

HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-D-758-DB-2012 (O&M)  
Date of decision:17.02.2022

Shambu

V/s.

....Appellant

State of Union Territory of Chandigarh

.....Respondent

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

Present: Mr. A.P. Kaushal, Advocate for the appellant.  
Mr. J.S.Toor, Addl.P.P., Chandigarh.

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Ritu Bahri, J.

The appellant Shambu has come up in appeal against the judgment dated 20.01.2012 and order dated 23.01.2012 whereby he has been convicted and sentenced as under:-

| <i>Offence</i>    | <i>Sentence</i>                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U/S 366 IPC       | To undergo rigorous imprisonment for a period of five years and to pay fine of Rs.2,000/-. In default of payment of fine, further undergo rigorous imprisonment for one year. |
| U/S 376(2)(f) IPC | To undergo imprisonment for life and to pay fine of Rs.5,000/-. In default of payment of fine, further undergo rigorous imprisonment for two years.                           |

The brief facts of the case are that a three-year old daughter of Dhani Ram was raped on 14.01.2010. The eye witness was Thama, her mother and as per the version given by her (PW7), the prosecutrix (name withheld) wanted to urinate. She removed her panty and stood outside the

door while prosecutrix went inside the bathroom. When she was coming out, accused, who used to frequently visit their house, took her. She was under the impression that he had taken the prosecutrix for playing but when the prosecutrix did not return for long, she started searching for her and saw her daughter lying naked on the roof and accused was closing zip of his trouser. Her daughter was crying. She picked her up and brought her down in her arms. She felt something wet on her hand and found her daughter was bleeding from her private part. It was around 10:00 p.m. On seeking her, accused ran away from the spot. She asked her brother to call her husband and narrated the incident to him. Thereafter, the police took her daughter to hospital. PW1, Dhani Ram, husband of PW7 supported her version. He stated that he had called the police and reached the hospital with his daughter where his statement Ex.P-1 was recorded.

PW-4 Dr. Shikha, Department of Gynae and Obstetrics, GMCH, Sector 32, Chandigarh, who had medico-legally examined the prosecutrix stated about the injuries as under:-

“Few abrasions were found on the back of the girl.

On Local examination, I found some fluid present on the perineum, fishy smell (can be semen). The same was taken on a swab as sample. Hymen was found ruptured. Small tear present on the posterior vaginal wall. Not bleeding-vaginal swabs taken. Per speculum and per vaginal examination was not done as patient was minor. Specimen samples of perineal swabs, vaginal swabs, nail clippings, clothes including two sweaters and a frock were taken by preparing a separate sample of each of the above. However, all the clothes were put in a single parcel. From the above examination, I reached to the conclusion that the above said girl was sexually abused recently”.

Ex.P-20 is the forensic DNA report duly proved by PW-12 Sunita, Senior Scientific Officer (BIO), CFSL, Sector 36, Chandigarh. The conclusion of the said report is as under:-

“1.The DNA profiles obtained from the Genital swab (3821001) and crotch area stains from the Pant (3821003) are consistent with being a mixture. Neither victim Sunita nor Shambu can be eliminated as possible co-contributors of the genetic material isolated from these items.

2. Shambu and Sunita cannot be excluded as the contributor of mixture genetic material of the Male Genital swab and Pant (3811001 and 3821003) of accused (Shambu). The probability match of this female profile was 1 and  $5.5 \times 10^{-30}$  and male profile was 1 in  $1.4 \times 10^{18}$ .

3. Shambu is also the contributor of genetic material on item No.3281002A of victim Sunita.

4.Therefore, Shambu cannot be excluded as the contributor of DNA profiles obtained from the evidence items No.(3821001 and 3821003 and 3821002A).

5. Assuming no identical twin, victim and accused are source of the mixture DNA obtained from item No. 3821001 and 3821003 to a reasonable degree of scientific certainty.”

MLR Ex.P-4 showing injury on the vagina area of the child as also the DNA report Ex.P-20 are sufficient to prove sexual intercourse with the child by the accused. PW-2 Dr. Sunita has also opined that there was nothing to suggest that the accused was not capable of performing sexual intercourse.

The prosecution examined PW-9 Dr. Sakshi Singla who conducted ossification test of the prosecutrix. She stated that prosecutrix was 3-4 years old and proved her report Ex.P-10. PW-10 HC Yashpal, who prepared rough site plan Ex.P-8 of the place of kidnapping and Ex.P-9 of the place of alleged rape on 24.01.2010 (wrongly written as 24.01.2011), at

the instance of Dhani Ram and SI Sarwan Singh. PW-11 SI Sarwan Singh, who investigated the case on receiving information of the rape on 14.01.2010. PW3 HC Zile Singh and PW-5 L/C. Pawanjit Kaur had supported the versions of the prosecution.

Finally keeping in view the statement of PW-7 Thama, MLR Ex.P-4 showing injury on the vagina area of the child, DNA report Ex.P-20 and version of PW-2 Dr. Sunita, the trial Court held that the charges against the accused were proved and the accused was convicted under Sections 366 and 376(2) (f) of IPC.

Learned counsel for the appellant has argued that the whole case is based on the circumstantial evidence. Even the prosecutrix had not been examined. He has further argued that a second sample for DNA test was taken without the consent of the appellant and DNA report Ex.P-20 cannot be made basis for convicting him.

Heard learned counsel for the appellant at length.

The DNA report Ex.P-20 as reproduced above, makes it abundantly clear that the DNA profile of Shambu and Sunita shows that they are the contributor of mixture genetic material of the Male Genital swab and this profile matches with the female profile. **Victim and accused were source of the mixture DNA to a reasonable degree of scientific certainty.**

The ground taken by the appellant that the second sample for DNA test was taken while he was in the police custody, is liable to be rejected on the ground that during trial, he never raised objection to this taking of profile and even as per the opinion given by PW-12 Sunita, victim and accused were source of the mixture DNA obtained from item No.

3821001 and 3821003 to a reasonable degree of scientific certainty. Hence, the opinion of the expert cannot be interfered by this Court. Moreover, there was no delay in informing the police with respect to the incident which took place about 10:00 p.m. and the police was informed at about 10:20 p.m., and the FIR was recorded on 12:45 a.m. There is no evidence led by the appellant that there was motive behind registering false FIR against him. Moreover in the present case, while awarding the quantum of sentence on 23.01.2012, it was further observed that the appellant had already been convicted under Section 376 IPC by the Court of Shri V.P.Sirohi, Additional Sessions Judge, Chandigarh and had been sentenced to undergo rigorous imprisonment for seven years and this fact is further evident from the custody certificate dated 16.12.2021. The first offence was committed in FIR No. 341 dated 15.12.2009 under Sections 363/367/377 IPC registered at Police Station Sector-36, Chandigarh and the second offence (which is in the present case) was committed within one month as it is evident that the FIR No. 21 under Sections 366/376(2)(f) IPC, at Police Station Sector-34, Chandigarh was registered on 15.01.2010. Even in the earlier case, the appellant was convicted for raping a minor child which is against the basic human rights. The socio-economic status of convict being labourer is not a ground to reduce his sentence.

With the above observations, appeal is dismissed. Pending application also stands dismissed.

**(RITU BAHRI)**  
**JUDGE**

**17.02.2022**

**Divyanshi**

**Whether speaking/reasoned:**

**Yes/No**

**Whether reportable:**

**Yes/No**

DIVYANSHI  
2022.02.25 10:48  
I attest to the accuracy and  
authenticity of this document

**(ASHOK KUMAR VERMA)**  
**JUDGE**