

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

**CRA-D-1299-DB-2013
Date of decision: 03.02.2022**

Abdul Malik

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Chandan Singh Rana, Advocate,
for the appellant.

Mr. H.S. Grewal, Addl. A.G., Punjab.

Ritu Bahri, J.

This appeal has been filed against the judgment of conviction dated 29.08.2013 and order on quantum of sentence dated 30.08.2013 passed by the Additional Sessions Judge, Ludhiana whereby accused-appellant (Abdul Malik) has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/-, which is to be paid to the prosecutrix as compensation as per the provisions of Section 357 Cr. P.C., for commission of offence punishable under Section 376 IPC. In default of payment of fine, he has to undergo simple imprisonment of six months. Though, he was also convicted under Section 354 IPC, but no order of sentence has been passed under this section.

Brief facts of the case are that on 22.06.2012, complainant-prosecutrix got recorded her statement to ASI Jaswinder Singh to the effect

that she was doing the household work. First marriage of her father, Abdul Malik, was performed with her mother Rehana Begam. Out of the said wedlock, she along with her brother Mohd. Aslam, aged about 19 years, was born. When she was of the age of 09 months, her mother Rehana Begam died. Thereafter, her father performed second marriage with her maternal aunt (*massi*) namely, Anguri, who also died when she (complainant) was 8-9 years old. Her father used to keep bad eyes on her. He used to forcibly commit rape with her. She did not inform, in this regard, to anyone as she was afraid of her father. Her father again performed his marriage with another lady namely, Anguri, however, later on, they took divorce from each other. Thereafter, her father again performed marriage with another lady. But, that lady did not like the complainant. On 07.06.2012, at night, she (complainant) along with her father and other family members was sleeping on the roof of their house. At about 11.30 P.M., her father (appellant) put his hand into her shirt and committed obscene acts with her. In the meantime, their neighbour Jamila woke up and saw her father committing the said obscene acts. She asked about the entire story from the complainant and advised her to report the matter to the police.

On the basis of statement made by complainant-prosecutrix, FIR No.77 dated 22.06.2012, under Sections 376/354 IPC was registered at Police Station, Division No.4, Ludhiana. During investigation, accused-appellant was arrested on 24.06.2012.. Prosecutrix was also medico-legally examined at the Civil Hospital. Rough site plan was got prepared. On completion of investigation, report under Section 173 Cr.P.C. was prepared and presented in the Court of Illaqa Magistrate. Vide order dated 15.09.2012, Illaqa Magistrate committed the case to the Court of Sessions.

Copies of challan and other documents were supplied to the accused-appellant free of costs, as envisaged under Section 207 Cr.P.C.

Thereafter, finding a prima facie case, charge under Sections 376 and 354 IPC was framed against the accused-appellant, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Dr. Milli Markan (PW-1), Dr. Pardeep Kumar (PW-2), Prosecutrix (PW-3), HC Harkesh Kumar (PW-4), Jamila Khatoon, eye witness (PW-5), SI Jaswinder Singh, IO (PW-6) and HC Pardeep Singh (PW-7).

On conclusion of the prosecution evidence, statement of the accused under Section 313 Cr. P.C. was recorded, wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication in the case. In defence, accused-appellant examined Majada as DW-1.

Trial Court, after going through the evidence led by the prosecution, convicted and sentenced accused-appellant in the aforesaid terms. The conviction of accused-appellant is based on the testimony of Dr. Milli Marken (PW-1), who had medically examined the prosecutrix and proved on record the MLR as Ex.PW1/A along with pictorial diagram as Ex.PW1/B. Dr. Pardeep Kumar (PW-2), who conducted the medical examination of accused, proved copy of MLR as Ex.PW2/B. The medical record i.e. MLR of the prosecutrix Ex.PW1/A as well as report of chemical examiner Ex.PX, reveal that hymen was absent and vagina admits two fingers. In the report of the chemical examiner, no spermatozoa were detected. Even, Dr. Pardeep Kumar (PW-2), who had examined the accused-appellant, had opined that there was nothing to suggest that the

accused was incapable of performing the sexual intercourse. Trial Court observed that testimony of prosecutrix (PW-3) was well corroborated by the testimony of Jamila Khatoon (PW-5) and was further corroborated with the medical evidence, which inspires confidence. It was held that testimony of the prosecutrix qua commission of rape upon her by her father i.e. accused and an incident of outraging her modesty were proved beyond reasonable doubt and her testimony was found unshakable during her cross-examination. Since mother of the victim had already died and there was nobody to disclose her plight, she had been exploited by her own father. On the day, when he was doing obscene acts with her, their neighbour Jamila Khatoon (PW-5) had seen the occurrence and asked the prosecutrix to report the matter to the police. On the basis of above evidence, the accused-appellant was convicted by the trial Court.

Learned counsel for the appellant has argued that while making statement under Section 313 Cr.P.C., accused-appellant had specifically stated that his daughter, who was working in a factory, was having illicit relations with a boy namely, Aftab. He (appellant), being father, used to stop her from developing any further relations with the said person, so she felt annoyed and in order to make her path clear, she falsely implicated him in this case. Learned counsel further argued that Majada, wife of Abdul Malik-appellant, appeared as DW-1 and stated that the victim was working in the factory of Aftab and she was doing wrong acts in the factory. When the appellant tried to stop her from going to the factory, Jamila Khatoon threatened them that in case, they did not send the prosecutrix to the factory, she would implicate them in a false case.

Apart from the testimony of accused and his wife Majada (DW-1),

there was no evidence to show that the prosecutrix had illicit relations with Aftab. A perusal of the MLR, Ex.PW1/A, of the prosecutrix, proved on record by Dr. Milli Markan (PW-1), shows that hymen was found missing and vagina admits two fingers. This evidence was sufficient to show that rape had been committed upon the prosecutrix. Even if, in the chemical examination report Ex.PX, no spermatozoa was detected, it would not falsify the case of the prosecution, as on the date when FIR was got registered in the present case, the allegation was that she was sexually assaulted by her father by putting hand in her shirt. This was also noticed by Jamila Khatoon, their neighbour, who appeared in the witness box as PW-5 and narrated the entire incident. The best evidence, the appellant could have led in defence, was to examine his son from the first marriage, who is the real brother of the prosecutrix/victim. He could have deposed, whether his sister was having any illicit relation with a person namely, Aftab, or not. However, he never chose to examine him in Court. Hence, the sole testimony of his wife namely, Majada (DW-1) was not sufficient to return a finding that the prosecutrix was having any illicit relations with any person in the factory.

From the testimony of Jamila Khatoon (PW-5) and Majada (DW-1), it has further transpired that the prosecutrix had joined the factory of Aftab about 17 days prior to the date of occurrence. Hence, the possibility that she would implicate her father at the instance of the owner of the factory (Aftab) was not probable. The version of the prosecutrix, coupled with the medical evidence i.e. MLR Ex.PW1/A, testimony of Dr. Milli Markan (PW-1), Dr. Pardeep Kumar (PW-2) and MLR Ex.P2/B, was sufficient to conclude that the appellant had committed rape upon the victim

and it was Jamila Khatoon (PW-5), who had persuaded the prosecutrix to file a complaint against her father. Even though as per the version given by Jamila Khaton (PW-5), on the date of occurrence i.e. 07.06.2012, the appellant did not commit rape upon the prosecutrix, however, the version given by the prosecutrix (PW-3) that in the past, he had been raping her since long, coupled with MLR Ex.P1/A, was sufficient to give a finding that it was the appellant, who had committed rape upon the victim. Moreover, the victim being 17 years old girl, who had lost her mother at the tender age, had requested Jamila Khatoon (PW-5) to make her father understand that he should not commit any such offence in future and she did not want to lodge any complaint against her father. While appearing as PW-3, prosecutrix had specifically stated that her aunt Jamila had seen her father committing the offence and she had told Jamila that she (prosecutrix) would make her father understand not to commit such offence in future. She further stated that she did not want to go to the police station for lodging a case against her father. As per prosecutrix, all this had started after he (appellant) got married fourth time. During her cross-examination, prosecutrix (PW-3) stated that Jamila used to work in the factory and was not related to her. The trial Court, while referring to the judgment passed by Hon'ble the Supreme Court in **Madan Gopal Kakkad vs. Naval Dubey**, 1992 (3) RCR (CrI.) 461, **State of Punjab vs. Gurmit Singh**, 1996 (1) RCR (CrI.) 533 (SC) and **State of Rajasthan vs. N.K. the accused**, 2000 (2) RCR (CrI.) 471 (SC), has rightly convicted the accused-appellant.

The appellant, in the present case, has placed on record copy of DDR No.8 dated 16.01.2015 (Annexure A-1), a perusal of which, shows that the same was got registered by Mohd. Wazir, who had approached the

police along with his wife-Jamila and stated that the prosecutrix (daughter of appellant), aged 19 years, had gone missing. She was having an affair with Sahil, resident of Jalandhar. After investigation, it was found that she had gone of her own will and there was no involvement of anyone else. The prosecutrix was 19 years of age and was major. Therefore, the DDR was closed and no further action was taken. The apprehension of the appellant was that it was Jamila, who had abducted his daughter and had got registered the said DDR only to save her skin. In this view of the matter, it cannot be said that Jamila had taken away the daughter of the appellant.

Complaint (Annexure A-3) with regard to his missing daughter was made by Abdul Malik (appellant) on 14.03.2015. As per report dated 16.01.2015 (Annexure A-1), daughter of appellant had left her house at her own will. Hence, even this complaint, which he had made in the year 2015, has no significance. The appellant belongs to a lower strata of the society. He got married fourth time and his only son had left his company, as is evident from news item (Annexure A-2). The prosecutrix also left his house after conviction of the appellant when he was in jail. His children did not stay in the house of appellant along with their step-mother (his fourth wife).

Incident, in the present case, took place on 22.06.2012 and on that date, punishment for rape, under Section 376 IPC, was prescribed as under:-

“376 Punishment for rape-- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment

of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

xx xx xx xx”

After going through the impugned judgment, in the light of above discussion, this Court is of the view that the accused-appellant has been rightly convicted by the trial Court after appreciating the evidence in the right perspective. No ground is made out to interfere therein. Resultantly, the present appeal is dismissed qua the conviction part.

However, keeping in view the mitigating circumstances, this Court is of the considered opinion that sentence of the appellant deserves to be modified. The order of sentence awarded by the trial Court is modified and accused-appellant is sentenced to undergo imprisonment for a period of 10 years. However, as per custody certificate dated 30.11.2021, the appellant has already undergone 11 years, 03 months and 29 days in custody. Accordingly, he (appellant) be released forthwith, if not required in any other case.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

03.02.2022
ajp

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