

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA-S-736-SB-2018

Reserved on: April 06, 2022

Date of Decision: April 21, 2022

Ram Chander @ Mahender

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rajesh Duhan, Advocate,
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

Vivek Puri, J.

The present criminal appeal has been preferred against the judgment of conviction dated 15.11.2017 vide which the appellant has been convicted under Sections 363/366/376/342/506 of the Indian Penal Code (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'Act, 2012') and order of sentence dated 16.11.2017 vide which he has been sentenced as following:-

<i>Offence under sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of fine imprisonment</i>
363 IPC	Five years rigorous imprisonment	Rs.10,000/-	One year rigorous imprisonment
366 IPC	Five years rigorous imprisonment	Rs.10,000/-	One year rigorous imprisonment
342 IPC	One year rigorous imprisonment	Rs.1,000/-	Six months rigorous imprisonment
506 IPC	Five years rigorous imprisonment	Rs.10,000/-	One year rigorous imprisonment
6 of the POCSO Act, 2012	Ten years rigorous imprisonment	Rs.20,000/-	One year rigorous imprisonment

It was further directed that all the substantive sentences shall run concurrently and the period of custody undergone during the investigation / enquiry / trial shall be set off against the sentences of imprisonment awarded to him. It was further directed that the total fine of Rs. 51,000/- if realized from the appellant, out of which a sum of Rs. 50,000/- shall be payable as compensation to the victim.

The facts as put forth by the prosecution are to the effect that on 18.03.2016, a telephonic information was received in Women

Police Station with regard to the sexual assault committed upon victim in Village Baroli. ASI Sangeeta reached the place of occurrence and the statement of the victim was recorded to the effect that the victim is aged about 11 years and a student of 6th standard. On 18.03.2016, the victim had gone to take bucket from the house of her aunt (tai) Santosh. When the victim did not return back, efforts were made to search her in the street. A small child informed that the appellant had forcibly pulled the victim inside his house and confined her. The mother of the victim raised alarm which attracted Dalbir @ Kala, Member Panchayat and other persons at the spot. They opened the lock and saw that mouth and hands of the victim were tied with clothes. They untied her and brought her down from the slab. The victim disclosed that the appellant forcibly pressed her mouth and dragged her while she was on her way to take bucket from house of her aunt. The appellant put off her salwar and committed wrong act with her. Her mouth, hands and legs were tied with the clothes and she was threatened to kill, in the event, she disclosed the incident to anyone. The appellant also sexually assaulted

her by putting his hand in her private parts and committed wrong act with her. Thereafter, the appellant left the room and locked her inside. The complainant i.e. the mother of the victim telephonically informed her husband, who also came at the spot. On the basis of the complaint, the FIR was registered.

On the completion of the investigation, the challan was presented and the charge under Sections 363/366/376/342/506 IPC and Section 6 of the Act, 2012 was framed.

In support of its case, prosecution has examined 13 witnesses, besides producing documentary evidence. The appellant has examined 05 witnesses in the defence evidence.

The prosecution has put forth a case to the effect that on 18.03.2016, the appellant had pulled the victim inside her house and committed penetrative sexual assault. Furthermore, he had tied the hands and legs of the victim and put her on a slab (Chhaja). The victim has stepped in the witness box as PW1 and testified with regard to the allegations against the appellant on oath in the Court. It is emerging in the statement that on 18.03.2016, while she was going to the house

of her uncle for taking the bucket, the appellant had pulled her inside the room and put off her salwar and committed rape upon her. Furthermore, the appellant had tied her hands and legs and thrown her on a slab. The appellant had threatened to kill her in the event, she disclosed the incident to anyone. The mother of the victim has stepped into witness box as PW2. She has submitted a complaint Ex.P2 to the police and on the basis thereof, the FIR has been recorded. ASI Sangeeta, PW11 had recorded the police proceedings and endorsement (Ex.P23) on the complaint and on the basis thereof, FIR was registered. She also found broken pieces of bangles lying near the cot which were taken into possession vide recovery memo Ex.P14. The chunni and a pair plastic ladies chappal were also found at the spot which was also sealed and taken into possession vide recovery memo Ex.P15. HC Sanjeev Kumar PW12 is a witness to the recovery effected at the spot. The father of the victim stepped into witness box as PW5 and had identified the articles to be belonging to the victim. Dr. Mani, PW6, had medico legally examined the victim. SI Rameshwar Dutt, PW4, had effected the arrest of

the appellant. EHC Jagbir Singh, PW3 had prepared the site plan (Ex.P5) depicting the place of occurrence. Sanjay Kumar, PW7, was working in the office of Additional District Registrar, Birth and Death, Panipat and has proved the birth certificate (Ex.P13) pertaining to the victim. Krishan Kumar, PW8, was working as Civil Ahlmad in the Court of Judicial Magistrate First Class, Panipat and he has testified with regard to the recording of the statement of the victim under Section 164 Cr.P.C. Dr. Arvind Kumar Biddu, PW9 had medico legally examined the appellant and as per his opinion there was nothing to suggest that he was unable to do sexual intercourse. EASI Roop Basant, PW10, had taken the parcel to the Forensic Science Laboratory and as per the report of the Forensic Science Laboratory (Ex.PX), human semen was detected on Ex.1 (Salwar), Ex.2a (Slides), Ex.2b (Vaginal swab) and Ex.3 (pyjama). However, no semen could be detected on Ex.4 (Condom). On completion of the investigation, the report under Section 173 Cr.P.C. has been presented under the signatures of Inspector Amit Kumar, PW13, the office incharge/SHO of Police Station Model Town, Panipat.

In his statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him. The defence version put forth by the appellant is to the effect that the father of the victim had to pay Rs. 1,00,000/- to him. The appellant had demanded the money, but the father of the victim had been prolonging the matter on one pretext or the other. The dispute was brought before the respectables of the village, who pressurized the father of the victim to pay the amount. On that score, the father of the victim had implicated the appellant in the false case through his daughter.

In the defence evidence, the appellant has examined Ajay, DW1, who has deposed to the effect that he had not told anything to the mother of the victim with regard to the occurrence. Dalbir Singh, DW2, Rakesh Kumar, DW3, Prem Kumar, DW4 and Mahabir Singh, DW5 have deposed with regard to the monetary dispute between the appellant and the father of the victim.

Vide judgment of conviction dated 15.11.2017 and order of sentence dated

16.11.2017, the appellant was convicted and sentenced as mentioned in preceding paragraph.

Aggrieved against the judgment of conviction and order of sentence, present appeal has been filed.

I have heard learned counsel for the parties and perused the record.

While assailing the judgment of the learned trial Court, it has been argued by the learned counsel for the appellant that the victim is the solitary witness to the occurrence and her parents are the interested witnesses. As per the version of the prosecution, Ajay, DW1 had informed the mother of the victim and on raising alarm, Dalbir Singh, DW2 was attracted at the spot. Significantly, Ajay, DW1, has deposed to the effect that he did not tell anything to the mother of the victim with regard to the occurrence and even Dalbir Singh, DW2, has stepped into the witness box to support the defence version of the appellant. The appellant along with the other family members were residing in the house. It is emerging in the statement of the victim as well as her mother that the appellant along with his wife, son, daughter-in-

law and grand children were residing in the house and it becomes improbable that he could have committed sexual assault upon the victim in his house. Furthermore, the age of the victim was more than 12 years and consequently, the conviction under Section 6 of the Act, 2012 could not have been recorded. The appellant has been falsely implicated on account of monetary dispute with the father of the victim. In the alternative, learned counsel for the appellant has also raised a submission that in the event, the conviction is maintained the same is liable to be altered to Section 4 of the Act, 2012 and consequently, the sentence may also be reduced.

While supporting the judgment of the learned trial Court, the learned State counsel has argued that the statement of the victim is duly corroborated with medical and other evidence appearing on record. After the penetrative sexual assault, the victim was tied with the help of clothes and thrown on a slab (Chhaja). The mother of the victim had untied her. The statement of the victim is also corroborated by the report of Forensic Science Laboratory. The FIR has been lodged with due promptitude on the day of

occurrence and even the statement under Section 164 Cr.P.C. of the victim has been recorded on the following day. Dalbir Singh, DW2, was given up by the prosecution being won over by the appellant. As per the prosecution version, Ajay, DW1, had only informed the mother of the victim and thereafter, the lock of the room of the appellant was broken and the victim was recovered. It is improbable that on account of monetary dispute, the minor victim will be projected by her father in a case of penetrative sexual assault to falsely implicate the appellant. The defence version is discrepant and not reliable.

At the very outset, it shall be appropriate to work out the age of the victim at the time of occurrence. The occurrence took place on 18.03.2016. While appearing in the witness box on 17.08.2016, the victim is testified to the effect that she is aged about 12 years. To the same effect is the version of the mother of the victim. In her statement recorded under Section 164 Cr.P.C., the victim has given her age as 11 years. It is significant to note that Ex.P13 is the copy of the birth certificate pertaining to

the victim which indicates her date of birth as 01.11.2003. The date of birth has been registered on 30.11.2003 and corresponding entry has also been reflected at Serial No. 1708 of Birth Register (Ex.P18), wherein also the date of birth of the victim has been mentioned as 01.11.2003. The occurrence took place on 18.03.2016 and as such, the age of the victim at the time of occurrence is worked out to be about 12 years and 04 months.

The testimony of a victim of sexual assault alone can be termed to be sufficient to convict an accused in the event, her testimony inspires confidence and is found to be reliable. Seeking corroboration of the statement of a victim of sexual assault before relying upon the same, as a rule, amounts to adding insult to the injury. In the event, the victim of sexual assault gives a vivid account of the entire episode and her statement inspires confidence, there cannot be any bar to base the conviction on the basis of such truthful narration of the entire episode by the victim. The deposition of a victim can be relied upon, if it is inspires

confidence and is free from embellishments or improvements.

On adverting to the merits of the case, the victim has given a candid and vivid account of the occurrence. The statement of the victim is fairly reliable and has given a consistent version against the appellant. She has specifically and categorically deposed to the effect that the appellant had pulled her inside the house, removed her salwar and committed rape upon her. Thereafter, the appellant tied her hands and legs and threw her on a slab. The appellant also threatened to kill her in the event she narrated the incident to anyone. The matter has been reported to the police by the mother of the victim and the FIR has been registered with due promptitude on the day of occurrence. Even the statement of the victim under Section 164 Cr.P.C. has been recorded on the following day of occurrence. Moreover, the report of Forensic Science Laboratory indicates that human semen was detected from the clothings of the victim, the appellant as well as vaginal swabs. The detection of the semen provides an additional credence to the case of the

prosecution and sufficiently corroborates the version as sought to be put forth by the victim.

The matter does not rest here. There are certain other significant circumstances which strengthen the case of the prosecution as sought to be put forth against the appellant. The investigation of the case was conducted by ASI Sangeeta, PW11. She visited the place of occurrence and found six pieces of broken bangles lying near the cot. The same were sealed and taken into possession vide recovery memo Ex.P14. Besides, a light blue coloured chunni and a pair of chappal of the victim was also found at the spot. The same were also converted into parcel and taken into possession vide recovery memo Ex.P15. The articles were identified to be belonging to the victim by her father who has stepped into witness box as PW5 and the fact that the same were identified by the father of the victim has also mentioned in the recovery memos. The recovery of broken pieces of bangles and other article of the victim are indicative of the fact that she was sexually assaulted and ravished by the appellant in a room in the house of the appellant.

The appellant has sought to put forth a case to the effect that the version of the prosecution appears to be improbable as he had been residing in his house along with other family members and in such circumstances, it was not possible for him to sexually assault the victim. It shall not be out of place to mention here that during the course of cross-examination of the victim, it is emerging that the appellant was residing alone separately in the same house. The children and wife of the appellant were not present in the house, though she states that at that time, his daughter-in-law was present in the house. Even the mother of the victim has deposed to the effect that the appellant had been residing in a separate room. The version of the appellant is to the effect that the rooms of the house were inter connected and as such, he could not commit rape in his house. However, the perusal of the site plan indicates that there is one door in the room of the house which opens in the street. In such circumstances, the case of the prosecution cannot be termed to be doubtful and improbable on the score that the other family members were having access to the room where

occurrence took place. After committing penetrative sexual assault, the appellant had restricted the movement of the victim and tied her mouth and legs. She was thrown on a slab. The appellant went away after locking the door of the room.

As per the prosecution case, Ajay, DW1, had informed the mother of the victim that the appellant has forcibly taken the victim to his house and when she raised alarm, Dalbir Singh, DW2, was attracted at the spot. The appellant has examined Ajay, DW1, and Dalbir Singh, DW2 to support his defence version. It may be mentioned here that Dalbir Singh, DW2, was given up by the prosecution having been won over by the appellant. Merely because Ajay, DW1 and Dalbir Singh, DW2, have stepped during the course of defence evidence cannot be termed to be circumstance to disbelieve the case of the prosecution. The statement of the mother of the victim to the effect that the victim was found tied on a slab finds corroboration from the statement of the victim. The statement of the victim with regard to the penetrative sexual assault is corroborated by the report of Forensic

Science Laboratory and the recoveries which have been effected at the spot. The statement of the victim is duly corroborated by medical and scientific evidence. The seminal stains were found on the clothes of the victim, as well as, appellant and semen was also detected in the vaginal swabs.

The appellant has sought to put forth a defence version to the effect that he was having a monetary dispute with the father of the victim and on that score, he has been falsely implicated. The defence version as sought to be put forth by the appellant does not sound to be probable and inspire confidence. In his statement under Section 313 Cr.P.C., the appellant has stated that there was a monetary dispute of Rs. 1,00,000/-, whereas, the witnesses examined by him have deposed to the effect that the dispute was for an amount of Rs. Twenty/twenty five thousand. Dalbir Singh, DW2, Rakesh Kumar, DW3 and Prem Kumar, DW4 had intervened in the matter. Rakesh Kumar, DW3, is the member of the Gram Panchayat and Prem Kumar, DW4, is the Sarpanch of the Gram Panchayat. It is also emerging in their statements that no proceedings were recorded

anywhere with regard to the efforts made by them to settle the dispute. Even, no document to indicate any monetary transaction between the appellant and the father of the victim is coming forth. In these set of circumstances it sounds hard to believe that there was any monetary dispute between the appellant and father of the victim or on that score the victim could have been projected by her father to falsely implicate the appellant in a case of penetrative sexual assault so as to put the honour of the family at stake and peril.

On evaluating the material on record, it is proved and established that the appellant had wrongfully confined the victim in the room of his house, committed penetrative sexual assault, tied her, put her on a slab and threatened to kill her in the event she disclosed the incident to anyone.

At this stage, it shall be appropriate to mention that the conviction of the appellant has been recorded for the offence under Section 363 IPC, as well as, Section 366 IPC. The offence under Section 366 IPC is an aggravated form of offence under Section 363 IPC. Consequently, the

conviction of the appellant and sentence imposed upon him for the offence under Section 363 IPC is liable to be set aside.

It has already been observed that as per the birth certificate, the age of the victim was more than 12 years at the time of occurrence. As such, the case of the prosecution against the appellant does not fall in the category of aggravated penetrative sexual assault and consequently, the conviction of the appellant has to be altered from Section 6 to Section 4 of the Act, 2012.

Learned counsel for the appellant has sought to put forth a case to the effect that the minimum sentence under Section 6 of the Act, 2012 has been awarded to the appellant by the learned trial Court and the same may be reduced as the conviction is being altered to Section 4 of the Act, 2012.

On the contrary, learned State counsel has argued that the age of the victim was marginally about 12 years and there are other aggravating circumstances which do not justify to reduce the sentence imposed upon the appellant.

It may be mentioned here that the victim was aged about 12 years and 04 months at the time of occurrence. She was wrongfully confined in the room of the house by the appellant. The appellant committed penetrative sexual assault upon her, thereafter, her mouth and legs were tied and was thrown on a slab. Furthermore, the appellant had also threatened to kill the victim, in the event, she disclosed the incident to anyone. As such, no reasonable ground is made out to reduce the sentence of rigorous imprisonment of ten years and the component of fine though the conviction and sentence is liable to be altered from Section 6 to Section 4 of the Act, 2012.

Keeping in view the entire circumstances as emerging in the instant case, the appellant is convicted under Sections 366, 376, 342, 506 IPC and Section 4 of the Act, 2012 and sentenced as following:-

<i>Offence under sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of fine imprisonment</i>
366 IPC	Five years rigorous imprisonment	Rs.10,000/-	One year rigorous imprisonment
342 IPC	One year rigorous imprisonment	Rs.1,000/-	Six months rigorous imprisonment

506 IPC	Five years rigorous imprisonment	Rs.10,000/-	One year rigorous imprisonment
4 of the POCSO Act, 2012	Ten years rigorous imprisonment	Rs.20,000/-	One year rigorous imprisonment

All the substantive sentences of imprisonment shall run concurrently. The period of imprisonment undergone by the appellant during the course of investigation, trial and the appeal shall be set off against the sentence imposed upon him.

As the sentence with regard to the offence under Section 363 IPC has been set aside, the amount of compensation component to be awarded to the victim also stands reduced from Rs.50,000/- to Rs. 40,000/-.

With the aforesaid partial modification in the judgment of conviction and order of sentence, the instant appeal is dismissed.

April 21, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasonable : Yes
Whether reportable : Yes