

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

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CRA-D-871-DB-2014 (O&M)

Reserved on: 16.11.2022

Date of Decision: 30.11.2022

SONU KUMAR

-Appellant

Versus

STATE OF PUNJAB

-Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. V.S. Rana, Advocate
Legal Aid Counsel for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

KULDEEP TIWARI, J.

1. The present appeal has been directed against the verdict of conviction dated 19.10.2013 and the order of sentence dated 21.10.2013 passed by the learned Additional Sessions Judge, Ludhiana, in case FIR No.127 of 19.06.2012, registered under Sections 376 and 506 IPC at Police Station Salem Tabri, District Ludhiana, whereby the appellant was convicted for the offence punishable under Sections 376 and 506 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.20,000/- for offence punishable under Section 376 IPC and further, rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- for committing the offence punishable under Section 506 IPC. Both these sentences were ordered to run concurrently.

FACTUAL MATRIX

2. The appellant before this Court is a stepfather, who has been charged for committing rape upon his 8 year minor stepdaughter. The criminal machinery was set rolling by one Gopal Morya (PW3), who got recorded his statement on 19.06.2012 to A.S.I. Ashwani Kumar (PW6) to the effect that one girl (name is withheld in view of provision of Section 228(A) of IPC) (hereinafter referred to as the “prosecutrix”), whose parents are residing at Vehra as tenants, where his workers Deepak and Munna are also residing as tenants, came to him and weepingly informed him that on 18.06.2012, at about 02:00 p.m., her stepfather Sonu Kumar, the appellant herein, entered into her room and closed the door from inside and then committed rape with her by giving threat to kill her with knife. As a result of this, blood started oozing out from internal part of her body. Upon such statement being made by Gopal Morya (PW3), the aforesaid FIR was registered against the accused, whereafter, the Investigation Officer proceeded with the investigation and got the prosecutrix medico-legally examined and also got her statement recorded under Section 164 Cr.P.C. before the Illaqa Magistrate. The accused was arrested, who was also medico-legally examined. After completion of investigation, the Final Report under Section 173 Cr.P.C. was filed before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide order dated 01.02.2015.

PROCEEDINGS OF TRIAL COURT

3. The accused was charge-sheeted for commission of offence punishable under Sections 376 and 506 IPC. The prosecution, in order to prove its case, has examined as many as 9 witnesses and apart from various other documentary evidences, the prosecution has also proved on record the medico-legal report of prosecutrix as well as her school leaving certificate. The learned trial Court, after relying upon the statement of prosecutrix and complainant Gopal Morya (PW3), held the appellant guilty for committing the offence punishable under Sections 376 and 506 IPC. Aggrieved against this finding of conviction recorded by the learned Additional Sessions Judge, Ludhiana, the present appeal has been preferred at the instance of the appellant.

4. With the able assistance of both the learned counsels, this Court examined the entire record and the judgment passed by the learned trial Court. The entire case as put forth by the prosecution primarily revolves upon the statements of prosecutrix, examined as PW2, as well as the statement of complainant Gopal Morya, examined as PW3. After going through the entire record, this Court has culled out the following issues for adjudication:-

- (a) Age of prosecutrix.*
- (b) Whether the prosecutrix was subjected to sexual assault?*
- (c) Whether the appellant Sonu Kumar committed sexual assault upon the prosecutrix?*

5. An in-depth discussion over afore three issues runs in the following paragraphs.

(a) Age of prosecutrix.

6. In order to prove the age of prosecutrix, the prosecution examined A.S.I. Ashwani Kumar as PW6, who was the Investigation Officer. During the course of investigation, he took into possession the school leaving certificate of prosecutrix issued by the Principal of Government Primary School, Jassian, regarding the date of birth of prosecutrix, which was proved as Ex.PW6/I. The prosecutrix was subjected to ossification test, which was conducted by Dr. Hatinder Kaur, Radiologist, who opined that the age of prosecutrix, as per the radiological test, is between 5-10 years. Per contra, the defence has not led any evidence to disprove the positive evidence led by the prosecution regarding the age of prosecutrix, therefore, this Court can safely place reliance upon the school leaving certificate, according to which, the date of birth of prosecutrix was recorded as 04.03.2005 and as such, on the date of occurrence, she was aged about 7 years and 7 months.

(b) Whether the prosecutrix was subjected to sexual assault?

7. The prosecution examined Dr. Mili Markan as PW1, as per her statement, she had medically examined the prosecutrix on 19.06.2012. Prosecutrix was brought before her with alleged history of rape on 18.06.2012 at around 02:00 p.m. She further stated that “No external mark of injury present anywhere on body. On local examination, blood stained undergarments, minimal bleeding present per vaginum, hymen absent, small 0.5 cm tear seen on posterior vaginal wall, vagina

admits tip of finger with difficulty. Three vaginal swabs were taken, sealed and sent to Chemical Examiner along with blood stained undergarments in a sealed jar through police for detection of spermatozoa.” She proved the photocopy of MLR as Ex.PA.

8. After examining the report of Chemical Examiner (Ex.PB), she opined that possibility of rape cannot be ruled out. As per the report of Chemical Examiner, spermatozoa was detected in vaginal swabs. In opinion of this Court, the evidence of PW1 is sufficient enough to establish that the prosecutrix was subjected to sexual assault. This fact further finds corroboration from the statements of Gopal Morya (PW3), to whom the prosecutrix had narrated the entire ordeal. Therefore, for the aforesaid reasons, this Court holds that the prosecutrix was subjected to sexual assault.

(c) Whether the appellant Sonu Kumar committed sexual assault upon the prosecutrix?

9. So far as this issue is concerned, this Court needs to examine the testimonies of star witnesses of prosecution i.e. prosecutrix (PW2), complainant Gopal Morya (PW3), Geeta Devi (PW4), A.S.I. Ashwani Kumar (PW6) and Mrs. Girish, CJM, Gurdaspur (PW9).

10. The minor prosecutrix stepped into the witness box as PW2, however, during her examination-in-chief, deposed that the appellant Sonu Kumar did not commit any wrong act with her, rather, one person namely Raju, who is known to complainant Gopal Morya (PW3) had committed wrong act with her. She further stated that she had given her

earlier statement under the threat of A.S.I. Ashwani Kumar, Investigation Officer (PW6). When the prosecutrix did not support the prosecution, she was cross-examined by learned Public Prosecutor for the State. Interestingly, when she was cross-examined by the learned Public Prosecutor, she categorically admitted that she has got recorded in her statement under Section 164 Cr.P.C. that Sonu removed her clothes and also removed her Pazama and then he committed wrong act with him. The relevant extract of the cross-examination of the prosecutrix is as under:-

“It is correct that I had got recorded in my statement that Sonu removed my clothes and he also removed his Pazama and then he committed wrong act with me. It is correct that after that wrong act, I started bleeding from my private part. The person had thrust his private part into my vagina. It is correct that I had felt pain at that time. It is correct that I had got recorded in my statement that Sonu threatened me that if I will raise shrieks, he will gagged my mouth and will kill me with a knife. It is correct that I had got recorded that after committing wrong act with me, Sonu fled away. It is correct that I had stated all the above mentioned facts correctly before the learned Magistrate.” (Emphasize specifically)

11. A perusal of above cross-examination clearly depicts that the prosecutrix has supported the version put forth by the prosecution and her testimony gives a vivid picture of what she had suffered at the hands of the appellant, her own stepfather. She specifically admitted that she got

recorded her statement correctly before the learned Magistrate. However, when she was cross-examined by the learned defence counsel, she again resiled from her statement and again stated on same line as stated by her in examination-in-chief that she was subjected to rape by one person namely Raju and not by the appellant. Thereafter, on the request of the learned Public Prosecutor for the State, the prosecutrix was again re-examined by him and during the course of her re-examination, she deposed that one Raju had committed wrong act with her when all her siblings were present in the house. It was furthermore stated by her that there is only one room, where they are residing and on the said date, her father, i.e. the accused, was on his work and had returned at about 09:00 p.m. **At last, she categorically admitted that her mother has come along with her to the Court and her mother has told her as to what to depose in the Court. (Emphasize specifically).** The relevant extract of re-examination of the prosecutrix is as under:-

“When Raju committed wrong act with me, we all brothers and sister were present in the house. There is only one room, where we are residing. All my brothers and sisters were present in the room. My father had gone to his work place. When Raju committed wrong act with me, my brothers and sister were sleeping. All are younger to me. My father came back at about 09:00 p.m. I was made unconscious by Raju and was laid down at the roof. When my father came, I was unconscious. In the morning, I regained consciousness. Then I told my father that Raju had

committed wrong act with me. My father dialed 100 to inform the police. The police did not come, then Gopal called police. Then police officials took away my father Sonu along with them. I had not informed my mother about the incident. My mother came from village on the day, when my father was sent to jail. I did not narrate the incident to my mother even after she returned. My mother also did not inquire from me as to what has happened to me. Today, my mother has come along with me to the Court. My mother has told me as to what to depose in the Court."

12. Since, the prosecutrix has changed her version at every step, therefore, it is the bounden duty of this Court to examine her statement carefully to arrive at any conclusion. Before commenting anything upon the statement of the prosecutrix, it is vital to bring on record the family background of the prosecutrix, her mother and the appellant. The mother of the prosecutrix, after getting divorce from her earlier husband, started residing with the appellant and all her children treated the appellant as stepfather. They all were dependent on the appellant for everything.

13. Indisputably, when the prosecutrix was subjected to sexual assault, her mother was not in the town as she had gone to her native village at Uttar Pradesh. It has also come on record that when statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 22.06.2012 before Magistrate, the mother of the prosecutrix was also present in the court premises and she did not disclose at any point of time that the

prosecutrix was under any pressure or duress while deposing before the Magistrate under Section 164 Cr.P.C.

14. Earlier, when the prosecutrix was cross-examined by the learned defence counsel, she changed her version and stated that she suffered the statement under Section 164 Cr.P.C. before the learned Magistrate under the threat of Investigation Officer. When she was again re-examined by the learned Public Prosecutor, she categorically admitted that her mother has tutored her as to what is to be deposed in the Court. **She further categorically admitted that she had given her statement before the learned Magistrate voluntarily. (Emphasize specifically).**

The relevant extract of re-examination of the prosecutrix is as under:-

“Today, my mother has come along with me to the Court. My mother has told me as to what to depose in the Court.

XX XX XX XX

I left the Court along with my mother. My father and Gopal had never quarreled with each other. They had no enmity. I had given my statement before the learned Magistrate voluntarily.”

15. The mother of the prosecutrix was examined as PW4 by the prosecution, who also opted not to support the prosecution version. She stated that her daughter disclosed her that she made a wrong statement against her stepfather and her stepfather had not committed any wrong act with her. She further stated that her daughter had made the statement under the pressure of people of Vehra. When she was cross-examined, she

admitted that during investigation, she got recovered one blood stained condom from the backside of television lying in her room and she produced the same before the police. The most interesting aspect of the statement of mother of the prosecutrix, which draws attention of this Court, is that she, neither in her examination-in-chief nor in her cross-examination, stated that her daughter was subjected to sexual assault by one Raju. This reflect complete contradiction in the statements of the prosecutrix and her mother with regard to the theory of sexual assault committed by one Raju instead of the appellant. We have to keep the admission by the prosecutrix in our mind that she was tutored by her mother.

16. Therefore, from the above narrated facts and circumstances, it can be safely concluded that the prosecutrix was tutored by her mother when she stepped into the witness box. The obvious reason for the mother to tutor her daughter was to save the appellant, with whom she was living as wife and upon whom, she along with her children were dependent. It appears that she has entered into compromise with her husband and accordingly, forced her daughter to resile from her statement. However, when the prosecutrix was cross-examined, she could not deny the fact that she made a statement before the Magistrate under Section 164 Cr.P.C. wherein she narrated the entire incident of sexual assault committed by none else than her stepfather.

17. The prosecution has also examined Mrs. Girish, C.J.M., Gurdaspur (PW9), who categorically deposed that she recorded the

statement of prosecutrix after being satisfied that she is suffering her statement voluntarily. The relevant extract of statement of PW9 is as under:-

“Before recording the statement of prosecutrix, I checked the competency of the prosecutrix by putting questions to prosecutrix, who is minor of 7 years and I also satisfied that she is suffering her statement voluntarily. I have also explained to the prosecutrix that she is not bound to make the statement. Thereafter, I have recorded the statement of prosecutrix, which is Ex.PW9/A.”

18. In this context, it is also important to mention that at no point of time, the mother of the prosecutrix had made any complaint to any authority regarding false implication of her husband Sonu Kumar. In fact, she stated a totally contradictory reason regarding false implication of the present appellant. The prosecutrix, in her testimony, stated that it was A.S.I. Ashwani Kumar (Investigation Officer), who threatened her mother to put her in police lock up if the prosecutrix does not depose against the accused, whereas, when the mother of the prosecutrix stepped into the witness box as PW4, she came up with an entirely new version by stating that the prosecutrix disclosed her that she made the statement against her stepfather, otherwise, people of Vehra would have put her to flames. This Court cannot lose sight of the sequence of events, which clearly prove that it is the mother of the prosecutrix, who is hell bent to save the appellant and accordingly, to that end, she even went on to tutor her

minor daughter. When the statement of prosecutrix was recorded under Section 161 Cr.P.C. on 19.06.2012, her mother was not present with her as she was at her native village. She returned from her native village only on 21.06.2012 and on 22.06.2012, the statement of prosecutrix was recorded before the learned Illaqa Magistrate, wherein she levelled unambiguous and specific allegations against the appellant. The mother of prosecutrix made no efforts to lodge any complaint regarding false implication of the present appellant. From 22.06.2012 to 21.10.2013, i.e. the period between nominating the appellant as the wrongdoer by the prosecutrix in her statement recorded before the learned Illaqa Magistrate and passing of order of sentence by the learned trial Court while holding the appellant guilty, the mother of prosecutrix did not approach any higher authority regarding false implication of the appellant. Therefore, in view of the above, this Court can safely conclude that the statement of prosecutrix, which was got recorded by her under Section 164 Cr.P.C., was without any coercion or duress.

19. We have thoroughly examined the statements of prosecutrix (PW2), Gopal Morya (PW3) and Ashwani Kumar, Investigation Officer (PW6). In view of afore discussion, we find that the statement made by prosecutrix, during her initial cross-examination conducted by learned Public Prosecutor, reveals the real version of horrifying incident of 18.06.2012 and this ghastly act was, in fact, committed by none else than the present appellant Sonu Kumar, which further stands corroborated from the statements of Gopal Morya (PW3) and Ashwani Kumar (PW6).

20. PW3 Gopal Morya is an independent witness, to whom the prosecutrix first disclosed about the incident of rape, fully supported the case of prosecution. He was put to pointed and lengthy cross-examination, however, the defence failed to impeach his credibility. The suggestion was put to him that just in order to save his friend Raju, he is levelling false allegations. However, in defence, no witness or evidence was produced on record regarding existence of any person namely Raju. PW3 Gopal Morya specifically denied the suggestion that he is trying to save Raju, who is, in fact, the actual culprit, rather, he categorically deposed that he neither knows any person namely Raju nor he has any acquaintance with any person namely Raju.

21. Ashwani Kumar, Investigation Officer of the present case, was examined by the prosecution as PW6. The whole case of defence is that it was Ashwani Kumar, who pressurized the prosecutrix and her mother to falsely implicate the present appellant. As per prosecutrix, Ashwani Kumar threatened her that in case she will not depose against the present appellant, then he will put her mother into jail. However, when Ashwani Kumar stepped into the witness box, he was not confronted with this statement of prosecutrix. Further, he was put to pointed and lengthy cross-examination, however, not a single suggestion was given that in order to save Raju, he pressurized the prosecutrix to depose against her own stepfather. Therefore, the story put by defence that some Raju has committed the present offence is totally devoid of any substance. The defence has not produced even a single witness to support

its version.

22. The victim, before this Court, is a minor girl, who is totally dependent upon her mother and as already discussed above, the mother of the prosecutrix has left no stone unturned to save the appellant. Therefore, it is the duty of this Court to impart justice to the victim. Although, the prosecutrix turned hostile on various aspects, however, it is for the Court to separate grain from the chaff and to uphold the majesty of law. From the aforesaid discussion, this Court does not have any hesitation to hold that it is, in fact, the present appellant Sonu Kumar, who has committed rape upon the prosecutrix when she was aged about 7 years and 7 months. Therefore, this Court does not find any merit in the instant appeal and accordingly, the same is hereby **dismissed**.

23. The judgment of conviction dated 19.10.2013 and the order of sentence dated 21.10.2013 passed by the learned Additional Sessions Judge, Ludhiana, does not call for any interference by this Court and the same is affirmed and maintained.

24. The case property, if any, be dealt with in accordance with law after expiry of the period of limitation for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

30.11.2022
ajay-1/devinder

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