

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-719-2019 (O&M)

Reserved on:14.09.2022

Date of decision:28.09.2022

Monu (as alleged, correct name Mohit)

...Appellant

Versus

The State of U.T. Chandigarh

...Respondent

CRA-AD-23-2020

The State of U.T. Chandigarh

...Appellant

Versus

Monu

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr.J.S. Mehndiratta, Advocate
for the appellant in CRA-S-719-2020.

Mr. Anil Kumar, Lambdharia, APP for U.T., Chandigarh
in CRA-AD-23-2020.

N.S. SHEKHAWAT, J.

This judgment shall dispose of above-mentioned two appeals arising out of same impugned judgment. However, for the facility of reference, facts are being taken from CRA-S-719-2019.

CRA-S-719-2019 is directed against the judgment of conviction dated 20.11.2018 and order of sentence dated 22.11.2018 passed by the learned Sessions Judge-cum-Special Court, Chandigarh, whereby the accused/appellant was held guilty for the offence punishable under Section

376(2) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and sentenced to undergo rigorous imprisonment of 10 years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.

The brief facts, as emerged, from the report under Section 173 (Cr.P.C.) are that on 15.10.2014, SI Sarabjit Kaur along with other police officials was present in Police Post, Maloya. At that time the complainant along with her minor daughter came there and got the statement recorded to the effect that she was married and used to clean utensils in the marriage functions. She was having 06 children out of whom 02 were boys and 04 were girls. Her minor daughter (name of the prosecutrix/victim has been withheld in view of the provisions contained in Section 33 of the POCSO Act, Section 228-A of the IPC and in view of the law laid down in the judgment of the Hon'ble Supreme Court in State of Karnataka Vs Puttaraja, 2004 (1) RCR (Crl.) 113 and has been referred as the 'victim'), aged 14 ½ years and was studying in the 7th standard. On the day next to Karvachauth, i.e. 11.10.2014 at about 08.00 PM, the victim left the home without disclosing anything to her family members and they had been searching for her. Even they had lodged DDR No.7 dated 12.10.2014 (Ex.DW2/A) in Police Post, Maloya regarding the said fact. The complainant stated that she had come to know that her daughter, i.e. the victim, had gone with a boy, namely Monu (appellant herein), who was a resident of Shamli and on 14.10.2014, they had gone to Shamli with the police and brought her daughter back from there. Her daughter got her statement recorded that she had gone with accused Monu (appellant) out of her own free will. When the victim went home with her parents, she disclosed that Monu (appellant),

who was the nephew of their neighbour Meena, used to come to the house of Meena for the last 7-8 months where the victim also used to sit in the house of Meena and Monu used to have fun with her. One day, the victim was alone in her Jhuggi (hut), where Monu (appellant) came and closed her mouth and forcibly committed rape upon her. Monu told the victim that he would perform marriage with her and in case she disclosed the same to anyone, he would kill her parents, due to which, she was extremely frightened and did not disclose the occurrence to anyone. The victim disclosed to her mother that on the day of Karvachauth, Monu met her in the morning and asked her to come to him at 08.00 PM in the evening with her clothes and they would perform marriage after running away and in case she did not come at 08.00 PM, he would kill her family. After threatening her, he took her to Shamli with an intention to marry her and committed rape against her wishes. With these broad allegations, the FIR in the instant case was registered on 15.10.2014, on the basis of statement of the mother of the victim, i.e. PW-2. After completing necessary investigation, the challan was presented against the appellant (Monu) in the court of competent jurisdiction.

Both the parties were granted ample opportunities to lead their respective evidence. In support of the charge, the prosecution examined 11 witnesses including PW-1, the victim, PW-2 Bala (mother of the victim) and PW-5 Dr.Prabhleen, who medico legally examined the victim. The statement of the accused/appellant was recorded under Section 313 Cr.P.C., who stated that the victim was major at the time of alleged incident and she had sufficient maturity to understand as to what she was doing. The victim was having an affair with accused/appellant through her close neighbour

namely Meena and always wanted to marry him. He had been falsely implicated in the present case by her parents especially her mother, who were deadly against them on the issue of getting married and they were nursing a grudge against him and used to quarrel and threaten him and his family. He further stated that he had also been falsely implicated in order to extract money, which he had refused to give to them. The victim had deposed before the Court under the tutoring, pressure, undue influence and threat of her parents, so that he may be punished. The prosecution had cooked up a false case against him at the instance of the complainant by arresting him months after the date of alleged incident. He further stated that he had been portrayed as a perpetrator, whereas he along with his family have been a victim at the hands of the complainant, who had been taking undue advantage of her daughter and for whom levelling the allegation of rape is a matter of convenience. The complainant had been proceeding out of sheer vengeance to spoil his career, life and living. He had neither kidnapped the victim at all nor had kidnapped her with an intention to force her to illicit intercourse nor had committed rape or aggravated penetrative sexual assault upon her repeatedly nor had committed any other crime. To prove his innocence, the accused had examined 05 defence witnesses. On ultimate analysis of the evidence, vide the impugned judgment, the learned trial Court convicted and sentenced the appellant as noticed above.

Learned counsel for the accused-appellant has vehemently contended that the appellant has been falsely involved in the instant case, rather he and his family are the victims. He has further submitted that the victim/prosecutrix had left her home on 12.10.2014 out of her own sweet

will and nobody was responsible for the same. He further submitted that her mother had lodged DDR Ex.DW2/A dated 12.10.2014, in which it has been stated that her daughter had got flour from the shop and after keeping the goods, she left the house and went away on her own. She had no suspicion on anyone and she had been searching for her daughter, but she did not return. He has next submitted that there is a custom in the Jhuggis, the girls are married at an early age and even the mother of the victim was married twice and as such no offence was made out against the appellant/accused. Still further, it has been further submitted that the record relating to the date of birth of the victim was self contradictory and she was major at the time of alleged occurrence and she had left on her own. Consequently, no offence under Section 6 of the POCSO Act as well as offence under Section 376 IPC is made out against him. It has also been submitted that she had left on the occasion of the festival of Karvachauth and this clearly shows that she was having an affair with the present appellant and had left on her own.

On the other hand, learned counsel for the State has vehemently opposed the submissions made by the learned counsel for the appellant and prayed that the present appeal deserves dismissal.

Learned counsel for the appellant has submitted that as per the evidence led by the prosecution and DDR (DW2/A), it is clear that the victim had left on her own and was major. Even her mother did not raise any suspicion on anyone and no case is made out against him. We find no merit in the said argument. The prosecution examined PW-10 Gurmukh Singh, Principal, Government Model Senior Secondary School, Maloya, who brought the school record and stated that as per the record, the date of

birth of the victim is 05.04.2000. He placed on record the extract of admission and withdrawal register brought by him in the Court as Ex.P15, whereas the photocopy of the application form and transfer certificate submitted at the time of admission of the victim were produced as Ex.P16 and Ex.P17. Still further, the corresponding report, issued under his signatures, prepared from the school record, was Ex.P18. In fact, none of the said exhibits was objected to by the defence and this clearly shows that at the time of occurrence, the victim was aged about 14 ½ years. To rebut the said evidence, the defence examined Suvandana (DW-4), Work Instructor, Government Girls Model Senior Secondary School, Sector-18C, Chandigarh, who stated that in the affidavit submitted by Raju, the date of birth of the victim of the same name was mentioned as 05.04.2000, whereas in the second affidavit submitted by the father of the victim, namely Mukesh, the date of birth of the victim was mentioned as 15.04.1999. She stated that she asked Mukesh (father of the victim) to bring correct date of birth of the victim, but he had not submitted the same before her. In fact, the said deposition does not help the appellant in any manner. The first affidavit was submitted by Raju, whereas the name of the father of the victim was Mukesh. Secondly, once the prosecution had examined PW-10 Gurmukh Singh, Principal Government Model Senior Secondary School, Maloya, Chandigarh, who had clearly stated that the date of birth of the victim was 05.04.2000 and he had exhibited the relevant record in this regard and the same was not even objected to by the defence. Moreover, it is apparent from the testimony of DW-4 Suvandana that record of the said school was incomplete and one of the affidavits did not pertain to the victim also. Thus, it is conclusively held that on the basis of the

evidence led by the prosecution that the date of birth of the victim/prosecutrix was 05.04.2000 and at the time of occurrence, she was aged about 14 ½ years and was a minor.

It has been submitted by the learned counsel for the appellant that as per DDR entry, Ex.DW2/A, the victim had left on her own and her mother and family did not suspect the role of any other person in the same. However, later on, the FIR was registered by leveling allegations against the present appellant and a false case has been planted against him. We find no substance in the said argument and we find that Ex.DW2/A did not advance the case of the accused in any manner. In fact, a perusal of Ex.DW2/A clearly reveals that the parents of the victim had stated correct facts and did not allege against anyone as they were not sure about the name of the accused. However, when they came to know that the appellant had enticed away their minor daughter, they took the police to Shamli, where the victim was confined illegally and was being raped by the appellant and they brought her back to Chandigarh. After bringing the victim back to Chandigarh and on hearing her story, the FIR was lodged against the appellant by mentioning the entire sequence of events. Still further, immediately after the registration of the FIR, the statement (Ex.P2) of the victim was recorded under Section 164 Cr.P.C. by the Court of learned Judicial Magistrate 1st Class, Chandigarh, wherein she clearly stated that she was forcibly taken away by the appellant to his sister's house in Meerut and later on she was shifted by the appellant to his village and was raped forcibly every night. Even the victim appeared as PW-1 during the course of trial and she had supported the case of the prosecution completely. She was searchingly cross-examined and her testimony could not be shaken in any

manner. Even the testimony of the said witness was duly corroborated by the deposition made by PW-2-Bala (mother of the victim) and she supported the case of the prosecution in all respects. Thus, from the above-stated discussion, it is apparent that the victim was subjected to forcible sexual intercourse repeatedly by the present appellant and he has been rightly convicted by the learned trial Court. Still further, even the cross-examination of PW-1, the victim, by the defence counsel, clearly shows that it has been suggested to her that she had gone with the accused on her own. In her cross-examination, she clearly stated that she had gone with the appellant forcibly and under threat she visited different places with him by using modes of public transport. Even if it is assumed for the sake of arguments that the victim was a consenting party, still her consent was not material and relevant as she was minor at the time of the commission of crime and was not capable of giving a valid consent to the act. Consequently, it is established that the accused had tacitly admitted that he had taken away the victim to different places and had committed sexual intercourse with her under threat and fear.

Statements of PW-1, the victim and PW-2 Bala (mother of the victim) are duly supported by the testimony of PW-5 Dr. Prabhleen, who medico legally examined the victim on 15.10.2014. She had conducted internal examination of the victim and after examination three swabs and slides from introitus, vagina and buccal cavity were taken and converted into parcel, which were sealed. Samples of nail clipping and hair clipping as well as blood samples were also taken and converted into parcels, which were sealed. Finally, she opined that the possibility of sexual intercourse could not be ruled out. Even the said samples were sent to Central Forensic

Science Laboratory, which clearly opined that human semen was detected in the swab taken from introitus. This clearly shows that the victim, who was minor at the time of occurrence, was subjected to aggravated penetrative sexual assault and the appellant had been rightly convicted under Section 6 of the POCSO Act.

Hon'ble the Supreme Court in ***Criminal Appeal No.680 of 2020 titled as 'Ganesan vs. State represented by its Inspector of Police,*** decided on 14.10.2020, has observed as under:-

"11. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 39496 and 403, paras 8 and 21)

"8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix?

The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

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21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

12. In ***State of Orissa v. Thakara Besra, (2002) 9 SCC 86***, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In ***State of H.P. v. Raghubir Singh, (1993) 2 SCC 622*** this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in ***Wahid Khan v. State of M.P. (2010) 2 SCC 9*** placing reliance on an earlier judgment in ***Rameshwar v. State of Rajasthan, AIR 1952 Supreme Court 54***.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

(Emphasis supplied)

9.2 In the case of ***Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130***, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality."

No other argument was raised.

Consequently, on over all evaluation of the depositions made by PW-1, the victim, PW-2 Bala (mother of the victim), PW-5 Dr. Prabhleen and PW-9 SI Sarabjit Kaur, Investigation Officer, on the touchstone of the above-said principles of law, we are of the considered opinion that the testimonies of the said witnesses are trustworthy and unblemished and are worthy of credence. Our judicial discretion impels us to maintain the impugned judgment of conviction dated 20.11.2018 and order of sentence dated 22.11.2018 passed by the learned Sessions Judge-cum-Special Court, Chandigarh and thus, the appeal filed by the accused-appellant (Monu) deserves to be dismissed.

CRA-AD-23-2020 has been preferred by the State of U.T., Chandigarh with a prayer to modify the impugned order of sentence dated 22.11.2018 passed by the learned Sessions Judge-cum-Special Court, Chandigarh and to enhance the sentence awarded to the accused-respondent.

It has been submitted by the learned counsel for UT Chandigarh that the sentence awarded by the accused/appellant was inadequate, keeping in view the facts of the instant case and the same is liable to be enhanced.

The FIR in the instant case was registered on 15.10.2014. On the said day, Section 6 of the POCSO Act provided that a person guilty of the offense under Section 6 of the POCSO Act shall be punished with rigorous imprisonment for a term which shall not be less than 10 years, which may extend to imprisonment for life and shall also be liable to fine. Later, vide amendment dated 16.08.2019, Section 6 of the POCSO Act was substituted and now the minimum sentence for the offence under Section 6

of the POCSO Act has been enhanced to 20 years. But since the occurrence had taken place on 14/15.10.2014, the minimum sentence for the offence under Section 6 of the POCSO Act would remain to be 10 years which may extend to imprisonment for life.

Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for the commission of an offence and is found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The object of punishment has been succinctly stated in **Halsbury's Laws of England (4th Edition, Volume 11, para 482)**, which reads as under:-

“482. Object of punishment-The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided”.

(emphasis supplied)”

The Hon’ble Supreme Court in **Ramnaresh and others Vs State of Chhattisgarh, (2012) 2 SCC (CrI.) 382** has held as under:-

“The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh and thereafter, in Machhi Singh. The aforesaid judgments, primarily dissect these principles into two different compartments-one being the “aggravating circumstances” while the other being the mitigating circumstances. The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.”

Apparently the Court will have to draw a balance sheet of aggravating and mitigating circumstances. Both the aspects have to be given their respective weightage. The Court has to strike a balance between two and see towards which side the scale of justice tilts. In other words “the doctrine of proportionality” has a valuable application to the sentencing policy under the Indian Criminal Jurisprudence. The Court not only have to examine what is just, but also as to what the accused deserves keeping in view the impact on the Society at large.

Guided by the above-said principles of law, now we shall proceed to with the contentions raised on behalf of the learned counsel for

the State as well as the learned counsel for the appellant.

Learned counsel for the State submitted that the accused had committed the most heinous crime and does not deserve the leniency and prays that maximum sentence prescribed under the law may be imposed on the present respondent-crime.

On the other hand, learned counsel for the accused-respondent submitted that the respondent is a poor and young boy, aged about 21 years and is the sole bread earner of the family. He is the only person in the family, who has to take care of his old and ailing mother and his father had already expired. His elder brother is in serious medical condition and the respondent has no criminal antecedents. Being the first offender, it is prayed that a lenient view may be taken in the matter otherwise his family will suffer for no fault on their part.

We have cumulatively examined the aggravating as well as mitigating factors of the instant case.

Keeping in view the above-said principles of law, we deem it appropriate to reject the prayer made by the learned counsel for the State. We confirm and maintain the sentence awarded by the learned trial Court and as a consequence, the present appeal filed by the U.T. Chandigarh deserves dismissal.

Considering the facts and circumstances of the cases noted above, both the afore-mentioned appeals are hereby dismissed. Consequently, the judgment of conviction dated 20.11.2018 and order of sentence dated 22.11.2018 passed by the learned Sessions Judge-cum-Special Court, Chandigarh are affirmed.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

28.09.2022
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO