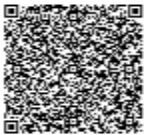


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-339-SB-2011 (O&M)
Date of Decision: 19.09.2024

Nahar Singh

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

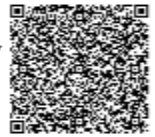
Present: Mr. Amit Jay Singh, Advocate (*amicus curiae*)
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

1. Mr. Amit Jay Singh, Advocate is appointed as *Amicus Curiae* in this case to assist the Court on behalf of the appellant.
2. Present appeal is preferred against the judgment of conviction dated 03.12.2010 and the order of sentence dated 07.12.2010 passed by learned Sessions Judge, Moga in FIR No.73 dated 09.03.2008 under Sections 376 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Baghapurana, District Moga, vide which the appellant was convicted

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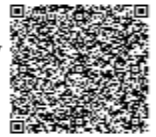


and sentenced under Section 376 of IPC and was ordered to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/-, out of which Rs.5,000/- was ordered to be paid to parents of the victim, along with default mechanism.

3. Succinctly, the facts are that father of the victim moved a complaint before the concerned police station, wherein it was alleged that on 09.03.2008, the appellant committed rape upon his daughter aged about 08 months. Upon completion of investigation, the final police report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was filed against the appellant and consequently, charges were framed against him for commission of offence punishable under Section 376 of IPC, to which he pleaded not guilty and claimed trial. During the course of trial, the prosecution examined as many as 10 witnesses to establish its case, whereas the appellant-accused did not lead any evidence in his defence, after his statement under Section 313 of Cr.P.C. was recorded. Ultimately, the appellant was convicted and sentenced in the manner mentioned above. Feeling aggrieved, the appellant has approached this Court by way of filing the present appeal.

4. Learned counsel (*amicus curiae*) on behalf of the appellant, *inter alia*, contends that the conviction and the consequent sentence of the appellant are against the law and facts proved on record and thus,

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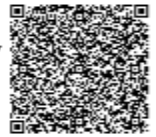


unsustainable in law. Learned Court below has falsely convicted the appellant without there being any cogent and reliable evidence against him. Further, learned trial Court failed to appreciate the material discrepancies in the version put forth by the prosecution. The FIR (*supra*) is an outcome of the old enmity between the families of the appellant and the complainant. Pertinently, learned trial Court failed to appreciate that as per the medical reports, there were no injury marks on the body of the victim-prosecutrix. Lastly, no test identification parade was carried out by the investigating agency to prove the identity of the appellant and as such, the benefit of doubt ought to be extended to him.

5. Learned State counsel produces the custody certificate dated 18.09.2024 of the appellant in the Court today, which is taken on record. He contends that the impugned judgment of conviction as well as the order of sentence have been passed by learned trial Court after duly appreciating the complete evidence on record. He further submits that guilt of the appellant has been established well beyond the shadow of reasonable doubt, therefore, no interference is warranted by this Court. However, it is also submitted by him that as per the custody certificate dated 18.09.2024 filed in the Court today, the appellant has completed his sentence on 24.11.2016 and he has also paid the fine.

6. I have heard learned counsel for the parties and perused the

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record of the case with their able assistance. It transpires that in the case at hand, the ocular evidence is in complete consonance with the documentary evidence including the medical evidence. Before learned trial Court, father of the victim (complainant) was examined as PW-2, whereas mother of the victim was examined as PW-5 and perusal of the record shows that both these witnesses have given cogent and convincing evidence by remaining firm in their respective testimonies despite being cross-examined at length. It is pertinent to mention that recording testimony of the victim could not have been humanly possible since she was only 08 months old at the time of the incident. But the medical evidence put forth by Dr. Jyoti, who was examined as PW-1, clearly shows that hymen of the child-victim was torn and there was an abrasion of 2x3 mm on her right labia majora.

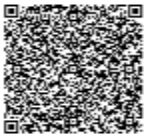
7. After examining the entire evidence in light of the facts and circumstances of the present, this Court is able to say with certitude that guilt of the appellant has been established beyond reasonable doubt. Therefore, no interference is warranted by this Court apropos the present case.

8. Resultantly, the present appeal is dismissed since it is bereft of any merit.

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

10. The High Court Legal Services Committee is directed to pay the

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remuneration to learned *Amicus Curiae* for rendering his valuable assistance to this Court, as per rules.

19.09.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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