

2024:PHHC:078498-DB



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

779

CRA-D-1011-DB-2014 (O&M)

Reserved on: 14.05.2024

Pronounced on: 31.05.2024

Surjit Singh @ Seetu

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH**

Present:-. Mr. Vivek Salathia, Advocate for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

KIRTI SINGH, J.

1. The instant appeal has been preferred by the appellant against the judgment of conviction and order of sentence dated 02.05.2014 passed by the learned Additional Sessions Judge, Amritsar, in case FIR No.220 dated 16.09.2013, under Sections 376/506 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as 'POCSO Act') registered at Police Station Sultanwind, Amritsar, whereby the appellant had been convicted and sentenced to undergo rigorous imprisonment along with fine as under:-

Section(s)	Sentenced to R.I.	Fine	In default of payment of fine
6 of POCSO Act	For Life	Rs.20,000/-	RI for 01 year
506 IPC	01 year	--	--

Learned trial Court had ordered that both the sentences shall run concurrently.

Factual Matrix

2. The facts as put-forth by the prosecution are to the effect that the statement was recorded by the prosecutrix before SI Kanwaljit Kaur stating that she was resident of Amritsar and was engaged in household work. Her mother Rajji was earlier married to Manga and later their marriage got dissolved. Around 11 years ago, her mother performed second marriage with Surjit Singh son of Karam Singh resident of Amritsar. Her mother took her along to her matrimonial home as at that time she was aged around one year. Her mother was working as a sweeper at Mata Kaulan Hospital, Tarn Taran road, Amritsar. Around one year ago, whenever her mother used to leave for work, her step father Surjit Singh used to commit rape upon her and she was given threats in order to compel her not to report the said incident to anyone.

Later on, she became pregnant and gave birth to a female child. She along with her mother were threatened by her step father to remain silent. On the basis of the statement of the prosecutrix, FIR Ex.PA/2 was registered.

Investigation Proceedings

3. After registration of the FIR, the investigation was brought into motion. The prosecutrix was subjected to medico-legal examination and was produced before the learned Illaqa Magistrate who recorded her statement under Section 164 Cr.P.C. on 17.09.2013. The accused was arrested and the statements of the witnesses were recorded.

4. On conclusion of the investigation, the challan was presented in the Court and in terms of the order dated 06.01.2014, the case was committed to the Court of Sessions. A *prima facie* case under Sections 376/506 IPC and Section 6 of POCSO Act was made out against the accused-appellant. The charge was accordingly framed, the contents whereof were read over and explained to the accused-appellant who pleaded not guilty and claimed trial.

Proceedings of the trial Court

5. In order to substantiate its case, the prosecution examined 12 witnesses namely, PW1 Rajji, PW2 Gurpreet Singh, PW3 the minor prosecutrix, PW4 Dr. Vanita Bansal, PW5 Dr. Archana Aggarwal, PW6 Dr. Naval Goel, PW7 SI Kawaljit Kaur, PW8 ASI Jaswant Singh, PW9 HC Balwinder Singh, PW10 Kiran Jolly, PW11 Palwinder Kaur and PW12 Dr. Mandeep Singh Sandhu.

6. The statement of the accused-appellant under Section 313 Cr.P.C. was recorded in which he pleaded in defence that the age of the prosecutrix was 20 years and she was married to him. He further stated

that he wanted to lead evidence in defence. However, no defence evidence was led by him.

Submissions of the learned counsel for the appellant

7. Learned counsel for the appellant has submitted that the age of the prosecutrix was 20 years and she had been wrongfully considered as a minor by the Court. He further contended that the prosecutrix was the wife of the accused-appellant and hence, no case under Section 376 IPC could be made out against the accused-appellant and there were major improvements in the statements of the witnesses.

Submissions of the learned State counsel

8. The learned State counsel has argued that the impugned judgment of conviction is based upon proper appreciation of evidence and the prosecution has proved its case against the accused-appellant by leading cogent and convincing evidence and there is no infirmity in the order passed by the learned trial Court.

Analysis and observations

9. We have heard the rival submissions of both the learned counsels for the parties and with their able assistance, we have also scrutinized the entire record and judgment passed by the learned trial Court.

10. PW1 Rajji, mother of the prosecutrix stated that she was previously married to Manga and out of this wedlock, one daughter i.e. prosecutrix was born. The age of the prosecutrix was mentioned as 14

years. Her matrimonial ties came to an end and she re-married Surjit Singh i.e. appellant. The prosecutrix had informed her that in her absence, the accused-appellant committed rape on her multiple times by threatening her with dire consequences and as a result, she got pregnant. When she confronted the appellant, he threatened to kill her as well as the prosecutrix in case they disclosed the incident to anyone. The appellant used to confine them by locking the door and continued to commit rape on the prosecutrix. Thereafter, she delivered a baby girl and the entire matter was reported to the police.

11. PW2 Gurpreet Singh (nephew of PW1 Rajji) deposed that his maternal aunt had performed second marriage with accused-appellant. He came to know that the accused-appellant had forcefully raped the prosecutrix, who had subsequently given birth to a daughter. Additionally, the accused-appellant had been physically abusing and threatening them to remain silent about the said incident.

12. PW3, the minor prosecutrix narrated that she is the step daughter of the appellant. In the absence of her mother, the appellant used to indulge in forcible sexual intercourse with her against her wishes and used to warn her to remain silent about the incident. He used to threaten her along with her mother with dire consequences. He also used to beat them in order to refrain them from disclosing the matter. As she was subjected to continuous sexual assault at the hands of the accused appellant, she gave birth to a female child.

Medical Evidence

13. PW10 Kiran Jolly who is the Record Keeper in Birth & Death Department, Municipal Corporation, Amritsar stated that on 24.09.2013, the investigating officer moved an application Ex.PH in regard to the birth entry of the prosecutrix. She had proved on file report Ex.PH/1 and entry in the birth register as Ex.PJ. As per entry Ex.PJ, date of birth of the prosecutrix was shown to be 26.12.1999. Therefore, it is clear that the prosecutrix was about 12/13 years of age when she was subjected to forcible sexual intercourse by the accused-appellant.

14. PW4 Dr. Vanita Bansal conducted the medico-legal examination of the prosecutrix on 17.09.2013 and stated that a small healed mediolateral scar from fourchette to the right side of episiotomy (at the time of birth of baby) was present.

15. PW5 Dr. Archana Aggarwal, Consultant Gynecologist furnished the evidence that on 06.08.2013, the prosecutrix was admitted in their hospital for delivery at 10.30 p.m. and she delivered a female child at 11.22 p.m. She proved the attested copy of treatment chart of the patient as Ex.PW5/A.

16. PW12 Dr. Mandeep Singh Sandhu, Medical Officer, conducted the potency test of accused-appellant on 18.09.2013 and opined that there was nothing to suggest that the appellant Surjit Singh was incapable of performing sexual activity.

17. The contention of the accused-appellant that the prosecutrix was married with him is not tenable as there is no concrete evidence on the record proving the said fact. There is no photograph, marriage certificate or any other document(s) on file to prove the factum of marriage between the prosecutrix and the appellant. Moreover, no suggestion was put to any witness during the trial and not even to the prosecutrix. Therefore, it cannot be held that the prosecutrix was married to the accused-appellant.

18. The Hon'ble Supreme Court in *Ganesan vs. State, 2020(10) SCC 573* observed and held that in order to hold the accused guilty for commission of offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality. The relevant extract of the judgment is reproduced as under:-

“9. In the present case, the appellant-accused has been convicted by the learned trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial Court as well as the relevant evidence on record, more particularly the deposition of PW1-father of the victim, PW2-mother of the victim and PW3-victim herself. It is true that PW2-mother of the victim has turned hostile. However, PW3-victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW3 - victim. PW3 aged 15 years at the time of deposition is a matured one. She is trustworthy

and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.

9.1 Whether, in the case involving sexual harassment, molestation etc., can there be conviction on the sole evidence of the prosecutrix, in the case of Vijay alias Chinee (supra), it is observed in paragraphs 9 to 14 as under:

"9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550* this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16).

"16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to

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."

Conclusion

19. After examination of the testimony of the witnesses and the medical evidence on record, there is sufficient evidence to hold that the prosecutrix who was the step daughter of the accused-appellant was a minor girl who was subjected to forcible sexual intercourse by the accused-appellant multiple times without her consent and as a result she became pregnant and delivered a female child at a very young age.

20. Rape is violation of victim's fundamental right enshrined under Article 21 of the Constitution of India. Such matter should be dealt with sternly and severely. Sexual violence apart from being dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or minor, it leaves behind a traumatic experience. A rapist not only causes physical injury but leaves behind a scar on the most cherished position of a woman i.e. her dignity, honour, reputation and chastity. Rape is not

only an offence against the person of a woman rather a crime against the entire society.

21. From the cumulative assessment of the afore-discussed testimony of PW1 Rajji (mother), PW2 Gurpreet Singh (nephew of PW1) and PW3 the minor child victim (prosecutrix) coupled with the medical evidence recorded, it is safe to conclude that the impugned judgment of conviction and order of sentence dated 02.05.2014 passed by the trial Court is based on correct appreciation of evidence and the learned counsel for the appellant has failed to point out any illegality or infirmity in the same. Resultantly, the judgment of conviction and order of sentence dated 02.05.2014 are upheld and the instant appeal stands dismissed.

22. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the learned trial Court.

23. All pending applications, if any, are disposed of, accordingly.

(KIRTI SINGH)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

31.05.2024

Ramandeep Singh

Whether speaking/reasoned	Yes
Whether reportable	Yes