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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-128-SB-2010 (O&M)
Reserved on: 23.09.2024
Pronounced on: 25.09.2024

Mehar Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

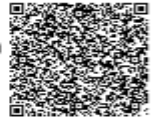
Present: Mr. Deepak Jaglan, Advocate (legal aid counsel)
for the appellant.

Mr. Rishab Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

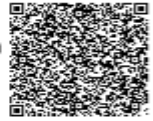
1. The present appeal is preferred against judgment of conviction and order of sentence dated 29.07.2009 passed by learned Additional Sessions Judge (Ad-hoc), Fast Track Court, Mansa in FIR bearing No.171 dated 01.11.2006 under Section 376(2)(f) of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Bhikhi, District Mansa, whereby the appellant was convicted and sentenced under Section 376(2)(f) of IPC and was ordered to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- along with default mechanism.

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2. The facts, as alleged, are that on 11.11.2006, Police Station Bhikhi received a *ruqa* from the SHO of Police Station, City, Mansa that the victim is admitted in the hospital due to an accident. Next day, upon reaching the hospital, the Investigating Officer recorded the statement of mother of the victim to the effect that she has three daughters and one son. The victim is the youngest among all of them and is aged about six years. A day prior, the complainant, upon noticing that the victim was not present at home, went out to search for her. The complainant went towards the road in her search, where she saw the victim coming from the other side. She was seen limping and weeping at that time. The complainant also noticed that the victim was not wearing her slippers and underwear. Moreover, the victim was bleeding from her private parts. The complainant brought her daughter to their house. The brother-in-law of the complainant was also present at home. Thereafter, the complainant and her brother-in-law took the victim to a hospital in Bhikhi. From there, she was referred to Civil Hospital, Mansa. On the basis of this complaint, FIR (*supra*) was registered. The appellant was arrested. The victim and the appellant were medico-legally examined. Upon completion of the investigation, final report under section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented before the Court.

3. Thereafter, learned trial Court framed charges under Section 376(2) (f) of IPC vide order dated 05.07.2007, to which the appellant pleaded not guilty and claimed trial.

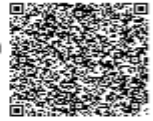


4. The prosecution examined as many as 10 witnesses to prove its case. Thereafter, statement of the appellant under Section 313 of Cr.P.C. was recorded, wherein the appellant pleaded false implication, however, no witness was examined by the defence in order to prove his innocence.

5. After taking into account all the material on record, the appellant-accused was convicted by learned trial Court vide judgment dated 29.07.2009.

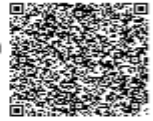
6. Learned counsel for the appellant assails the judgment of conviction on the ground that learned trial Court mechanically decided the case without due application of mind and recording any reasoned and concrete observations. The appellant was convicted solely on the basis of the statement of victim i.e. PW-5, which cannot be read as evidence, as her cross-examination could not be concluded since the same was stopped by learned trial Court at the request of learned Public Prosecutor. Further, as per the testimony of PW-6 namely, Gurmeet Singh, he saw the appellant walking with the victim by the side of the road, but admittedly, he had never seen the appellant engaging in sexual intercourse with the victim. Learned trial Court further failed to take into account that in the MLR of the victim, cause of injuries is mentioned as road accident. Moreover, there was a delay of one day in the registration of FIR (*supra*), which was not satisfactorily explained by the prosecution. Lastly, the prosecution did not examine any independent or disinterested witness, which is bound to be looked at with suspicion.

7. Learned State counsel opposes the prayer made by the appellant on



the ground that the charge for the offence punishable under Section 376(2)(f) of IPC has been clearly and unimpeachably proved. Learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, therefore, no interference is warranted by this Court in the instant appeal.

8. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgement of learned trial Court to indicate any perversity or misreading of evidence. Although it is true that FIR (*supra*) was registered on next day of the occurrence, however, a perusal of the trial Court record indicates that sufficient reasons have been provided so as to justify the delay. The Police Station received a *ruqa* from the SHO of Police Station City, Mansa on 01.11.2006 that the victim was admitted in the hospital due to an accident. On the very same day, the FIR (*supra*) was registered. The incident occurred on 31.10.2006 and the family members took the victim to a hospital at Bhikhi on that day and from there, she was referred to Civil Hospital, Mansa, where the Investigating Officer met the victim and the complainant. This has been the consistent view of the prosecution since the beginning of the proceedings. There is nothing on record to suggest that the complainant had time to embellish the narrative put forward by the prosecution. Also, a perusal of the statement of the complainant would reveal that name of the appellant does not find any mention. Thus, it cannot be said that a false case has been hoisted on the appellant. Nothing has been



brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered.

9. Additionally, there is clinching medical evidence supporting the case of the prosecution. The MLR (Ex.PA) has been duly proved on record by PW1, namely, Dr. Navjot Kaur, who medico-legally examined the victim on 31.10.2006 at about 08:10 p.m. The deposition of Dr. Navjot Kaur and the medical report produced before learned trial Court clearly point to penetrative sexual assault. PW2 Dr. Vijay Kumar medico-legally examined the appellant and he proved his MLR. As per his medical opinion, there was nothing to suggest that the appellant could not perform sexual intercourse. Although, it was recorded in the MLR that the cause of injuries was a road side accident, the medical evidence and medical examination proved the facts otherwise. This conclusion is further buttressed by testimony of the victim, who has clearly stated that the appellant took her to the fields and sexually assaulted her. As per the Investigation Officer i.e. ASI Malkit Singh, who was examined as PW-8, some hair were recovered from the place of occurrence. A study of the Chemical Examiner's report (Ex.PQ) also corroborates the case of the prosecution, as the report states that the hair was of human origin.

10. Lastly, the submission advanced with respect to the material contradictions and improvements in the testimonies of the prosecution witnesses, this Court finds that the discrepancies were only minor in nature, which are bound to occur, as no true witness can possibly escape from making

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some discrepant details. Also, the victim was only 06 years old and therefore, some minor additions and omissions are bound to be present. PW-6, namely, Gurmit Singh has also categorically stated that he saw the appellant and the victim going towards the fields. The said witness neither has any grind to axe with the appellant nor he is related to the complainant. Thus, the prosecution case has also been corroborated by an independent witness. Hence, the evidence on record is sufficient to affirm the guilt of the appellant on the charge framed against him.

11. In view of the facts and circumstances of the case, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by learned trial Court, which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

12. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

25.09.2024
vishnu

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