing clothes of accused Jagdish, one parcel containing pubic hair in glass vial, one parcel containing swab in glass vial and one envelope containing papers and one parcel containing blood sample of accused Jagdish, all sealed with the seal of doctor. On 13.7.2015, he handed over these articles to EASI Shamsheer Singh for depositing the same in FSL Madhuban, who after deposit handed over

the receipt to him the same day.

14. PW5 HC Falel Singh stated that on 6.9.2015 he was posted as Head Constable in Police Station, Barwala. On that day the prosecutrix was summoned by ASI Rajbala to General Hospital, Hisar for taking her blood sample for DNA examination. The attending doctor took the blood sample of prosecutrix which was taken into possession by ASI Rajbala vide memo Ex.PE. On the same day, the prosecutrix produced the clothes- one Salwar and shirt, which she was wearing at the time of occurrence which were converted into sealed parcel sealed with the seal of 'RB' and taken into possession vide memo Ex.PF. Both the sealed parcels were deposited with MHC on returning to police station.

15. PW6 Babli wife of Harpal aunt of prosecutrix deposed that on 31.8.2015 at about 9.00 am her niece -prosecutrix daughter of Kala had taken the tiffin for her mother, who had gone to pluck the cotton crop in the field of Jagdish. Jagdish was standing on the way. Prosecutrix asked him as to where her mother was plucking the cotton crop. Jagdish hid himself in the fields and he raped the prosecutrix after breaking the string of her salwar. When the prosecutrix started raising alarm he intimidated her and gagged her mouth with her *dupatta*. He also warned her against disclosing about this act to anybody. After throwing tiffin in the fields prosecutrix came to her house. Prosecutrix narrated all the facts to her on 01.09.2015 and she (PW6) disclosed about the entire incident to family members of prosecutrix. Then they went to police station. Police recorded the statement of prosecutrix and also got her statement recorded before a Magistrate. After that the prosecutrix was medically examined in General Hospital, Hisar.

PW6 stated that the police recorded her statement on 02.09.2015.

16. In cross examination PW6 stated that the prosecutrix had revealed about the incident to her on 01.09.2015 at about 6.00 p.m. They had all gone to the police station at around 7 p.m. on 01.09.2015. She stated that she was illiterate. She did not remember about the dates whether it was 31.08.2015 or 01.09.2015. On 01.09.2015 the police recorded her statement and of the prosecutrix. She stated that she had narrated about the incident to all the family members including her mother-in-law, brother-in-law and parents of prosecutrix. The mother of the prosecutrix had returned home along with tiffin after the prosecutrix revealed about the incident. She stated that she had not seen any injury mark on the person of prosecutrix. Her clothes were not torn. Entire field of Jagdish is at one place. She denied the suggestion that the prosecutrix had not revealed anything to her or that the accused had not ravished her as alleged and that she had made up the entire story to falsely implicate the accused.

17. PW7 Rajesh Kumar, Tehsildar deposed that on 02.11.2015 ASI Rajbala moved an application Ex.PG for verification of caste of prosecutrix. He forwarded it to concerned Patwari for report. Patwari Dalip Singh submitted his report to the effect that prosecutrix daughter of Kala belongs to Odd caste which has been declared as Scheduled Caste vide notification of Haryana Government. He proved the report Ex. PG/2 duly counter signed by Ram Kumar Retired Tehsildar, Barwala.

18. PW8 Gopal, Assistant DC Office, Hisar stated that on 30.10.2015 ASI Rajbala obtained the Gazette notification Ex.PH and same was taken into possession by her vide memo Ex.PH/1.

19. PW SI Rajbala (Investigating Officer) deposed that on 02.09.2015

she was present at police station alongwith LAC Rekha Mittal. In her presence prosecutrix got recorded her statement Ex.PA which was attested by LAC Rekha Mittal and by her. She made her endorsement Ex.PL and sent the same to MHC for registration of the case. Special report was sent through special constable. Formal FIR Ex.PM was registered by SI Satbir Singh. Prosecutrix was produced before Illaqa Magistrate. Application Ex.PO for recording her statement under Section 164 Cr.P.C. was moved. After recording her statement under Section 164 Cr.P.C. prosecutrix was taken to Government Hospital Hisar for medico legal examination. After medical examination cloth parcels were handed over by medical officer which were taken into possession vide recovery memo Ex.PR. Thereafter prosecutrix was handed over to her parents vide memo Ex.PS. On 6.9.2015, prosecutrix was produced before medical officer for obtaining blood sampling for DNA. Medical officer after taking blood sample handed over sealed blood sample which was taken into possession vide recovery memo Ex.PE which was handed over to MHC PS Barwala. On same day PW 8 took into possession clothes of prosecutrix which were worn by her at the time of alleged rape vide recovery memo Ex.PF. On 30.10.2015 she had taken into possession Gazette notification Ex.PH/1. On same day she had taken into possession attested copy of notification Ex.PT by moving application Ex.PU. On same day, she had also taken into possession certificate Ex.PC by moving application PV to Headmaster, Primary School, Gabipur. On 2.11.2015, she had taken into possession caste certificate Ex.PG/2 by moving application Ex.PG/1 and photographs of prosecutrix and place of occurrence Mark 1 to 3 vide recovery memo Ex.PX.

She also recorded statement of prosecutrix.

20. In cross examination she stated that the prosecutrix had come to police station, Barwala on 02.09.2015 at 9.30/10.00 a.m. She was accompanied by her parents. After recording her statement she was taken for medical examination. She had not prepared injury report of prosecutrix as there was no injury on her. The clothes which were worn by prosecutrix were handed over in parcel after medical examination by doctor. She stated that village Gaibipur is at a distance of 10 km from police station Barwala. She admitted that the alleged place of occurrence is near village abadi. She denied the suggestion that the investigation was tainted and that the case was registered against the accused due to party faction in the village and at the instance of Smt. Babli who is a politician of the village.

21. PW9 Dr. Anju Arya stated that on 06.09.2015 she was posted as Medical Officer GH, Hisar. On that day on the request of the police she had taken blood sample of prosecutrix for DNA and handed it over to the police the same day.

22. PW10-Dr. Pushpa Lata Bishnoi, Medical Officer, General Hospital, Hisar tendered her affidavit Ex.PW10/A. She stated that on 02.09.2015 she had conducted the medico-legal examination of the prosecutrix at 3.30 p.m. The following observations were made while conducting the MLR:

“xxx xxx xxx

- *No external mark of injury present any where on the body of the victim*
- *History of taking bath and washing clothes after episode of rape on 31.08.2015.*

Local examination- No mark of injury seen on external genitalia.

Pubic hair trimmed on P/v examination Hymen torn. No bleeding

present. Tenderness present. Vagina admits one finger with difficulty. Two vaginal swabs taken handed to police.”

In her opinion the possibility of attempt to rape could not be ruled out.

23. She proved copy of the MLR Ex.PY, the blue colored salwar of the prosecutrix which had been handed over to the police after medical examination Ex.P2 and the glass vial Ex.P3. In cross examination, she stated that she had mentioned the age of the prosecutrix as 14 years as deposed by her parents. She had not advised to conduct ossification test of the victim to determine her age. There were no external mark on the body of the victim or external genitalia mark. She stated that during investigation of the case police did not take her opinion regarding the possibility of rape on prosecutrix.

24. PW11-Dr. Dharmender Sandhir, Medical Officer, General Hospital, Hisar tendered in evidence affidavit Ex.PW11/A. Therein it has been stated that on 06.09.2015 he conducted medico-legal examination of Jagdish. In his opinion there was nothing to suggest that he could not perform sexual intercourse. He proved the MLR of Jagdish Ex.P4. He stated that on request of ASI Dharmbir he had collected blood sample for DNA sample of Jagdish. The same was handed over to police along with other parcels as mentioned in MLR Ex.P4. He proved the glass vial containing the blood sample of Jagdish Ex.P5.

25. PW12-Dharambir Singh, Ex-Sub Inspector deposed that on 02.09.2015, he was posted as Sub Inspector at P.S Barwala. On that date, SI Saroj Bala Investigating Officer of the case recorded the statement of prosecutrix in the presence of Legal Aid Counsel. Thereafter, medical examination of the

prosecutrix was got conducted in General Hospital, Hisar. After medical

examination, the doctor handed over the parcels to IO, which were taken into possession by her vide recovery memo Ex.PR. After medical examination, prosecutrix was produced before the Illaqa Magistrate where her statement was got recorded under Section 164 Cr.P.C. Thereafter prosecutrix was handed over to her parents vide Ex.P5. On 06.9.2015, investigation of the case was entrusted to him. He produced accused Jagdish before Medical Officer General Hospital, Hisar for conducting his medico-legal examination. On his request, the Medical Officer took the blood sample of accused for DNA Test. Thereafter the parcel and blood sample were taken into possession vide recovery memo Ex.P7. He proved the glass vial containing blood sample of Jagdish Ex.P8.

26. PW13-Rajbir Singh, DSP Naraingarh deposed that on 02.09.2015 he was posted as DSP Barwala. On that day, after receipt of special report of the case, he reached the place of occurrence. He was accompanied by ASI Rajbala, who prepared the rough site plan in his presence. He had directed ASI Rajbala to get medico-legal examination of the prosecutrix conducted and also to produce her before the Magistrate to get her statement under Section 164 Cr.P.C recorded. On 05.09.2015 when he was present in police station, Barwala, Jagdish accused was produced by his brother Mahabir. Accused was arrested vide arrest memo Ex.PK. Upon interrogation, he suffered disclosure statement and led the police party to the place of occurrence where the offence was committed and demarcated the same vide memo Ex.PM.

27. In cross examination he stated that he did not sign any document on 02.09.2015 when he visited the place of occurrence along with ASI Rajbala. No document was prepared by him during the investigation of the case except the

arrest memo dated 05.09.2015. He denied the suggestion that a false case was registered against accused under pressure of some politician belonging to Barwala constituency.

28. Learned Public Prosecutor tendered into evidence report of FSL (Biology) Ex.P1 and DNA report Ex.PJ. PWs LC Anita Devi, EHC Vinod Kumar, Inspector Kapil Kumar, Mrs. Rekha Mittal-Legal Aid Counsel, SI Satbir Singh, Kala, Mindo amongst others were given up being unnecessary.

29. DW1-Ram Niwas Head Teacher, GPS Giabipur, Hisar brought the admission and withdrawal register from 08.04.2009 till date of Govt Primary School, Giabipur, Hisar. He proved the attested photo copy of the same as Ex.D1. As per the said register, Jyoti daughter of Kala Ram and Mindo had passed 5th class from the School. Her date of birth was recorded as 27.07.2001. He also proved her School leaving certificate Ex.D2. In cross examination by learned Public Prosecutor, he stated that as per the admission form Jyoti was admitted in Class 1 by her mother. Her mother was an illiterate lady as she had affixed her thumb impression on the application form. No document was attached or referred to in the admission form on the basis of which date of birth was mentioned in the form.

30. DW2-Sandeep Kumar, Inspector Food and Supply, Barwala brought the original record of the Application Form (D-1 Form) submitted by Kala Ram and D-4 Form Register. He proved the attested copy of D1 Form as Ex.D3 and of D-4 Form as Ex. D4. As per the same Kala Ram had applied for issuance of Ration Card for six members out of which two were adult males and four minors.

In this form, the age of the prosecutrix d/o of Kala Ram was written as 12 years at

point-A in Ex.D3. In cross examination, he stated that the date is not mentioned in the form as well as in the register. The register pertains to the year 2005 till date. He could not tell the exact date on which the form was submitted.

31. Ld. Counsel for the appellant has assailed the judgment of conviction on the following grounds:

(i) As per evidence of PW10-Dr. Pushpa Lata Bishnoi, Medical Officer, General Hospital, Hisar tendered through her affidavit Ex.PW10/A she had conducted the medico-legal examination of prosecutrix on 02.09.2015 at 3.30 p.m. After medical examination she had handed over to the police a dark blue colored salwar of the prosecutrix. In her affidavit PW10/A she has recorded observation about history of taking bath and washing clothes after the episode of rape on 31.08.2015. On 06.09.2015 the prosecutrix handed over one salwar and shirt which were allegedly worn by her at the time when she was ravished. These were taken into possession by PW8 ASI Raj Bala vide recovery memo Ex.PF. In the recovery memo Ex.PF it has been recorded that due to fear the prosecutrix had washed these clothes. As per the FSL report human semen was detected on both the salwars i.e., exhibit-1 (the dirty dark blue coloured salwar) handed over to the police by PW10-Dr. Pushpa Lata Bishnoi and exhibit-3a- dirty dark brown & green coloured salwar (handed over to PW8 ASI Raj Bala by the prosecutrix on 06.09.2015 which she was allegedly wearing when she was ravished). Ld Counsel has argued that it is not possible that semen stains would remain after washing and secondly how could the semen stains of accused be found on two salwars. He argued that the entire case against the accused is planted and false.

(ii) As per PW3 Dalip Singh Patwari who prepared the scaled site plan of

occurrence, the field of Jagdish accused where the incident is alleged to have taken place, is close to the village abadi and there is a thickly populated area. It is highly improbable that the rape could have taken place in a thickly populated area close to the village abadi.

(iii) In her cross examination PW1- the prosecutrix had stated that the entire land of Jagdish was having cotton crop. The place where she was ravished had thick cotton crop growing which was damaged. But as per PW3 Dalip Singh Patwari who prepared the scaled site plan of occurrence on 15. 09.2015 on the same being pointed out by ASI Rajbala there was no broken crop of cotton when he visited the place of occurrence. This belies the claim of the prosecutrix regarding the incident. Further, if in the process of the victim being ravished the cotton crop was damaged how is it that the victim suffered no injury at all?

(iv) There are material contradictions in the statements of PW1 prosecutrix and PW6 Babli aunt of the prosecutrix. As per PW1 she narrated the entire incident to her aunt Babli PW6 soon after returning from the fields on 31.08.2015, whereas, according to PW6 the prosecutrix narrated the facts to her on 01.09.2015. Further as per PW1 her statement was recorded by the police on 01.09.2015 whereas according to PW8 SI Rajbala her statement was recorded on 02.09.2015.

(v) The most material witnesses the father and the mother of the prosecutrix have not been examined.

32. Having carefully considered the submissions of the Ld. Counsel for the appellant we find no merit in the same.

detected on both the salwars, all that needs to be noticed is that it was not the case of the prosecution that the blue coloured salwar which the prosecutrix was wearing at the time of her medical examination on 02.09.2015 (exhibit-1) was the salwar which she had been wearing when she was ravished. It was stated by PW1 in her cross examination that she was wearing a brown coloured salwar kameez at the time of the incident. Hence the reliance by the Ld. Counsel on the observation of PW10 Dr. Pushpa Lata Bishnoi that there was history of bathing and washing after the incident on 31.08.2015 also loses significance. Further though human semen was detected on this exhibit, however there was no amplification of DNA when the DNA extracted from this exhibit (Item No.1) was subjected to Autosomal STR analysis by using Identifier Plus Kit. Thus the semen detected on this salwar has not been connected with accused Jagdish.

34. As per the FSL report in regard to the second salwar- Item No.2 (exhibit.-3a) which was handed over to PW8 ASI Raj Bala by the prosecutrix on 06.09.2015 which she was allegedly wearing when she was ravished the conclusion was that: *“The Autosomal STR analysis conclusively proves that the DNA profile of seminal stains on item no.2 (salwar) matches with the DNA profile of source of item No.3 (blood of Jagdish)”*

35. Even though human semen stains were found on both the salwars, it was only the DNA extracted from the salwar which as per the prosecution was worn by the prosecutrix at the time when she was raped, that matched with the DNA profile of Jagdish. This conclusively establishes the case of the prosecution.

36. Argument based on the mere recital in the Recovery Memo Ex.PF that the prosecutrix had stated that due to fear she had washed the clothes and

hence the semen stains could not remain on the washed clothes cannot help the accused. First, neither the prosecutrix nor PW8 SI Rajbala were questioned regarding this. Secondly much depends on the quality and extent of the wash. The prosecutrix may have only attempted to remove the more visible stains and not succeeded in removing all. This is all the more clear because as per the FSL report both Exhibit-3a (the dirty dark brown & green coloured salwar) and Exhibit-3b (dirty blue coloured embroidered lady's shirt) were dirty and had muddy stains, quite contrary to a proper wash after which the clothes would be clean and in any case not have muddy stains. This in fact supports the claim of the prosecutrix that she was dragged from the passage of a drain by the accused before she was ravished.

37. The accused has led no evidence to substantiate his assertion in his statement under Section 313 Cr.P.C that the salwar which was recovered by the police on 06.09.2015 was the salwar of his wife. This bald assertion cannot be accepted.

38. The argument that the field of Jagdish accused where the incident is alleged to have taken place is close to the village abadi and it is highly improbable that the rape could have taken place in a thickly populated area close to the village abadi also does not appeal to us. It has come in evidence that the fields of Jagdish are about two killas from the village abadi. In her cross examination PW1- the prosecutrix has stated that there are other houses near the house of Jagdish-appellant, but his house is the last one on the abadi. Jagdish has one big chunk of land approximately about 40 acres in which cotton was grown. As per PW1- the occurrence took place in the middle of the field of Jagdish. At that time there was

nobody in the surrounding fields. He had dragged her for a considerable distance from the passage of a drain. Obviously, the appellant chose a place where he would not be visible.

39. The argument of the Ld. Counsel that though as per PW1 the place where she was ravished had thick cotton crop growing which was damaged. But as per PW3 Dalip Singh Patwari who prepared the scaled site plan of occurrence on 15.09.2015 on the same being pointed out by ASI Rajbala there was no broken crop of cotton when he visited the place of occurrence also is not sufficient to dent the prosecution case. The prosecutrix is a minor girl of about 14 years. She had gone to deliver food to her mother in the fields and she faced the accused hiding in the crop who gagged her mouth, dragged her to some distance along the drain and raped her. She obviously would be in a shock and she cannot be expected to remember each minute detail regarding the incident. The incident had taken place on 31.08.2015 whereas the scaled site plan was prepared on 15.09.2015 i.e, more than two weeks after the incident. Much cannot be made of this discrepancy in the face of the conclusive evidence against the accused.

40. Similarly, regarding the contradictions in the statements of PW1 prosecutrix and PW6 Babli aunt of the prosecutrix regarding the date and time when PW1 narrated about the incident to PW6 all that needs to be said is that PW6 has in her cross examination stated that she is an illiterate lady and she did not remember the dates as she had not refreshed them before making her statement. In any case these variations are not material and do not dent the prosecution case.

41. Further, the fact that the parents of the prosecutrix have not been examined does not weaken the prosecution case. It has come in evidence that the

father of the prosecutrix is a labourer. Her mother often worked in the fields of the accused. As such she appears to be dependent on the family of the accused for providing her work. Their house is close to the house of the accused. Though they have been given up as unnecessary but it is quite possible, that in these circumstances they may have been reluctant to depose against the accused.

42. There is clear and unequivocal testimony of PW1- the prosecutrix about the incident. Despite her being subjected to detailed and lengthy cross-examination, the defence has not been able to dent her version. The FSL report conclusively establishes that the semen found on the salwar of the prosecutrix was of the appellant. The fact that the prosecutrix is a minor has been established on record. Further the fact that she belongs to the Scheduled Caste has also been established.

43. The prosecution has proved the case against the appellant beyond reasonable doubt.

44. There is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 09, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No