

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

Crl. Appeal No.D-735-DB of 2012 (O&M)

Date of Decision: April 01, 2021

Upendar Mato

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Ms.Nupur Chaudhary, Legal Aid counsel
for the appellant.

Mr.Hitesh Pandit, Addl. Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 03.02.2012 and order of sentence dated 04.02.2012 passed by learned Additional Sessions Judge, Fatehabad, vide which, appellant Upendar Mato was held guilty and convicted for the offence under Section 376 IPC and sentenced to undergo imprisonment for life. Even, fine of Rs.5,000/- was imposed, in default whereof, he was to further undergo rigorous imprisonment for a period of three months.

Background facts in nutshell are as follows:-

That, complainant Khushbu wife of Mehar Chand was doing labour work in village Kulan. Her husband had died about two years ago.

She is having two daughters. One is aged about 10 years and younger daughter (prosecutrix) is aged about 3 years. On 13.10.2010, at about 4.00 p.m., her elder daughter had gone out from the house for playing with children and after some time, even her younger daughter (prosecutrix) had gone out of the house for playing. However, when the prosecutrix had not returned back, the complainant had gone in search of her. While in the process of search, she reached the hut of Upender Mato, who belongs to District Purnia and lived in her neighbourhood, she heard screams of her daughter. She then went inside the hut and found Upender Mato to be committing rape upon her younger daughter. On spotting the complainant, Upender Mato had fled away. Blood was oozing from the private parts of her daughter and she was not wearing any underwear but only wearing a frock. The complainant raised hue and cry, upon which, several people had collected at the spot.

Proceedings in the present case were initiated, on the basis of the statement got recorded by the complainant. During the course of the investigation, scene of crime was inspected. Even, on the day of occurrence itself, at about 9.46 p.m., the medical examination of the prosecutrix was got conducted. Accused Upender Mato was arrested on 14.10.2010. On completion of investigation, challan was presented against Upender Mato

On presentation of challan, compliance of Section 207 Cr.P.C. was made. On the basis of material coming forth, charge under Section 376 IPC was framed against Upender Mato, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as

Draftsman, PW-3 MHC Basau Ram, PW-4 EHC Ramesh Kumar, PW-5 Dr.Aradhana Ahuja, PW-6 Head Constable Mahavir Singh, PW-7 Dr.H.S.Sagoo, PW-8 SI Ganga Ram, PW-9 Khushbu and PW10 ASI Virender Singh.

Even, learned Public Prosecutor tendered into evidence report of FSL Ex.P19 and Ex.20.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to accused-appellant in his statement under Section 313 Cr.P.C. However, the accused-appellant denied those allegations. In fact, he had taken the plea of false implication, due to enmity and also pleaded that prosecutrix suffered injuries, when she was playing with other children and that he has not committed any rape upon the prosecutrix.

In defence, accused examined his wife Rekha Devi as DW-1, who deposed that complainant Khushbu wanted to marry her husband, thus, she had filed false case against her husband, as he had refused to marry the complainant. Also, she stated about the prosecutrix to have suffered injuries, while she was playing on swings in the plot and other children had also suffered injuries, at that time. The mother of the prosecutrix was called by her and her husband, at the spot. The complainant had taken away her child and also extended threats to implicate Upender Mato, in a false case.

The point for determination formulated by learned trial Court in the present case, reads as under:-

'Whether on 13.10.2010, the accused committed rape on the prosecutrix, aged about three years and thereby committed the offence punishable under Section 376 of the IPC'.

After hearing learned Public Prosecutor as well as learned defence counsel and on appraisal of the evidence brought on record, vide impugned judgment, accused-appellant was held guilty, convicted and sentenced, as already detailed in earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellant-convict has filed the present appeal.

In pursuance of notice, learned counsel made appearance. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

In the light of the evidence, coming on record, it has been vehemently submitted by learned counsel for the appellant that evidence, so adduced in the present case, has not been appraised by learned trial Court, in correct perspective. In fact, she submitted that the complainant, who is mother of the prosecutrix, is the sole witness, who has been examined in the present case and even, her testimony is not above board, as it contains various discrepancies, which in itself, negates the prosecution version. Rather, it is submitted that a false case has been registered against the appellant, solely on the ground that complainant was nursing grievance because of his not being inclined to marry her. As such, a prayer has been for acceptance of the appeal and to set aside the judgment of conviction and order of sentence and acquit the appellant.

In refutation, learned State counsel resisted the claim of the appellant. He submits that the evidence, so adduced, in the present case, has been rightly appraised by learned trial Court. The testimony of the complainant is trustworthy. She has categorically deposed about the

ravishment of her daughter, who was 3 years old, by the appellant-convict. She has categorically deposed about the manner of occurrence. Even, sufficient corroboration is lent to the version of the complainant from the medical evidence, brought on record. Thus, it is submitted that learned trial Court has rightly reached the conclusion about the appellant, having caused the occurrence in question and has convicted him under Section 376 IPC. Even, sentence so imposed, is just and reasonable. Therefore, learned State counsel has made a prayer for dismissal of the appeal.

Throughout the arguments, much emphasis has been laid upon the sole testimony of the complainant coming forth, with regard to the sexual assault allegedly committed upon prosecutrix by the appellant. It is submitted that statement of the complainant is not trustworthy and reliable. However, the aforesaid submission is not tenable. Very true, as so pointed by learned counsel for the appellant that PW-9 Khushbu is the sole witness, examined vis-a-vis occurrence in question, but however, it is pertinent to mention that victim girl is only 3 years old and looking at her age, definitely, she would not have been in a position to depose about the manner of occurrence and therefore, she has not been examined as a witness. In fact, the complainant, who is mother of the prosecutrix, had reached the spot and she has stated about having spotted the appellant, while he indulged in ravishment of her daughter. The complainant, while in the witness box as PW-9, besides deposing about her relationship with the prosecutrix, has also categorically deposed about the manner, in which her daughter had gone away from the house, in evening for playing. She has also categorically stated that when her younger daughter did not return

course, she had heard screams of her daughter, coming from the hut of the appellant, which is situated in her neighbourhood. She then went inside and found appellant committing rape upon her daughter. She further deposed that on seeing her, appellant had fled away. She also stated that blood was oozing out from the private parts of her daughter and frock worn by her was also stained with blood. In her cross-examination, she has categorically stated that wife of the appellant was not present in the hut, at that time. The complainant has thus deposed categorically, in consonance with her statement Ex.P2, on the basis whereof, proceedings were initiated in the present case.

Though, now it is submitted that there is discrepancy coming forth about the distance of house of the complainant from the hut of the appellant and this discrepancy is of vital importance but however, it is not so. Though, the complainant, while deposing in cross-examination, has stated that hut of the appellant was situated at about 2 kms. away from her house but however, it is pertinent to mention that PW-10 ASI Virender Singh, Investigating Officer, in cross-examination, has categorically stated that distance between the cottage of the appellant and residence of the complainant, is about 1 acre. Even otherwise, this discrepancy, is not such, which raises doubt about the truthfulness of the version, so put forth by the complainant, who is mother of the prosecutrix. This discrepancy, otherwise also, has to be considered in the backdrop of the other evidence, brought on record. The complainant, as stated aforesaid, has deposed clearly and specifically about the manner of occurrence caused by the appellant. Besides the same, Investigating Officer has also categorically deposed about

conducting of medical examination of the prosecutrix.

The ocular evidence, so coming forth, also finds corroboration from the medical evidence, brought on record. The prosecution has examined PW-5 Dr.Aradhana Ahuja, Medical Officer, who had medico-legally examined the prosecutrix, on the day of occurrence only i.e. 13.10.2010. She has categorically deposed that on examination of the prosecutrix, who was having alleged history of rape, she observed following injuries:-

1. *There was laceration of vagina. Blood was found in the vagina.*
2. *There were injury marks on the bilateral thighs of the baby.*

Furthermore, she has also stated that vaginal swabs were taken and sent for analysis. Even, she had deposed about the parcel bearing seal of FSL, opened during the course of examination and she found the same to be containing dirty greenish small size baby frock and stated that frock was the same, which was worn by the prosecutrix, at the time of medico-legal examination. Besides the same, it is evident from the FSL report Ex.P19, that blood was detected on vaginal swabs. Even, FSL report Ex.P20 states that baby frock was stained with few medium and small blood stains. The medical evidence, as such, also lends credence to the prosecution version, about the ravishment of the prosecutrix by the appellant.

A faint attempt has also been made to secure acquittal, on the ground that appellant, who has been falsely implicated in the present case, in his statement under Section 313 Cr.P.C., had taken the plea that false case

that prosecutrix had suffered injuries, when she was playing with other children. To so substantiate this plea, even the appellant, in his defence, has examined his wife Rekha Devi as DW-1. She has also stated that complainant wanted to marry her husband and complainant had filed false case, as her husband had refused to marry her. She also stated that prosecutrix suffered injuries, while she was playing on swings in the plot and other children also suffered injuries. She further stated that mother of the prosecutrix was called by her and her husband, at the spot and while taking away her daughter, the complainant had extended threats to implicate her husband, in a false case. However, it is pertinent to mention that in his statement under Section 313 Cr.P.C., no reason, as such, has been assigned by the appellant himself, thereby giving inkling about his false implication. Simply, he had stated about his false implication due to enmity but the reason for the animosity, as such, has not been given. No witness of any kind qua animosity, existing between the complainant and appellant, as such, has been examined. Even though, wife of the appellant, while appearing as DW-1, had stated about the complainant to be interested to marry her husband and on refusal to marry the complainant, she had got registered false case against her husband but however, this plea is very vague. There is nothing, as such, coming on record, as to when such interest was expressed by the complainant and when refusal was made by the appellant. This is all the more important to consider when appellant is aged about 42 years and is already married, having seven children. Even, plea has been taken that prosecutrix had sustained injuries, while playing. The wife of the appellant, while deposing as DW-1 had also stated that

this plea of sustaining injuries by other children, during the course of playing, as such, has been produced. In the given circumstances, the plea of false implication also appears to be hollow one, which has been raised, only to escape from the criminal liability.

The cumulative effect of aforesaid discussion is that prosecution has successfully established, as per the demanding degree of proof, about the appellant to have committed rape upon the prosecutrix, who is 3 years old girl child. Thus, learned trial Court has rightly held the accused guilty and convicted him under Section 376 IPC. Keeping in view the age of the appellant, who is married man, having seven children, as gathered from the evidence and also considering the age of the prosecutrix, the sentence, so imposed upon the appellant is just and reasonable. As such, impugned judgment of conviction and order of sentence, calls for no interference.

Resultantly, present appeal stands dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

April 01, 2021
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
Yes