

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-970-DB-2013
Reserved on: 18.09.2024
Date of decision: 25.09.2024

RAJWINDER SINGH @ RAJU

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Fury Jain, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 20.04.2013, upon Sessions Case No.07 of 08.02.2012, by the learned Additional Sessions Judge, Patiala, wherethrough, in respect of charges drawn for offences punishable under Sections 376, 354, 511, 452 of the IPC, she recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Sections	Sentence	Fine	In default of payment of fine
376 IPC	Life Imprisonment	Rs. 50,000/-	RI for Two years.
452 IPC	RI for Five Years	Rs.10,000/-	RI for One year

2. Both the sentence(s) were ordered to run concurrently. The period spent in prison by the convict, thus during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution is that on 3.10.2011 ASI Nasib Singh along with ASI Kuldip Singh, HC Baljit Singh and HC Daljit Singh on private vehicles was present in the area of Dal Dalia Chowk, Patiala, in connection with patrolling, where Gurmeet Kaur wife of Ramesh Kumar, resident of Ganga Vihar Colony, near Ghalaure Gate, Patiala, got her statement recorded to the effect that she is doing stitching work in her house. She has two daughters namely Mamta, aged about 14 years and the prosecutrix, aged about 10 years and one son namely Vicky, aged about 12 years. Her husband is doing labour work. Today, she along with her daughter Mamta went to bazar for domestic work. Her son Vicky was playing with the children in the street and the prosecutrix was in the house. At about 5.15 PM, when she along with her daughter Mamta returned home, she heard the shrieks of the prosecutrix and saw that Rajwinder Singh @ Raju son of Darshan Singh, resident of House No.79, Sanjay Colony, Ghalaure Gate, opposite CIA Staff, Patiala, was lying on the prosecutrix after putting off her Salwar. She raised alarm and on seeing her accused pushed her and fled away from the spot. On the basis of aforesaid statement, case was registered.

INVESTIGATION

5. During investigation, the accused was arrested. Rough site plan was prepared. Statements of witnesses were recorded. On completion of all other necessary formalities, the challan against accused was presented in the Court of Sh. Kuljit Pal Singh, Addl. Chief Judicial Magistrate, Patiala. On presentation of challan, copies of documents relied upon by the prosecution were supplied to the accused free of cost. The case was vide order dated 25.01.2012, committed by the learned Magistrate to the Court of Session, as the offence punishable under Section 376 IPC is exclusively triable by Court of Session.

TRIAL PROCEEDINGS

6. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he choose to lead only one defence witness into the witness box.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

7. The learned counsel for the appellant has argued before this Court, that the verdict of conviction, as became rendered against the present appellant is flawed, and, is required to be set aside. Moreover, it is also contended that the order of sentence as made upon the appellant is also liable to be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation

of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

9. Since, initially the prosecutrix-child victim, as revealed by the Admission Form embodied in Ex.PW/1, proven by PW-1, was a minor, at the relevant stage, thus thereby she was disabled to make a valid consent to the accused, thus to subject her to coitus. Resultantly, any exculpatory plea founded upon the sexual intercourse, if any, which occurred *inter se* the appellant and the prosecutrix rather being consensual, but does not hold any significance.

10. Be that as it may, it has to be yet adjudicated whether the testifications rendered vis-a-vis, the crime event, thus respectively by the prosecutrix, who stepped into the witness box as PW-5, by her mother who stepped into the witness box as PW-4, and by her sister who stepped into the witness box as PW-6 rather are confidence inspiring or not.

11. It is trite law that the confidence inspiring and unblemished version rendered qua the crime event by the prosecutrix does hold immense evidentiary worth and solitarily on the said premise, this Court is required to uphold the verdict of conviction.

12. In the above endeavour, it is but imperative to make a wholesome appraisal of the testification of the prosecutrix, her sister and, of her mother. The prosecutrix stepped into the witness box as PW-5, only after the learned trial Judge concerned, assessing/declaring her competence to depose as a witness, through hers rendering able answers to certain queries as became put to her.

13. Since the said statement Ex.P1 is assigned. The prosecutrix in her examination-in-chief make speakings that she had made statement Ex.P1, thus before the learned Magistrate concerned, upon proceedings drawn under Section 164 Cr.P.C. Moreover, when she admitted that she had made her signatures thereons. Therefore, though the prosecutrix admits her signatures as exist on

Ex.P1. However, it is yet to be gauged from the testification made by PW-11, who is the learned Magistrate concerned, wherebefore whom, it became recorded, whether the said made signatures were voluntarily made by the prosecutrix.

14. For the purpose (supra), thus the learned Magistrate concerned, stepped into the witness box as PW-11, and, in her examination-in-chief she deposed that the victim had put her signatures on Ex.P1, and, she also deposed that subsequently she had made a certificate at the foot of Ex.P1, with declarations therein, that the signed statement of the victim prosecutrix was thus made voluntarily by her. Resultantly when the prosecutrix does not renege from the contents of Ex.P1, thereby the effect thereof, is but that, the prosecutrix has rendered a confidence inspiring version vis-a-vis the crime event. More so, when in her examination-in-chief the prosecutrix has deposed about her previous statement as made before the learned Magistrate concerned, in proceedings drawn under Section 164 Cr.P.C., thus was made truthfully. Moreover, when therein an inculpatory role is assigned to the accused. The contents of the said exhibit, are extracted hereinafter.

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*Statement of Jyoti D/o Ramesh Kumar, age 10 years, R/o Patiala
u/s 164 Cr.P.C.*

On SA

Q: What is your name?

A: Jyoti.

Q: In which school do you study?

A: Newson Flower Model School.

Q: Who is your teacher?

A: Vandana Madam.

*Certified that the witness understand the questions and gives
reasonable answers. She understands what she says.*

Q: What had happened?

A: Raju had done bad things with me.

Q: Who is Raju?

A: *He is the person who did bad things with me.*

Q: *Who else was at home?*

A: *My brother*

Q: *Your brother is elder or younger?*

A: *Elder. He is 12 years old.*

Q: *Do you want to say anything else?*

A: *Raju took off my underwear and put his hand inside my sexual organ. He also remove his underwear and tried to lie on me.*

Q: *Do you want to say anything else?*

A: *No*

RO&AC

Sd/- In English

Sd/- in English

JMIC(D)

5/x/11

Certified that the above said statement was made in my presence and hearing and was correct."

15. The mother and sister of the prosecutrix respectively stepped into the witness box as PW-4 and PW-6, and, both of them in respect of the crime event, thus made a version rather in complete alignment with the version embodied in the FIR, besides also both of them narrated therein an ocular account vis-a-vis the crime event which is but free from any taint of any *inter se* or *intra se* contradiction, inasmuch as, theirs stating that when they entered the relevant crime site, thereupons theirs sighting that the appellant was lying over the prosecutrix and was committing rape upon the prosecutrix.

16. Even though no medical examination was made upon the prosecutrix but the non making of any medical examination upon the prosecutrix rather becomes inconsequential, thus on the solitary premise hence founded upon the reason (supra), that the prosecutrix has rendered a taint free and confidence inspiring version vis-a-vis the crime event. Conspicuously also, when this Court has also assigned creditworthiness to the deposition, as became by the mother and sister of the prosecutrix who respectively, stepped into the witness box as

PW-4 and PW-6.

17. Though the result(s) of the examination, as became made over the spermatozoa enclosed in the vaginal swabs of the prosecutrix, result whereof becomes extracted hereinafter, does not connect the spermatozoa inside the vaginal swabs of the prosecutrix rather with the spermatozoa/blood group of the accused. However, the said omission is also inconsequential, as rather than primacy being assigned to medical evidence, thus primacy is to be assigned to the taint free deposition(s) (supra).

“Report of the Chemical Examiner to Govt. of Punjab

xxx

1. I HEREBY CERTIFY that I received a packet/Box from Dr. Sarbhjit Kaur, Medical Officer, Department of Gynae & Obst., GMC RH Patiala.

Through L. Constable Dimple Rana No.1419

alleged to have been dispatched by him on the 4th of Oct. 11

referred to in his office memo No. Nil Dated: 4.10.11

and received by me on the 10th of Oct/2011

2. The packet consisted of two sealed parcels, sealed with a seal bearing the impression on the invoice, hereunto attached, received by me with 3, 4 seals entire and intact.

The contents of the packet were as follows:-

I. Introitus vaginal swab.

II. Posterior vaginal swab.

III. Pajami.

IV. Frock.

3. The above seals were opened in my presence and the contents of the packet were duly examined by me and remained under my immediate custody until examination was completed.

The result was as follow:-

Spermatozoa *were detected in the contents of exhibits I, II, III & IV.*

Chemical Examiner to Govt. Punjab”

FINAL ORDER

18. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thus thereupon, he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.
19. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.
20. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

25.09.2024

Ithlesh

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

(SUDEEPTI SHARMA)
JUDGE