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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-1052-SB-2004 (O&M)

Reserved on : 02.05.2025

Pronounced on: 27.05.2025

Ranjit Singh and another Appellants

VERSUS

State of Punjab Respondent

CORAM: HON’BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Ajay Pal Singh, Advocate, for the appellants.

Ms. Guramrit Kaur, DAG, Punjab.

KIRTI SINGH, J.

The instant appeal has been preferred against the judgment of conviction and order of sentence dated 06.04.2004 passed by the learned Addl. Sessions Judge, Fast Track Court, Ferozepur, in case FIR No.182 dated 12.10.2003, under Sections 452, 376, 511 & 34 IPC (during investigation, Section 447 IPC was converted to Section 452 IPC), registered at Police Station Ghall Khurd, District Ferozepur, whereby the appellants have been convicted under Sections 376(2)(g) and 511 IPC and sentenced to undergo imprisonment along with fine as under:-

Sentence under Section	Sentenced to RI	Fine	In default of payment of fine
376(2)(g) read with Section 511 IPC	10 years	Rs.1,000/-	RI for 03 months

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**Factual matrix**

2. The brief facts of the case against the appellants as alleged are that on the noon of 09.10.2003, the prosecutrix, 14 years of age at that time, was alone at her home with her younger sister, about two and a half years of age, when she heard a commotion in her house. When she was about to get up to check where the noise was coming from, the appellants herein entered the room of the prosecutrix. While she was still on the bed, appellant No.2 pinned down the prosecutrix from her shoulders and gagged her mouth with his hand while appellant No.1 broke the string her salwar in an attempt to rape her, when the maternal uncle of the prosecutrix, Swaranjit Singh who had come to visit his sister-in-law/mother of the prosecutrix reached the house. When the appellants heard him arrive, they fled the spot and ran away by scaling the wall of the house, in visible sight of Swaranjit Singh, who immediately went to find the parents of the prosecutrix and informed them about the events that had unfolded. Upon hearing so, Gurjeet Kaur i.e. mother of the prosecutrix immediately moved an application before the Deputy Superintendent of Police, Ferozpur seeking registration of an FIR, who in turn marked the same to the SHO concerned for necessary action. The same was then marked to ASI-Shamlal on 10.10.2003, who on 12.10.2003 recorded the statements of the witnesses and got lodged the FIR against the appellants under Sections 452, 376, 511 & 34 IPC (during investigation, Section 447 IPC was converted to Section 452 IPC). A site plan of the place of occurrence was prepared and the two pieces of the broken string along with the salwar of the prosecutrix was taken into

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possession by way of a recovery memo. Thereafter the arrest of the two accused was carried out on 14.10.2003 and after they pleaded innocence, were put to trial and charged under Sections 376 and 511 of the IPC.

Submissions made by learned counsel for the appellants:-

3. Learned counsel for the appellants submits that the appellants have been wrongly convicted in the present case. It is submitted that there was an unexplained delay of three days in the registration of the FIR. No documentary evidence to determine the actual age of the prosecutrix were placed on record. Further, there is no evidence, be it in the form of a medical or scientific report, or through testimonies of any independent witnesses, that point towards the complicity of the appellants, who have been convicted for a period of 10 years solely on the statement of the prosecutrix and Swaranjit Singh, whose testimony also stood dented by the defence as he was not able to tell the name of his father-in-law or even the brother-in-law whose house he was visiting. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court passed in **Aman Kumar v. State of Haryana, 2004(1) RCR (Criminal) 925**, in support of his submission that the charge of attempt to rape in the present case does not stand proved. The maximum charge that the appellants can be held guilty of, if the case may be, is that of indecent sexual assault under Section 354 IPC. It is submitted that there has been no allegation against the appellants herein of undressing themselves or committing any such act that would indicate that they had the intention of raping the prosecutrix but could not carry out the same. It is submitted that the test of an act falling under the category of

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an attempt to rape is that except for the failure to consummate, all the elements of the substantive crime stand fulfilled, which is not so in the present case. Therefore, in the absence any evidence to even remotely indicate that the appellants indeed had the intention to commit rape upon the prosecutrix, they can at most be charged for indecent sexual assault which is punishable under Section 354 of the IPC. It is also prayed that the young age of the appellants at the time of the incidents, their conduct thereafter and the time that has since elapsed be considered while deciding the appeal.

Submissions made by the learned State counsel

4. *Per contra*, learned State counsel has vehemently opposed the arguments made on behalf of the appellants. She submits that the appellant No.2 being the neighbour of the prosecutrix was well aware of the family set up of the prosecutrix. He along with his accomplice chose the time when they knew that parents of the prosecutrix were not at home, and in execution of a common criminal design, scaled the wall between their houses, and entered the bedroom where the prosecutrix was. Appellant No.2 held the prosecutrix pinned on the bed where she had been lying and gagged her mouth with his hands to prevent the cries of the prosecutrix from being heard, while appellant No.1 broke the strings in of the salwar of the prosecutrix in a desperate attempt to commit rape upon her. They were determined to ravish the prosecutrix, and would have succeeded in doing so had the uncle of the prosecutrix not reached at the spot. Qua the evidence presented by the prosecution in support of its case before the learned trial Court, it is submitted that the broken strings of the salwar that the

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prosecutrix was wearing was recovered by the investigating agency. Further, the prosecutrix in her statements made before the investigating agency as also in her deposition as a prosecution witness reiterated the allegations levelled against the appellants in the FIR and maintained the stance that the accused persons did not let her go despite her cries and struggles, and that had it not been the chance arrival of her uncle, they would have raped her. The testimony of the prosecutrix stood duly corroborated by the statement of eye witness Swaranjit Singh who categorically stated that he saw the appellants holding the prosecutrix pinned to the bed with her mouth gagged and the string of her salwar broken, and that they ran away by scaling the wall of the house upon seeing him. Insofar as the plea of the counsel for the appellants is concerned that since Swaranjit Singh could not tell the correct name of his father-in-law or brother-in-law, learned counsel submits that it may be kept in mind that marriage of the Swaranjit Singh was solemnised back in 1960's. Further, though he could not recollect the name of his brother-in-law, he correctly stated that his sister-in-law was previously married to one Bohar Singh and also had children with him, one among them being the prosecutrix. Therefore, it was rightly concluded by the learned trial Court that the presence of Swaranjit Singh at the house of the prosecutrix was bonafide. It is thus submitted that the conviction of the appellants under attempt to rape be upheld.

Analysis & conclusion

5. In criminal jurisprudence, there are two elements which constitute a crime, those being *mens rea* or the mental element i.e the

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intention to commit a crime and *actus reas* that is any act done in furtherance of that common intention. The progressions in the stage of crime are that its inception begins with intention, followed by preparation. It is thereafter that an attempt is made, and it that attempt becomes successful, a crime is said to have taken place.

6. The Hon'ble Supreme Court in Koppula Venkat Rao vs. State of A.P., (2004) 3 SCC 602, elicited the difference between 'attempt' and 'preparation' in a rape case by holding that:

“11. In order to find an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.”

7. Most recently, in State Of Madhya Pradesh vs. Mahendra Alias Golu, 2021(4) RCR (Criminal), 613, the Hon'ble Supreme Court reiterated the distinction between preparation and attempt to rape by observing thus:

“11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit),secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still

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punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.

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20. We may at the outset explain that what constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes."

8. A gainful reference can also be made to the judgment passed in **Chaitu Lal Vs. State of Uttarakhand Criminal Appeal No. 2127 Of 2009 decided on 20.11.2019**, wherein accused though had not undressed himself but had pounced upon the victim in the presence of her daughter who also pleaded before the accused, and lifted her petticoat while the prosecutrix protested and wept, and it was only

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due to the arrival of a neighbour that the accused ran away after threatening the complainant. While upholding the conviction of the accused appellant therein under Section 354 and Section 511 read with Section 376 IPC for a period of two years, the Hon'ble Supreme Court held that:

“10. Herein, although the complainant-victim and her daughter were pleading with the accused to let the complainant-victim go, the accused-appellant did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the accused-appellant would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.

11. The counsel on behalf of the accused-appellant placed reliance upon the case of **Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)**, (2006) 8 SCC 560 to claim the benefit of acquittal for offence under Section 511 read with Section 376 of IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the accused-appellant in forcibly entering the house of the complainant-victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.”

9. The case of **Aman Kumar (supra)** on which learned counsel for the appellants has placed heavy reliance is distinguishable from the facts of the present case since first, there was enmity between the complainant and accused sides; further, the only basis of conviction was the testimony of the prosecutrix which also suffered from minor inconsistencies and did not contain therein the allegations of penetration, which are a sine qua non for

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invocation of the charge of rape; and third, the prosecution witnesses including the father of the prosecutrix, had turned hostile in that case. Therefore it could not be proved that the accused therein had intentions of committing rape, and thus they were convicted under 354 IPC. However, the present case stands on a completely different footing.

10. Reverting to the case in hand, at the outset, the delay aspect was duly considered by the learned trial Court. The information regarding the commission of the offence was given to the official concerned but the procedural action of the investigating agency led to the delay in lodging of the FIR. Further, a perusal of the statement of the prosecutrix reveals that the appellants, one of whom was a neighbour, entered her house by scaling the wall built when she was alone with her 2 ½ year old sister. Appellant No.2 kept her shoulders pinned to the bed and tried to gag her mouth in order to stop her from raising an alarm while appellant No.1 broke the string of her salwar. It was only a matter of chance that the uncle of the prosecutrix turned up at her house and heard her muffled cries, that the appellants had to flee from the spot. The testimony of the statement stood corroborated by the evidence of the eye-witness Swaranjit Singh (uncle of the prosecutrix). It is also not the case where a plea of previous enmity and suspicion of false implication of the appellants due to some oblique motive has been raised. The prosecution witnesses had no animus to falsely depose against the appellants. The conduct of the appellants therefore speaks of their intention to commit the said offence, which they could not consummate due to the unexpected arrival of the eye witness. In these circumstances, this Court has

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no inhibition in holding the appellants guilty of the offence of attempt to rape.

11. The appellants herein were held guilty under section 376(2)(g) {as it was prior to the Amendment of 2013} and Section 511 of the IPC. The minimum punishment prescribed for the offence under the said provision of Section 376(2)(g) IPC was of 10 years, however, the proviso to the same provided that the Court may, for adequate and special reasons to be recorded in writing, sentence the accused for a term less than the minimum period prescribed. Section 511 IPC contains the provisions for punishment of attempt to commit offences for which a specific provision is not contained in the penal code. The harmonious interpretation of the proviso to Section 376(2) IPC (as it was prior to the 2013 amendment) and Section 511 IPC empowers the Court to sentence the accused, for reasons so recorded, for a period less than the minimum limit so prescribed.

12. Speaking of the quantum of sentence, the sword of damocles has been hanging over the heads of the appellants for more than two decades. The sentence of the appellants was suspended vide order dated 29.03.2005. Prior to the same, the custody certificates dated 02.05.2025 of the appellants show that while appellant No.1 had undergone a total sentence including remission for a period of 03 years, 03 months and 02 days; whereas appellant No.2 had undergone a total sentence, including remission for a period of 03 years, 01 month and 28 days. The appellants, who were 18 and 17 years of age at the time of the admission of the appeal, do not have any past criminal antecedents. The State has not shown any other criminal

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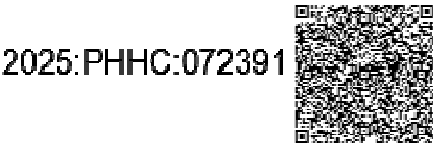


record during the subsequent period, showcasing that the appellants have integrated into the mainstream society, which is the aim of the reformative school of justice, on which foundation the entire structure of legal system is built. This Court feels that the sentence already undergone by the appellants when seen in light of the protracted litigation that has been suffered is commensurate to the crime that has been committed. Therefore, given these circumstances, but in no way undermining the gravity of the offence that the appellants are guilty of, this Court deems it a fit case to reduce the quantum of sentence awarded to the appellants to the period already undergone by them.

13. Accordingly, the appeal is **partly allowed** and the impugned judgment of conviction dated 06.04.2004 passed by the learned Addl. Sessions Judge, Fast Track Court, Ferozepur is upheld, however, sentence of the appellants is reduced to the period already undergone. The sentence of fine is enhanced from ₹1,000/- each to ₹50,000/- each, to be deposited by the appellants in the Poor Patient Welfare Fund, PGIMER, Chandigarh, within a period of two month from the date of this judgment and in default, they will be liable to undergo simple imprisonment of three months. The amount of ₹1,000/-, if deposited previously, shall be adjusted. The bail bonds of the appellants stand discharged.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

15. Record of the case(s), if any, be sent back to the Court(s) below.



The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s).

(KIRTI SINGH)
JUDGE

27.05.2025
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes