



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

**(1)** **CRA-D No.1037-DB of 2016 (O&M)**  
**Date of Decision: 09.09.2025**

Harwinder Singh alias Bittu

...Appellant

Versus

State of Punjab

...Respondent

**(2)** **CRA-S No.4208-SB of 2016**

Anita Rani

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL**  
**HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by:- Ms. Monita Mehta, Advocate  
for the appellant(s) (*in both the appeals*).

Mr. Rohit Bansal, Senior D.A.G, Punjab  
for the respondent-State (*in both the appeals*).

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**MEENAKSHI I. MEHTA, J.**

Both the above-captioned Criminal Appeals are being taken up together for discussion and adjudication as these have arisen out of the same judgment and order on sentence, handed down by learned Additional Sessions Judge, Pathankot (for short 'the trial Court'), on 29.10.2016 in the criminal case stemming out of FIR No.117 dated 06.11.2015 registered at



Police Station Division No.1, Pathankot, under Sections 363, 366-A, 376, 506 & 120-B IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'), whereby the appellants have been held guilty and have been awarded the punishment accordingly.

2. **CRA-D No.1037-DB of 2016** has been preferred by appellant Harwinder Singh @ Bittu, who has been sentenced as under:-

| <u>Offence</u>       | <u>Sentence</u>                                                                                                                                                                                                                                      |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>U/S 363 IPC</i>   | <i>Rigorous imprisonment for a period of 07 years and fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.</i>                                                                  |
| <i>U/S 366-A IPC</i> | <i>Rigorous imprisonment for a period of 10 years and fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.</i>                                                                  |
| <i>U/S 376 IPC</i>   | <i>Imprisonment for life and fine of Rs.2,00,000/- out of which the sum of Rs.1,50,000/- was to be paid to the prosecutrix as compensation and in case of default in payment of fine, to further undergo the rigorous imprisonment for 04 years.</i> |
| <i>U/S 506 IPC</i>   | <i>Rigorous imprisonment for a period of 02 years and a fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.</i>                                                                |

3. **CRA-S No.4208-SB of 2016** has been filed by appellant Anita Rani as she has also been awarded the following sentences:-

| <u>Offence</u>     | <u>Sentence</u>                                                                                                    |
|--------------------|--------------------------------------------------------------------------------------------------------------------|
| <i>U/S 363 IPC</i> | <i>Rigorous imprisonment for a period of 07 years and fine of Rs.10,000/- and in case of default in payment of</i> |



*fine, to further undergo the rigorous imprisonment for 02 years.*

*U/S 366-A IPC*

*Rigorous imprisonment for a period of 10 years and fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.*

*U/S 376 read with  
Section 120-B IPC*

*Rigorous imprisonment for a period of 07 years and fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.*

*U/S 506 IPC*

*Rigorous imprisonment for a period of 02 years and fine of Rs.10,000/- and in case of default in payment of fine, to further undergo the rigorous imprisonment for 02 years.*

All the sentences, as awarded to both the appellants, have been ordered to run concurrently.

4. Shorn and short of unnecessary details, the facts, culminating in the conviction of the appellants, are that on 06.11.2015, the prosecutrix, along-with her mother, approached the police and she made a statement (Exhibit P-11) before Inspector Anju Bala which was reduced into writing accordingly. She had stated that on that day, while she was on her way to her school, appellant Anita, the foster-sister of her father and her husband, i.e appellant Harwinder Singh, came there in a black colour car and offered that they would drop her at her school but she declined for the same. Then, they forcibly pulled her inside the car and took her along-with them. Appellant Harwinder Singh dropped appellant Anita near Adhunik Vihar Colony and threatened her (prosecutrix) to keep quiet or otherwise, he would eliminate her. He took her to the room in a hotel situated ahead of Kandwal Barrier in Himachal Pradesh and there, he forcibly removed her clothes and



undressed himself and started showing her obscene movies on his mobile-phone and thereafter, he pushed her on the bed and raped her. Later-on, he dropped her near children park and asked her not to disclose anything to anyone. On the basis of the afore-said statement, formal FIR (Exhibit P-18) was registered. Then, the prosecutrix was got medicolegally examined. Her statement under Section 164 Cr.P.C had also been got recorded. Further investigation was, then, carried out wherein appellant Anita was found to be innocent. On completion of necessary investigation, Police Report under Section 173(2) Cr.P.C/Challan was prepared against appellant Harwinder Singh @ Bittu and he was sent up to face his trial.

5. It is pertinent to mention here that after the commitment of the case and its entrustment for the trial, the trial Court invoked the power as conferred under Section 193 Cr.P.C and summoned appellant Anita to face trial along-with appellant Harwinder Singh. Then, both the appellants were charge-sheeted under Sections 120-B, 363, 366, 366-A, 376, 506 IPC as well as Section 4 of the POCSO Act. They pleaded not guilty to the charges and claimed trial. To substantiate its allegations against the appellants, the prosecution examined as many as seventeen (17) witnesses namely Ram Murti Sharma as PW1, Rinku as PW2, Dr. Ravi Kant as PW3, Dr. Anjana as PW4, the prosecutrix as PW5, Anu Katoch (mother of prosecutrix) as PW6, Ms. Lavleen Sandhu JMIC 1<sup>st</sup> Class as PW7, PHC Gurdev Singh as PW8, PHC Mohan Singh as PW9, PHC Surinder Pal as PW10, Inspector Anju Bala as PW11, ASI Kapil Dev as PW12, Rajesh Kumar Draftsman as PW13, ASI Gurdial Singh as PW14, Manjeet as PW15, ASI Hardev Singh as PW16 and SP Jagjit Singh Bhagtana as PW17. On conclusion of the prosecution



evidence, the appellants were examined under Section 313 Cr.P.C to explain the material/circumstances, appearing against them in prosecution evidence on the record wherein they pleaded innocence and stated that they had falsely been got implicated in the present case. They also examined two (02) witnesses named Bhag Singh as DW1 and Rani as DW2, in their defence evidence. After appreciating and evaluating the evidence led on the record and hearing learned Public Prosecutor for the State as well as learned defence counsel, the trial Court held both the appellants guilty and awarded punishment to them vide the impugned judgment and order on sentence, as already discussed in the preceding paragraphs. Feeling aggrieved therefrom, the appellants have preferred these appeals separately.

6. We have heard learned counsel for the appellants as well as learned State counsel in the instant appeals and have also perused the record carefully.

7. Learned counsel for the appellants has referred to the depositions made by PW4 Dr. Anjana in her affidavit Exhibit P-10 to the effect that she had examined the prosecutrix and had taken two (02) cervical swabs and had sent the same for forensic examination and she has, further, drawn our attention to Exhibit P-10/2, the report of Chemical Examiner and has pointed out that it has specifically been mentioned therein that no spermatozoa was detected in the above-said swabs and she has contended that the afore-discussed report falsifies the entire version of the prosecutrix regarding appellant Harwinder Singh @ Bittu having raped her.

8. However, the above-raised contention is devoid of any force because mere absence of spermatozoa cannot be construed to be the sole



decisive factor to record the acquittal of an accused/convict and rather, this fact requires to be considered/evaluated in juxta-position with the peculiar facts and circumstances of each case. In the present case, Exhibit P-10/1 is the copy of Medico-Legal Report (MLR) of the prosecutrix and as reported therein and deposed by PW4 as well, the following injuries were found to be present on the person of the prosecutrix:-

- “1. Fresh bruises were seen on her body, one at right angle of mandible of 1 cm x 1 cm. second on right side of neck 05 cm x 0.5 cm and third on left side of breast of 2 cm x 2 cm.*
- 2. On P/V examination: Hymen ruptured, red inflamed and according to patient that person had ruptured her hymen manually with finger, but confuse to give proper statement. 2 cervical swabs were taken and sent for forensic examination her date of birth as per school certificate is 14/12/1998.”*

Further, in her MLR Exhibit P-10/1, the time of arrival of the prosecutrix in hospital, has been mentioned as 08:30 PM and the time of her examination has been recorded as 08.45 PM and while deposing as PW5, she (prosecutrix) had categorically stated that on the day of occurrence, she was going to the school at about 08:00 AM and as per the entry in Exhibit P-6, i.e the copy of Visit Register of Hotel Mao Fort, appellant Harwinder Singh had checked in there at 08:40 AM and had left at 09:12 AM, meaning thereby that the prosecutrix had medico-legally been examined about 11½-12 hours after the alleged occurrence. PW4 has nowhere mentioned in MLR Exhibit P-10/1 that she had asked from the prosecutrix as to whether she had passed urine during the afore-said spell or not. In normal course of events, it



seems highly improbable that any person would retain the urine for such a long duration. Moreover, in **Narayanamma (Kum) vs. State of Karnataka (1994) 5 Supreme Court Cases 728**, Hon'ble Supreme Court has made the following observations: -

*“No presumption can be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa and it is a question of detail and has to be put to test by cross-examination. Otherwise also, there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix.”*

These observations are fully applicable to the above-discussed facts and circumstances of instant case and in the light thereof, it becomes explicit that the absence of spermatozoa in cervical swabs of the prosecutrix, does not create any dent in the credibility of allegations of the prosecutrix against appellant Harwinder Singh @ Bittu.

9. Learned counsel for the appellants has, then, pointed out that the prosecutrix, as PW5, has deposed regarding her having raised an alarm while being taken from the place of her alleged kidnapping to the afore-said hotel and she has contended that it does not seem probable at all that such an alarm did not catch/attract the attention of any passer-by or the workers of the hotel or persons who might be present there and she has also referred to the depositions made by the prosecutrix (PW5) to the effect that about two (02) years ago, a report had been lodged with the police regarding her having gone missing and she had been recovered on the same day and she has,



further, contended that the above-described facts cast a shadow of doubt on her (prosecutrix's) entire version/testimony.

10. Before adverting to discussion on the afore-said contention, we deem it apposite and essential to mention here that PW1 Ram Murti Sharma has specifically deposed that as per their school-record, the date of birth of prosecutrix was 14.12.1998 and he had brought the original record of 10<sup>th</sup> Class with Punjab School Education Board and Exhibit P-4 was the copy of Matriculation Examination Result Card of the prosecutrix which was correct as per the record and the above-referred date of birth of prosecutrix found mention therein. The appellants have not been able to adduce any evidence on the record to prove to the contrary. Thus, it becomes crystal clear that the prosecutrix had not completed the age of 18 years and was, rather, a minor on 06.11.2015, i.e the day of alleged occurrence. In such circumstances, the question of her (prosecutrix) having or not having raised any alarm and the factum of her having gone missing and having been recovered on the same day, pale into insignificance.

11. Learned counsel for the appellants has also contended that the father of prosecutrix had already expired and her mother, PW6 Anu Katoch, was having illicit relations with one Rakesh who was living in their house and appellant Anita happens to be the sister of afore-said Rakesh and she had moved a complaint to the police in this regard and moreover, PW6 had been demanding money from appellant Harwinder Singh, who was a friend of appellant Anita and due to non-fulfilment of the afore-referred demand, the prosecutrix and her mother have got the appellants falsely implicated in the instant case.



12. Again, we do not find the above-raised contention to be tenable at all because motive is a double-edged weapon and the Courts are supposed to be cautious in drawing the inferences in respect thereof. It is necessary to point it out here that the appellants have examined Bhag Singh as DW1, who is stated to be working as Reception Manager in the afore-mentioned hotel and this witness has categorically admitted during his cross-examination that on 06.11.2015, Room No.403 of their hotel had been occupied by appellant Harwinder Singh. These depositions sufficiently establish on the record that appellant Harwinder Singh had gone to and had stayed in a room in the said hotel, on the day of occurrence in question. To add to it, while appearing as PW5, the prosecutrix has fully supported the allegations as levelled by her against the appellants. These facts, coupled with the above-detailed medical evidence, do suffice to prove the version/allegations of prosecution against the appellants.

13. Lastly, learned counsel for the appellants has drawn attention of this Court to the depositions made by DW1 Bhag Singh to the effect that on the relevant day, no minor girl had entered/occupied Room No.403 of their hotel and she has also pointed out that DW2 Rani @ Seeta has specifically stated that on 06.11.2015, she had accompanied appellant Harwinder Singh to the afore-referred hotel and she has contended that the testimonies of these witnesses substantiate the factum of false implication of the appellants in the present case.

14. As regards the depositions of DW1 regarding no minor girl having entered and occupied the said room in their hotel, it is again pertinent to mention here that this witness has specifically admitted during his cross-



examination that appellant Harwinder Singh was accompanied by one more adult and that he had not mentioned the gender nor had obtained the proof of identity of said adult person. This admission on his part renders his above-described version highly doubtful. Similarly, though DW2 Rani @ Seeta has deposed that she had requested appellant Harwinder Singh to help her in getting some job and on the relevant day, she had accompanied him to the said hotel but her testimony also does not inspire any confidence because it seems quite strange and improbable that any female would accompany her acquaintance to a room in the hotel just for requesting or knowing the status of her request regarding helping her in getting job/employment.

15. Learned counsel for the appellants has not been able to point out any evidence on the record to cast a shadow/impinge upon the credibility of the prosecutrix. Therefore, it is held that the prosecution has, indeed, proved the commission of offences in question by the appellants beyond reasonable doubt by leading cogent and convincing evidence on the record.

16. As a sequel to the fore-going discussion, it follows that the impugned judgment and order on sentence, as passed by learned trial Court on 29.10.2016, do not suffer from any infirmity, illegality or perversity or irregularity so as to warrant any interference by this Court. Resultantly, both the appeals in hand, being *sans* any merit, are dismissed.

17. Pending applications, if any, stand disposed of accordingly.

**(LISA GILL)**  
**JUDGE**

**(MEENAKSHI I. MEHTA)**  
**JUDGE**

**September 09, 2025**

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*Whether speaking/reasoned:* Yes/No  
*Whether Reportable:* Yes/No