

Neutral Citation No. 2023:PHHC:071327-DB
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-334-DB-2015 (O&M)
Date of Decision: May 15, 2023

Chandrika ...Appellant

Versus

State of Punjab ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Dr. Amarpreet Kaur Sandhu, Advocate
for appellant.

Mr. Shiva Khurmi, AAG Punjab.

HARINDER SINGH SIDHU, J.

This appeal has been preferred against the judgment and order dated 14.11.2014 passed by the Additional Sessions Judge, SAS Nagar (Mohali) whereby appellant has been convicted under Section 376 (2) (i) IPC and Section 6 of POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/-, in default thereof, to further undergo rigorous imprisonment for 4 months.

2. The FIR was lodged on the statement of one Chand Mohammad who stated that he sells fruits on Rehri (Cart). His elder brother Gulsher alongwith his wife and five children resides with him on rent. Gulsher is having two boys and three girls. Youngest daughter of Gulsher is aged about 5 years (name not being disclosed. She is being referred to as the “victim”). Gulsher does labour work along with his wife Saripan. Whenever complainant and Gulsher along with his wife go

for work the children play alone. On 29.03.2014, at about 2.00 pm, when he had sold off the fruit he had taken in his cart, he came to his house to collect the fruit box. He heard the cries of a child in room adjoining to his room. He saw through the window that Chandrika (appellant), who resides in the adjoining room on rent, was committing rape upon his niece-the victim. On seeing the complainant, the accused immediately ran away after opening the door. The complainant comforted his niece. He immediately informed the parents of child about the incident. While he was going to inform the police, the police met him on the way. He prayed action be taken against accused for having committed heinous crime with his niece.

3. On the basis of the statement FIR was registered. The victim was sent to Civil Hospital, Dera Bassi alongwith her parents where she was medically examined. A parcel containing blood stained clothes, blood contained in a glass container, one parcel of swab was prepared. The spot was inspected. On 30.03.2014 accused Chandrika was arrested. His medico- legal examination was conducted on 31.03.2014. Blood sample was drawn and sent for DNA examination. On completion of investigation, challan was presented.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded innocence. However, he did not lead any evidence in his defence.

5. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1- the victim daughter of Gulsher aged 5 years. Being minor, she was asked certain preliminary questions to ascertain her fitness to depose. On being satisfied that she understands the nature of questions and was giving rational and reasonable answers her statement was recorded as under:

Q. Do you understand meaning of oath ?

Ans. The witness nodded her head conveying the sense that she does not understand the meaning of oath and she further stated verbally that she had never taken oath.

Since the prosecutrix is of tender age, therefore, she had been pampered so that she may open up. Then, following question was put to her :-

Q. What happened with you ?

Ans. The witness has not been able to tell the exact date, month, however, she murmured that three months back when she was present in her house and playing (the witness pointed at accused Chandrika), the accused came there and picked her from there and took her inside the room of her house and bolted the door of the room. He took off his underwear. The witness pointed out that after taking off underwear by the accused he put his penis in her mouth. She further pointed out with her finger that the accused put his penis in her vagina and led her bleed profusely. Thereafter accused gagged her mouth with her underwear.

The witness stated that she fell unconscious. The accused resides in front

of her house.

8. In cross examination by learned counsel for accused, she denied the suggestion that she has been tutored by her parents.

9. PW2 Chand Mohammad deposed that he sells fruits on Rehri (Cart). His brother Gulsher alongwith his wife and five children resides near his house. His brother has five children i.e. three daughters and two sons. His youngest daughter aged about 5 years is the victim. His brother alongwith his wife used to go out for doing labour work in the morning and used to come back in the evening. Their children used to play outside the house during day time. On 29.03.2014 he went to sell fruit in the area. During noon time he sold all the fruits and came back home at about 2.00 pm to take box of fruits. When he reached near his house then he heard a noise of weeping child from the house of Chandrika who also resides near his house. He opened the window of the house and noticed that Chandrika was committing rape with the victim. After noticing him , accused fled away from the spot after opening the door of the house. Blood was oozing out from the private part of the victim. Her thighs were also stained with blood. He comforted her. He telephoned the mother of the victim. The victim's father reached there. While they were on their way to inform the police, the police met them on Barwala turn where he suffered statement Ex.PW2/A. He affixed his thumb impression on the statement. Thereafter, victim was taken to Civil Hospital, Dera Bassi where she was medically examined. He identified the accused present in Court.

10. In cross examination by learned counsel for accused, he

stated that there are eight rooms on the ground floor and seven rooms on the first floor where they are residing. About 20 persons reside in these rooms. He does not know the name of the owners of the adjoining houses which were constructed near their house/building. He used to sell the fruit in the nearby villages. He purchases the fruit from Chandigarh. Each room has one window and one door. His brother alongwith his wife used to go to work at about 8/8.30 am in the nearby area but he does not know the exact place. On his making telephone call, they came back at the spot at about 2/2.30 pm. The accused had put a sheet on the floor. He tried to stop the accused but he fled away. They went to police station at about 3/3.30 pm. His statement was recorded by police in the police station and the police also visited the house of accused. The police reached the spot after admitting the victim in the hospital. The police and newspaper agents visited the place of occurrence in his presence. The police did not take into possession the sheet (chaddar) from the spot. Two sons of Gulsher had gone out to do labour work. The remaining were playing there. He denied the suggestion that he had not come to his room at about 2.00 pm on 29.03.2014. He denied the suggestion that he has not seen any incident narrated by him. He further denied the suggestion that accused was not present in his house on the day of occurrence. He further denied the suggestion that accused has been falsely implicated by them just to extract money from him.

11. PW3 Saripan wife of Gulsher deposed that at present she resides as a tenant in the house of Satpal. Focal Point Mubarakpur, P.S. Dera Bassi. She does labour work. Her husband has two sons from his

first marriage and three daughters from his second marriage with her. She and her husband usually go out for labour work. In their absence, their kids play in the house. Accused Chandrika also lives in the house of Satpal alongwith 3/4 boys from his village. Her brother- in- law Chand Mohammad also resides with them. Her brother- in- law owns a rehri for sale of fruits. On 29.03.2014, her brother- in- law came to their room for picking up fruit at about 2.00 pm. At that time, he observed that her daughter - the victim was screaming. When he looked inside the room he saw the accused present run away after opening the bolt of the door. Her brother-in-law called them telephonically. She reached the spot and found her daughter.. the victim lying unconscious in pool of blood. When they were on their way to police station to report the matter, the police met them near Barwala Chowk. They were sent to Civil Hospital, Dera Bassi. Her statement was recorded by the police.

12. In cross examination by learned counsel for accused, she stated that her brother- in- law made a telephonic call to her at about 2.00 pm. At that time, she was at a distance of 1 kilometer from her house. She reached within 15 minutes by car after taking lift from somebody. When she reached her house, the accused was not present there. The accommodation where she resides is having seven rooms on the first floor and eight rooms on the ground floor. In the said accommodation, 30/40 persons are living. Her other kids had gone to school on the date of occurrence. Only victim was present in the house. After reaching home, on seeing her daughter lying unconscious, she also fell unconscious. She denied the suggestion that accused was not present

in the building on the said date. She further denied the suggestion that somebody else had committed the wrong act with her daughter. When police came to her residence, she was not present as she was attending her daughter who was admitted in hospital (volunteered her daughter was discharged from hospital after 15 days). She further denied the suggestion that she has falsely implicated accused in order to extort money from him.

13. PW4 Dr. Rupinder Walia deposed that on 29.03.2014, she was posted as Medical Officer at Civil Hospital, Dera Bassi. On that date, the victim aged 5 years was brought by the police and mother of the victim. She examined her at 8.30 pm. The patient came with alleged history of sexual assault as per version of her mother Saripan. As per the version given by her, victim was sexually assaulted on 29.03.2014 in the afternoon. The victim had not changed her clothes since the time of assault. She packed the clothes of the child and prepared parcel. The clothes were red slacks with white stripes at the bottom which was stained with mud and blood. Red top with white stripes was sent for seminal analysis, blood grouping and DNA.

14. The patient was conscious and cooperative. Her vital were stable. On examination, following injuries were found on the person of patient :-

“1. Reddish contusion in the center of right cheek, circular in shape 2.08 cm x 1.09 cm.

2. Reddish contusion on left cheek just below left ear, circular in shape 2.1 cm x 1.2 cm.

Per abdomen examination :-

1. Abdomen was soft, no guarding/rigidity found.

Genital Examination

Vulva swollen and red, dried blood seen on external genitalia and in groin folds on both sides. Swabs taken for presence of semen analysis (1). Hymen is torn with irregular ragged edges, red and swollen, posterior Fourchette is torn and tear extends upto upper margin of external anal sphinter, muscles intact Serosanguinous blood discharge coming from vagina, swab taken for semen analysis (2). No active bleeding seen. Advised admission and USG pelvis and adnexes.

I) Blood sample for cross examination taken (3).

II) Blood sample for DNA taken and the parcels were prepared and sent for chemical analysis to CFSL, Chandigarh. Injury No. 1 and 2 were simple in nature. The remaining injuries were kept under observation subject to CFSL report.”

15. She brought the original MLR register and proved its carbon copy Ex. PW4/A. She deposed that as per her clinical examination the victim was sexually assaulted. Further examination-in-chief was deferred for want of Chemical Examiner report.

16. On being recalled for further examination-in-chief she deposed that CFSL report Ex.PW4/B was received vide letter dated 27.10.2014. As per the report from CFSL Chandigarh dated 27.10.2014, the spermatozoa and blood was positive in the external vaginal swab. The report is Ex.PW4/C. Thereafter, the police moved an application Ex.PW4/D seeking her opinion. She made her report Ex.PW4/E opining that after going through the report from CFSL which is positive for semen/spermatozoa and blood test which is external vaginal swab, the possibility of sexual intercourse cannot be ruled out. The CFSL report

also contained DNA report which was also recommended by her.

17. In cross examination she stated that the victim was brought by her mother Saripan alongwith police. She sealed the clothes of victim which were stained with blood. The clothes were untorn. She denied the suggestion that injury sustained by victim was caused due to fall while playing.

18. PW5 Satpal deposed that he is working in police department. In the year 2002, he purchased a plot at Mirpur Mubarikpur and had constructed rooms thereon. He constructed two storey. He gave the rooms on rent to the tenants. The tenants used to take on rent the rooms and left the rooms after some months. In April 2014, Chand Mohammad and his wife alongwith children and his brother Gulsher alongwith his wife and children had taken separate rooms on rent. Accused was residing in one room which was taken on rent by Jatinder Contractor . In cross examination he denied the suggestion that he had not given his home on rent to Jatinder Contractor with whom accused was residing. He had not issued any receipt of the rent to Jatinder.

19. PW6 Lady Constable Rimpi deposed that on 29.03.2014 she was posted as Lady Constable at P.S. Dera Bassi. On that day, she reached Civil Hospital Dera Bassi on being asked by ASI Tilak Raj. She got conducted the medical examination of the victim. The medical examination was conducted by Dr. Rupinder Walia. The doctor handed over to her the blood stained clothes/parcel of the prosecutrix, one small bottle containing blood which was also sealed, the vaginal swabs of the prosecutrix and two sealed envelopes which was sealed with the seals of

hospital alongwith MLR. She handed over the same to ASI Tilak Raj which were taken into possession by him vide memo Ex.PW6/A.

20. PW7 Constable Nirmal Singh tendered into evidence his affidavit Ex.PW7/A wherein he deposed regarding depositing of various parcels of case property at the Forensic Science Laboratory, Sector 36 A, Chandigarh.

21. PW8 ASI Tilak Raj deposed that on 29.03.2014 he was posted as ASI at Police Station Dera Bassi. On that date complainant Chand Mohammad suffered statement Ex.PW2/A before him at Barwala Chowk, Dera Bassi. He attested the same vide endorsement Ex.PW8/A. On the basis of statement of complainant, FIR (Ex.PW8/C) was registered by ASI Satnam Singh. The victim was taken to Civil Hospital, Dera Bassi for her medical examination. Constable Rimpi Rani was in the police party. The medical examination of the child was got conducted and thereafter constable Rimpi Rani handed over to him MLR dated 29.03.2014 of the victim, parcel sealed with five seals of the hospital containing blood stained clothes of victim, one parcel which was in a injection ampule containing blood which was also sealed with one seal of the hospital, one glass tube containing swab sealed with one seal of hospital and two envelopes each sealed with five seals of hospital which he took into possession vide memo Ex.PW6/A. The case property was deposited with MHC of Police Station Dera Bassi.

22. On 30.03.2014, accused Chandrika was arrested. His arrest memo (Ex.PW8/E) was prepared. His personal search memo (Ex.PW8/F) was also prepared. He was interrogated in this case. Dr.

H.S. Cheema conducted his medical examination and made his report (Ex.PW8/H). During investigation, he recorded the statements of witnesses. On 3.4.2014 the accused was got medically examined again. Dr. Rupinder Kaur Walia took two samples of blood of accused for DNA test and the same was handed over to him in a sealed condition. He took into possession the same vide memo Ex.PW8/J. He deposited the same before the MHC of police station. On 6.5.2014 the photograph of child (Ex.PW8/K) was taken on record. During treatment of the victim her ultrasound was also done through LC Rimpi Rani. The MHC of Police Station Dera Bassi sent the swabs and the samples to CFSL, Sector 36, Chandigarh. The report of CFSL is still awaited.

23. On the request of learned PP, further examination- in- chief was deferred for bringing the chemical examiner report by IO.

24. He was recalled for further examination- in- chief on receipt of the CFSL report. He deposed that he made an application (Ex.PW4/D) to the doctor and obtained her opinion (Ex.PW4/E). The challan of this case was presented by Inspector Atul Soni whose signatures he identified.

25. In cross examination by learned counsel for accused, he stated that he reached at Barwala Chowk, Dera Bassi at about 1.30 pm. They reached Barwala Chowk from Police Station Dera Bassi. They moved from the police station after entering the DDR. He does not remember DDR number. They remained at Barwala Chowk for about an hour. Chand Mohammad, Saripan, the victim and her father Gulsher Mohd. came to him at Barwala Chowk, Dera Bassi. They came on foot. The clothes of the victim were not torn but were stained with blood. The

lower was stained with blood. PHG Jarnail Singh was sent to police station alongwith ruqa at about 2.15 pm. They reached Civil Hospital, Dera Bassi at about 5/5.30 pm. He stated that 17/18 rooms have been constructed at the place of occurrence. He recorded the statement of owner of the building. He has not recorded the statement of Jatinder Thekedar who was residing there. He has not recorded statement of any other neighbour except Chand Mohammad. Accused was arrested on the highway near the traffic lights of Bhankarpur on 31.03.2014. He denied the suggestion that accused has never committed any offence against victim. He further denied the suggestion that accused was falsely implicated in this case. He accepted that about 30/40 persons reside in the rooms adjoining to the room of the victim. (volunteered all the ladies and gents used to go to do labour work in the day time). There were number of children residing there. He had not recorded the statement of any child but verbally questioned them.

26. He recorded the statement of Saripan at Barwala Chowk, Dera Bassi. He recorded the statement of the victim at Civil Hospital Dera Bassi. He recorded the statement of PHG Jarnal Singh at the place of occurrence in the evening time. He also recorded the statements of Constable Ashok Kumar and Constable Nirmal Singh. He denied the suggestion that he has falsely implicated the accused.

27. PW9 HC Dharam Singh who was was posted as Malkhana Munshi P.S. Dera Bassi on 29.03.2014 tendered into evidence his duly sworn attested affidavit Ex.PW9/A wherein he deposed regarding deposit of case property in the malkhana and it being subsequently sent for being

deposited in the FSL, Sector 36. Chandigarh.

28. PW10 Dr. H.S. Cheema deposed that on 31.03.2014, he was posted as Medical Officer at Civil Hospital, Dera Bassi. On that day he conducted the medical examination of Chandrika son of Sudish. He was conscious, cooperative and well oriented to time, place and person. Pubic hair present, no swelling, no ulceration present on the scrotum and penis. External genitalia present normally. There was nothing to suggest that he cannot perform natural sex. He was fit to do normal sexual intercourse. He proved his report Ex.PW8/H.

29. In cross examination by learned counsel for accused, he stated that there was no external injury mark on the external genitalia of Chandrika.

30 The Opinion in the FSL DNA Report (Ex.PW4/C) is as under:

“From the DNA profiling results of the above individuals and from the interpretations thereof,

a) The major co-contributor of this mixture male DNA profile (source Chandrika, Exhibit 5322203) of genetic material from evidentiary sample, source external vaginal swab of victim (Exhibit-5322201F) cannot be eliminated.

b) The Male STR profile originating from evidentiary sample Exhibit-5322201A (source Frock of victim) matches with DNA profile obtained from source Chandrika Exhibit-5322203).”

31. Ld. Counsel for the appellant has argued that the case against the appellant has not been proved beyond reasonable doubt. It has not been proved that the appellant was residing in the same building. Joginder Contractor with whom the appellant is alleged to have been staying has

not been examined. Admittedly there were number of other persons residing in the same building. The victim may have been molested by any one of them.

32. Mr. Khurmi Ld. AAG on the other hand argued that the deposition of PW2 Chand Mohammad, PW1-the victim and the medical evidence leave no manner of doubt about the guilt of the appellant.

33. We find that there is no merit in the contention of the Ld. Counsel for the appellant.

34. PW2 Chand Mohammad the uncle of the victim has deposed that he sells fruits on Rehri (Cart). His brother Gulsher alongwith his wife and five children resides near his house. His brother alongwith his wife used to go out for doing labour work in the morning and used to come back in the evening. Their children used to play outside the house during day time. On 29.03.2014 he went to sell fruit in the area. When he came back home at about 2.00 pm to take box of fruits he heard a noise of weeping child from the house of Chandrika-appellant who also resides near his house. He opened the window of the house and noticed that Chandrika- appellant was committing rape upon the victim. After seeing him, appellant fled away from the spot after opening the door of the house. Blood was oozing out from the private part of the victim. Her thighs were also stained with blood. He telephoned the mother of the victim. The victim's father reached there. They informed the police. Thereafter, victim was taken to Civil Hospital, Dera Bassi where she was medically examined. He identified the accused. PW3 Saripan wife of Gulsher also deposed that on receiving telephonic call from her brother-

in-law she reached the spot and found her daughter- the victim lying unconscious in pool of blood. The matter was reported to the police and the victim was taken to the hospital.

35. PW6 Lady Constable Rimpi deposed that on 29.03.2014 she was posted as Lady Constable at P.S. Dera Bassi. On that day, she reached Civil Hospital Dera Bassi on being asked by ASI Tilak Raj. She got conducted the medical examination of the victim. PW8 ASI Tilak Raj has also deposed that on 29.03.2014 on receipt of complaint from PW 2 Chand Mohammad FIR (Ex.PW8/C) was got registered. The victim was taken to Civil Hospital, Dera Bassi for her medical examination. Constable Rimpi Rani accompanied them to the Hospital for the medical examination.

36. The Child Victim appearing as PW1 has identified the appellant and stated about the rape committed upon her by the appellant which left her bleeding. She also stated that the appellant gagged her mouth with her underwear. She specifically stated that the appellant resides in front of her house.

37. PW5 Satpal deposed that he constructed rooms on his plot at Mirpur Mubarikpur which he gives on rent to the tenants. In April 2014, Chand Mohammad and his wife alongwith children and his brother Gulsher alongwith his wife and children had taken separate rooms on rent. Accused was residing in one room which was taken on rent by Jatinder Contractor .

38. Thus the appellant has been duly identified by PW2 and also by the victim PW 1. It has also been established that the family of the

victim and the appellant were tenants in the rooms constructed by PW 5 Satpal. PW1-the victim and PW2-the complainant have deposed about the rape having been committed by the appellant.

39. PW4 Dr. Rupinder Walia Medical Officer at Civil Hospital, Dera Bassi had conducted the medico-legal examination of the victim. The following injuries were found on the person of patient :-

“1. Reddish contusion in the center of right cheek, circular in shape 2.08 cm x 1.09 cm.

2. Reddish contusion on left cheek just below left ear, circular in shape 2.1 cm x 1.2 cm.

Genital Examination of the victim revealed the following.

Vulva swollen and red, dried blood seen on external genitalia and in groin folds on both sides. Swabs taken for presence of semen analysis (1). Hymen is torn with irregular ragged edges, red and swollen, posterior Fourchette is torn and tear extends upto upper margin of external anal sphinter, muscles intact Serosanguinous blood discharge coming from vagina, swab taken for semen analysis (2). No active bleeding seen. Blood sample for cross examination taken (3).

II)Blood sample for DNA taken and the parcels were prepared and sent for chemical analysis to CFSL, Chandigarh.”

40. She deposed that as per her clinical examination the victim was sexually assaulted. She further deposed that as per the report (Ex.PW4/C) from CFSL Chandigarh dated 27.10.2014, the spermatozoa and blood was positive in the external vaginal swab. After going through the report from CFSL which is positive for semen/spermatozoa and blood test which is external vaginal swab, she opined that the possibility of sexual intercourse cannot be ruled out. The CFSL report also contained

DNA report which was also recommended by her.

41. The Opinion in the FSL DNA Report (Ex.PW4/C) is as under:

””From the DNA profiling results of the above individuals and from the interpretations thereof,

a) The major co-contributor of this mixture male DNA profile (source Chandrika, Exhibit 5322203) of genetic material from evidentiary sample, source external vaginal swab of victim (Exhibit-5322201F) cannot be eliminated.

b) The Male STR profile originating from evidentiary sample Exhibit-5322201A (source Frock of victim) matches with DNA profile obtained from source Chandrika Exhibit-5322203).”

42. It conclusively establishes the factum of rape of the victim by the appellant.

43. Accordingly there is no merit in the appeal and the same is dismissed.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 15, 2023
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No