

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

**CRA-D No.1059-DB of 2015
Date of Decision:-29.11.2021**

Ajay Appellant

Vs.

State of HaryanaRespondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

Ms. Shruti Jain Goyal, DAG Haryana.

PANKAJ JAIN, J.

The appellant has been convicted for the offence punishable under Section 376 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012 and has been sentenced to undergo RI for 14 years and fine of Rs.50,000/-.

Complainant-Amita approached Police authority alleging that she is house hold lady. Due to an accident which took place six months ago, her husband has become incapacitated and remains at home only. She is having four daughters and two sons. Her daughter namely S, the prosecutrix (her name is withheld to conceal the identity) is third child who is aged about 13 years and student of 8th class in the village school. Same day, around 7:00 p.m. the prosecutrix along with her younger sister Shiksha went to government dairy for bringing milk. After some time, Shiksha

came back home and told that Ajay son of Madan who otherwise is their uncle after holding the hands of prosecutrix and shutting her mouth has taken her in the house of Preet Singh son of Ram Pat. Soon after having the information, she rushed to the spot and saw that accused Ajay at once ran away from there. Further, she entered in the house of Preet and on her asking, the prosecutrix disclosed that accused Ajay has raped her.

On the basis of this complaint, FIR No.274 dated 09.09.2013, Police Station Kalanaur under Section 376 and 4 of POCSO Act was registered.

The prosecutrix was medically examined and her statement was recorded under Section 164 Cr.P.C. The trial was committed to the Sessions Court.

In order to prove its case, the prosecution examined 15 witnesses namely SI Rajesh Kumar as PW1, HC Sumit Kumar as PW2, Dr. Neena as PW3, S, the prosecutrix as PW4, Inspector/SHO Ramesh Kumar as PW5, EHC Ram Niwas as PW6, ESI Jai Parkash as PW7, Constable Siri Bhagwan as PW8, Shilak Ram, Computer Statistical Assistant as PW9, Shiksha (sister of the prosecutrix) as PW10, Amita (complainant/mother of the prosecutrix) as PW11, Dr. Sunil, Medical Officer, General Hospital, Rohtak as PW12, Lady head Constable Jagwanti as PW13, Constable Vinod Kumar as PW14 and ASI Phool Kumar as PW15.

The appellant gave statement under Section 313 Cr.P.C but did not lead any evidence.

After examining the evidence, trial Court found that there was no

reason to doubt the evidence of prosecutrix, her mother and sister, who have no ulterior motive to implicate the accused falsely. The said witnesses were found to be truthful and trustworthy and their evidence was corroborated by medical evidence on record. Finding that the prosecution has proved the case beyond doubt, trial Court found appellant guilty of commission of offence punishable under Section 376 IPC read with Section 4 of the POCSO Act 2012 and thus sentenced him for 14 years RI and a fine of Rs.50,000/-.

While assailing the judgment passed by the trial Court, counsel for the appellant has primarily argued that it is a case of false implication on account of a property dispute between the family members. Counsel for the appellant further contended that the fact that no ossification test of prosecutrix was got conducted to ascertain her age and even at the time of medical examination of the prosecutrix, no injury was found on her person proves that no offence was committed. Counsel for the appellant has drawn our attention to FSL report Ex. P5 to contend that, human semen was not detected on the case property sent to the laboratory and thus the evidence does not support the story of the prosecution and it in fact negates commission of alleged offence.

Learned Additional Advocate General, while supporting the judgment has pointed out that the prosecutrix and the complainant are consistent in their version and there is nothing on record to disbelieve them.

So far as the FSL report is concerned, learned State counsel points out that it has come in the deposition of the prosecutrix that the

accused committed rape after removing her clothes and even her mother in her deposition stated that when she went inside the house she found that salwar of her daughter was lying removed thus, absence of human semen or stains upon the clothes is but natural. Learned State counsel has further taken us to the statement of PW3 Dr. Neena, who medically examined the prosecutrix.

We have heard both the counsel for the parties and have carefully gone through the record.

In our opinion, the arguments raised by learned counsel for the appellant deserve to be rejected.

Learned counsel for the appellant could not point out any discrepancy in the statement of prosecutrix and that of her mother. The prosecutrix as well as her mother-the complainant are consistent in their version and have successfully withheld themselves in cross-examination. The version of the prosecution is fully supported by the medical evidence on record.

It will be apposite to reproduce the statement of Dr. Neena which reads as under:-

“She was brought with alleged history of sexual assault on 9/9/13 as told by the patient herself and her mother. Her LMP was 29/8/13. Menarche started 2 months ago. She was wearing the same clothes during her examination. Clothes were all intact. She was wearing salwar (lemon coloured) which was blood stained, kameez was mehendi coloured with maroon work and white coloured shamiz. She had not taken bath after this assault. Here general condition was fair, pulse 80/min., bp-110/80 mmhg, afebrile, pupils b/I NSNR, conscious, cooperative, well oriented to time, place and person. She

was average built, breast are not well developed, axillary and public hairs are not well developed. Gait is normal. On G/E there are no fresh external mark of injury on the body.

On local examination of the external genitalia-hymen ruptured. On PS examination there are multiple lacerations present in the posterior fornix, bleeding P/V is also present, white d/s is present in the cervix. On p/v examination hymen ruptured, bleeding p/v is present. P/v examination is done by admitting one finger and it is also painful.”

In the light of the statement made by PW3, who medically examined the prosecutrix, the argument raised by counsel for the appellant stands answered.

So far as, the argument with respect to false implication of the accused is concerned, the old rivalry could be motive behind rape as well. Medical evidence on record totally demolishes the theory being projected by the counsel for the appellant and we find that the prosecution has proved its case beyond doubt.

Keeping in view the aforesaid facts and circumstances of the case, we find no reason to interfere in the judgment passed by the trial Court with respect to conviction.

The counsel for the appellant has further contended that no reason has been assigned by the trial Court for assigning the maximum punishment. Without doubt the appellant is guilty of offence against teenage girl of 14 years and deserves no empathy. However, keeping in view the fact that the appellant is neither involved in any other case nor is a prior convict, we deem it appropriate to reduce the sentence of the appellant

from 14 years RI to 12 years RI.

The present appeal is partly allowed to the extend that maintaining the judgment qua conviction of the appellant, order of sentence is modified to the extent that the appellant shall undergo rigorous imprisonment of 12 years and to pay a fine of Rs.50,000/- for the commission of offence punishable under Section 376 IPC read with Section 4 of POCSO Act 2012, instead of 14 years RI as ordered by the trial Court. Apart from the aforesaid modification in the order of sentence the appeal stands dismissed.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

29.11.2021
Amandeep

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