

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

Date of decision : 24.05.2022

(i)	CRA-D-1134-DB-2013 (O&M)	
	Balbir Chand @ Billa	..Appellant
	Versus	
	State of Punjab	..Respondent
(ii)	CRA-D-260-DB-2017	
	Surjit Lal	..Appellant
	Versus	
	State of Punjab	..Respondent

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Ms. Puneeta Sethi, Advocate as Legal Aid Counsel
for the appellant in CRA-D-1134-DB-2013.

Ms. Satinder Kaur, Advocate as Legal Aid Counsel
for the appellant in CRA-D-260-DB-2017.

Mr. H.S. Grewal, Addl. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J.

1. This judgment will dispose of CRA-D-1134-DB-2013 and CRA-D-260-DB-2017 as common questions of law and facts are involved in both the appeals.

2. The appellants-Balbir Chand @ Billa in CRA-D-1134-DB-2013 and Surjit Lal in CRA-D-260-DB-2017 have filed the present appeals challenging the judgments of conviction and orders of sentence dated 17.07.2013 and 30.01.2017, respectively, for commission of

offence punishable under Sections 376(2)(g) of the Indian Penal Code, 1860 (for short 'the IPC').

3. A blurb from the paper-books would reveal that on 29.08.2012 the prosecutrix, who was about 15 years of age, made a statement before the police that she was studying in 9th Class in Government Senior Secondary School, Jandiala. On that day at about 4:30 p.m., her classmate Pooja daughter of Sukhwinder Lal came to her house and asked the prosecutrix to collect her copy, which the prosecutrix had given to her, from the house of Pooja. Thereafter, she had gone to the house of Pooja. The family members of Pooja were not present in the house. The accused were present in the house of her friend. After making her sit in her house, her friend Pooja had gone outside. Then both the accused caught hold her from her arms and pulled her inside the room and forcibly thrown her on the cot and committed rape upon her one by one. During scuffle her shirt and salwar were torn. She raised hue and cry which attracted her mother who came to the house of Sukhwinder Lal. On seeing her mother, both the accused fled from the spot. She was got admitted in Civil Hospital, Nurmahal by her mother and uncle (Massar) Paramjit. On the basis of her statement, FIR No.59 dated 29.08.2012 under Sections 376/34 of the IPC was registered at Police Station Nurmahal, Jalandhar against the accused.

4. The matter was investigated, site plan was prepared, statements of the witnesses were recorded. Only accused Balbir Chand was arrested. The prosecutrix and accused Balbir Chand were

medicolegally examined, medical evidence was collected and after completion of investigation challan against Balbir Chand was presented in the Court. The trial court charge-sheeted the accused Balbir Chand under Sections 376(2)(g) of the IPC to which the accused pleaded not guilty and claimed for a trial.

5. At the time of conviction of accused Balbir Chand, accused Surjit @ Sodhi could not be arrested and was declared proclaimed offender vide order dated 17.01.2013. Thereafter, he was arrested by the police and supplementary challan against him was presented in the Court. During the trial, on 28.10.2013 he escaped from the custody of the police and was declared proclaimed offender vide order dated 22.01.2014. Lateron, it came to the knowledge of the prosecution agency that the accused is lodged in Ludhiana Jail with regard to FIR No.2 dated 15.01.2015 registered under Section 22 of the NDPS Act. After obtaining production warrants against the accused, he was produced before the trial court and was arrested in the present case and supplementary challan was presented against him on 20.05.2015.

6. In the case of accused Balbir Chand in order to prove its case, the prosecution examined as many as 09 prosecution witnesses and produced material documents and objects which were exhibited.

7. After appreciating the evidence on record, learned Additional Sessions Judge, Jalandhar vide its judgment of conviction dated and order of sentence dated 17.07.2013 held accused Balbir Chand guilty under Section 376(2)(g) and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.30,000/-. In

default of payment of fine, he shall further undergo rigorous imprisonment for a period of 01 year. Out of recovered fine of Rs.30,000/- a sum of Rs.20,000/- was ordered to be paid as compensation to the prosecutrix/victim.

8. In the case of accused-Surjit Lal @ Sodhi in order to prove its case, the prosecution examined as many as 11 prosecution witnesses and produced material documents and objects which were exhibited.

9. After appreciating the evidence on record, learned Additional Sessions Judge, Jalandhar vide its judgment of conviction and order of sentence dated 30.01.2017 held accused-Surjit Lal @ Sodhi guilty under Section 376(2)(g) and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of 01 year.

10. Aggrieved against the above said judgments of conviction and orders of sentence, the appellants have filed the present appeals.

11. Learned counsel for the appellants have vehemently submitted that the appellants have been falsely implicated in the present case. The case of the prosecution is merely based upon the circumstantial evidence. The incident took place in Abadi of village even then no independent witness has been examined in this case and the entire case is based on the testimony of the official witnesses. Learned counsel for appellant-Balbir Chand strenuously argues that his client was not present at the scene of crime on the fateful day. The trial court did not appreciate the statement of S.P. Jain, Nodal Officer who

categorically stated that mobile No.9815342578, which belongs to accused-Balbir Chand @ Billa, showing location between 4 p.m. to 5 p.m. on the fateful day at another village i.e. village Bath. Learned counsel have further submitted that the impugned judgments of the trial court are purely based on surmises and conjectures and deserve to be set aside. In support of their submissions, learned counsel for the appellants relied on catena of judgments in ***Rai Sandeep @ Deepu vs. State (NCT) of Delhi (SC), 2012(4) RCR (Criminal) 11, State of Rajasthan vs. Babu Meena, 2013 (2) SCC (Crl.) 364, Arokia Thomas vs. State of Tamil Nadu (SC) 2006 (10) SCC 542, Manoj @ Monu Vishal Chaudhary vs. State of Haryana and another (Criminal Appeal No.207 of 2022 (SC) decided on 15.2.2022 etc.***

12. *Per contra*, learned State counsel has submitted that the appellants have rightly been convicted and sentenced by the trial court. There is cogent evidence on record to show that the appellants had committed the offence. The prosecution has examined sufficient witnesses to prove its case. After appreciation of the evidence on record, the trial court has rightly convicted and sentenced the accused/appellants.

13. We have given our thoughtful consideration to the submissions made by learned counsel for the appellants and learned State Counsel and have gone through the paper-books as also the lower court record.

14. We are not convinced with the arguments of learned counsel for the appellants. Before proceeding further, it would be

apposite to reproduce the statement of the victim made under Section 164 Cr.P.C. on which the entire case revolves, reads as under:-

“Statement of (Name of Victim xxxx) daughter of Mangal s/o Arjan, age-DOB 31.3.1997, Student of 9th Class, r/o vill. Chuheki, Moh. Totaiani, P.S. Nurmahal, P.S. Phillaur.

Q: What is your age and what is your father?

A: I am 15-16 years old. I have entered 16th year and my father is a labourer.

Q: What is the name of your School?

A: I have been studying in Government Girls Senior Secondary School, Jandiala.

Q: Do you know that one should speak the truth or tell a lie ? What is the meaning of oath ?

A: One should always speak the truth, whether on oath or not.

(This witness has answered all the above stated questions rationally and intelligently. I am of the considered view that she knows the meaning of oath. Now I proceed to record her statement on oath)

On SA

The matter relates to 29.8.12. My friend Pooja daughter of Sukhwinder Lal came to our house at about 4.30 PM. She said to me, “I should go to her house and take my note-book which she had taken from me.” I accompanied her to her house at that very time. When I reached her house, she made me to sit on a cot and herself went outside. At that time no member of their family was present there in the house. Sodhi and Billa of our village Chuheki were present in her house. They both dragged me from my arms and took inside the room. They threw me on the cot. I raised much alarm. They first put off their clothes and then put off my clothes. Then first Sodhi did sexual intercourse with me

and later on Billa committed sexual intercourse with me. At the time of putting off clothes, they torn my suit from the plaits and also torn my salwar. When they were pulling and pushing me, my head struck against the cot. My mother while searching me reached the house of Pooja alongwith my Masar Paramjit. On seeing my mother and Masar, Sodhi and Billa fled away from the spot. My mother assisted me to stand up and put on clothes to me. Thereafter my mother and my Masar brought me to Civil Hospital, Nurmahal. Then information was given to the police. I have to say nothing more.

RO&AC	Sd/- in English
Sd/- in English	JMIC,
(Victim)	4.9.12.”

15. The prosecutrix was duly examined before the trial court. She categorically deposed by reiterating the aforesaid entire incident in toto. She categorically deposed that accused Billa @ Balbir Chand and Sodhi @ Surjit caught hold her from her arms and took her inside a room in the house of Pooja. They threw her on a bed. She raised loud shrieks. Both the accused committed rape on her one by one. In the scuffle, her shirt was torn near from the arm and her salwar was also torn. She had also received injury on her head. The accused kept her in the said room for 20 minutes. During that period, she had been raising alarm which attracted her mother Balwinder Kaur and she came to the house of her friend. On seeking her mother, both the accused fled away from there. Her Massar Paramjit also came there and she was taken to Civil Hospital, Nurmahal, where she was medically examined by the

doctor. The police reached in the Hospital and she made statement to the police. Her statement was also recorded by the Magistrate.

16. The deposition of the prosecutrix has further been corroborated by the deposition of her mother Balwinder Kaur who categorically deposed when she entered the house, after seeing her both the accused came out from the room. When she went inside the room, she found her daughter lying on the bed and her clothes were torn. Her daughter told her that both the accused committed rape on her. Thereafter, she took her daughter to civil hospital where she was medico legally examined by the doctor.

17. In the present case, as per deposition of Dr. Sonu Paul, Medical Officer, Civil Hospital, Nurmahal, it transpires that on 29.08.2012, she medico-legally examined the prosecutrix and found the following injuries on her person :-

1. Swelling normal coloured 3 cm diameter incised on the left side. Posterior parietal region. X-ray of skull was advised.
2. Reddish blue bruise four cm x three cm, three cm front of the left axillary region. Tenderness was present.
3. She was complaining of pain on both breast areas.
4. One cm reddish blue bruise on the lower outer quadrant of the right breast.
5. Multiple reddish bruises scattered in respect of both thighs.
6. Complain of pain on lower abdomen. Tenderness was present. Ultra sound abdomen was advised.

18. The MLR of the prosecutrix reveals that pubic hair was present; no external injury was seen, whitish discharge was coming out through the external opening, no bleeding was seen, hymen was absent,

per vagina discharge seen, admit one finger only. On receipt of report of Chemical Examiner, Dr. Sonu Paul gave her supplementary report that possibility of sexual intercourse could not be ruled out as spermatozoa was detected in vaginal swabs and the vaginal slides. These materials are consistent which are sufficient to prove the aforesaid offence against the appellants beyond reasonable doubts.

19. So far as the argument of learned counsel for the appellants regarding no independent witness was examined in the present case is concerned, Hon'ble Supreme court in its judgment in ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753***, while discussing in detail the plight of the victim of sexual assault, had observed that the testimony of victim, in such cases, is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused, where her testimony inspires confidence and is found to be reliable.

20. The plea of *alibi* taken by the learned counsel for the appellant- Balbir Chand does not inspire confidence. For the sake of argument, even if it is assumed that the location of mobile phone being used by accused-Balbir Chand @ Billa, was not at the spot of the crime at the fateful time, which does not mean that the accused was not present there. Presumption cannot be ruled out that the said mobile number might have been used by some other person at the time of occurrence. In the presence of depositions made by the prosecutrix, her

mother, the doctor and the medical legal evidence, it cannot be held that the accused Balbir Chand @ Billa was not present at the time of commission of offence. Further, it is well established principle of law that plea of alibi has to be proved beyond reasonable doubt.

21. The judgments relied upon by the learned counsel for the appellants are on different footings and are not applicable to the facts and circumstances of the present case.

22. Incident in the present case, took place on 29.8.2012 and on that date, punishment under Section 376(2)(g) of the IPC was prescribed as under:-

“376(2)(g)- commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.”

23. In view of the above discussions, we are of the considered view that there is no illegality in the judgments of conviction. The

accused-appellants have been rightly convicted by the trial court after appreciating the evidence. No ground is made out to interfere therein. Resultantly, the present appeals are dismissed qua the conviction.

24. However, keeping in view the mitigating circumstances, this Court is of the considered opinion that sentence of the appellants deserves to be modified. The order(s) of sentence awarded by the trial court are modified to the extent that the accused/appellants are sentenced to undergo imprisonment for a period of 10 years, while maintaining the amount of fine imposed by the trial court. Pending applications in this case, if any, shall stand disposed of accordingly. Registry to return back the Lower Court Record.

(ASHOK KUMAR VERMA)
JUDGE

(RITU BAHRI)
JUDGE

24.05.2022
MFK/Kothiyal

Whether speaking/reasoned
Whether Reportable

Yes
Yes