

**CRA-D-903-DB-2018 (O&M)**

2025:PHHC:009764-DB



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

**CRA-D-903-DB-2018 (O&M)**  
**Date of Decision: January 22, 2025**

**Jai Bhagwan**

.....Appellant

**Versus**

**State of Haryana**

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL  
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Ms. Monika Thakur, Legal Aid counsel for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

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**LISA GILL, J.**

1. This appeal has been filed by appellant, Jai Bhagwan, challenging judgment dated 21.08.2018 passed by learned Additional Sessions Judge, Kaithal whereby he has been convicted for the offences punishable under Section 376(2)(n) of Indian Penal Code (for short – ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short – ‘POCSO Act’) and order dated 23.08.2018, whereby he has been sentenced to undergo rigorous imprisonment for life that is remainder of his natural life besides pay

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a fine of Rs.50,000/- for the offence punishable under Section 376(2)(n) IPC and in default thereof undergo simple imprisonment for two months.

2. Brief facts as per prosecution version are that FIR No. 102 dated 27.06.2017 under Sections 376, 506 IPC and 6 of POCSO Act was registered on the basis of application submitted by victim herself, accompanied by her mother, wherein it is alleged that victim, 15 years old, was studying in 9<sup>th</sup> standard, her father had three brothers with present appellant being her father's younger brother. Victim's mother, it is stated, often remained out of their house for labour work and that victim used to come back from school at about 2.30 p.m. About 7/8 months prior when she returned from school, her uncle i.e. present appellant committed rape upon her. At that time, none was present at her home. Thereafter, appellant is stated to have repeatedly committed rape upon her as and when he found her alone. Commission of the act continued for 6/7 months. However, being fed up, victim disclosed these facts to her mother, upon which, application, Ex.PA was filed. Action against appellant was sought.

3. Formal FIR No. 102, Ex. PA/1 was registered. Victim was medico legally examined at General Hospital, Kaithal. Investigation was set in motion. Victim was taken to General Hospital, Kaithal for medico examination. Application, Ex.PDD was submitted before the Medical Officer. After medical examination, copy of MLR, Ex.PZ alongwith parcel of clothes of victim, parcel of vaginal swabs, pubic hair, sample seals and forwarding letter to FSL Madhuban were taken in possession by PW15 vide memo (Ex.PB). Supplementary statement of victim was also recorded. Place of occurrence was demarcated. Rough site plan, Ex.PEE and scaled site plan,

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Ex.PCC were prepared. Victim was counselled by lady Counsellor. Her statement under Section 164 Cr.P.C., Ex.PE was recorded before learned Judicial Magistrate First Class, Kaithal on 28.06.2017 wherein she reiterated allegations against appellant and added that she has not mensurated since February, 2017 and that when she was taken to the hospital, it was revealed that she was pregnant by six months. Ultrasound examination was conducted. Ultrasound report and film are on record as Ex.PO and Ex.PQ, respectively. As per report, Ex.PKK of Dr. Preeti, it was opined that foetus of 23 weeks and two days was detected. Birth certificate, Ex.PL, was taken in possession vide memo Ex.PM reflecting date of birth of victim to be 05.12.2002. Victim was admitted at General Hospital, Kaithal for delivery of child on 20.10.2017. Blood samples of child were in possession for DNA matching. As per DNA report, Ex.PBB, DNA profile of the appellant matched with that of the child delivered by victim.

4. On completion of investigation, final report under Section 173 Cr.P.C. was presented against appellant with a copy thereof being supplied to him. Appellant was charge sheeted for commission of offences punishable under Sections 376(2)(n), 506 IPC and Section 6 of POCSO Act. As many as 15 witnesses were examined by the prosecution and documents as detailed in para 5 of judgment dated 21.08.2018 were tendered. Incriminating evidence against appellant was put to him and his statement under Section 313 Cr.P.C. was recorded wherein he denied allegations against him, pleaded innocence and false implication. No evidence was led in defence.

5. Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had successfully proved its case

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against appellant and held him guilty for the offences punishable under Section 376(2)(n) IPC and Section 6 of POCSO Act. Aggrieved therefrom, present appeal has been filed.

6. Learned counsel for appellant vehemently argued that learned trial Court has proceeded on the basis of conjectures and surmises and has not considered evidence on record. Delay of six months in lodging of FIR without any cogent explanation coming forth casts a serious doubt upon the prosecution version. Victim as well as her mother have made material improvements while deposing before the Court which render their testimony devoid of credibility. It is submitted that medical evidence on record does not corroborate the stand of victim that she was subjected to rape forcibly. No injuries were found on her person. Moreover, acquittal of appellant for offence punishable under Section 506 IPC clearly indicates that there was no question of any threat being meted out to the victim. It, is thus, prayed that this appeal be allowed and impugned judgment and order dated 21.08.2018 and 23.08.2018 be set aside.

7. Learned counsel for State while opposing the appeal submitted that prosecution has succinctly proved the commission of offences as above by the appellant. Appellant has committed rape upon none other but her own niece. Medical evidence on record corroborates the prosecution version to the hilt. It is, thus, prayed that this appeal be dismissed.

8. We have heard learned counsel for parties and have gone through the record with their able assistance.

9. Relationship between the victim and appellant is a matter of record and not denied. Victim in her initial application has clearly stated the

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facts about commission of rape upon her by the appellant who is none other but her paternal uncle (chacha). She has given a consistent version right from the initial stage till her testimony before the learned trial Court which is also in consonance thereto. Despite lengthy cross examination, nothing useful could be elicited in favour of appellant. It is proved on record that victim was 15 years old at the time of occurrence, her date of birth being 05.12.2002. Birth certificate of victim (Ex.PL) is duly proved by PW5 Randhir Singh, SA from the office of Civil Surgeon, Kaithal. There is indeed no evidence to the contrary on record.

10. It is vehemently argued by learned counsel for appellant that inexplicable delay in lodging of FIR casts a shadow of doubt on prosecution version and that there was no reason for the victim to have kept quiet for so many months, in case rape had been committed upon her by the appellant. In the given factual matrix, we do not find any merit in this argument. Victim, in this case, was a young child of 15 years. She was subjected to rape by her own uncle (chacha). It has come in her deposition that she had earlier disclosed this fact to her mother who had been misled by appellant and that she was threatened by appellant not to disclose anything to anyone. In the month of June 2017, during summer vacation, she disclosed these facts to her maternal aunt (Mami). Mother of the victim has corroborated that victim had gone to house of her maternal uncle in the summer vacation of 2017 where she narrated the facts and that mother was then called there and complaint filed. Application, Ex.PA was filed before SHO, Police Station Rajound.

11. Argument raised on behalf appellant that it is highly improbable that mother would have ignored such a complaint, is devoid of any merit. We

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say so in view of testimony of mother PW2 wherein she has stated that after the death of her husband she used to reside in the house with the appellant, therefore, it is possible that she may have been prevailed upon by appellant at the initial stage. It is to be noted that she has duly supported the prosecution case before learned trial Court. PW4 - maternal uncle of victim has also supported the prosecution case. Learned counsel for appellant was unable to point out any material on record which impinges the credibility of victim or other witnesses.

12. Apart from the abovesaid, medical evidence on record proves the commission of offence by appellant, to the hilt. Poor victim came to know that she was six months pregnant only when she was taken to hospital after lodging of FIR. Female child was delivered at General Hospital, Kaithal on 18.10.2017. DNA report, Ex.PBB proves the child to be of the appellant.

13. PW13 Dr. Preeti Singla has duly proved MLR, Ex.PZ. She advised ultrasound examination after having conducted urine test to ascertain pregnancy of child - victim. Dr. Sarita Bishnoi, PW8 has proved ultrasound report, Ex.PO and ultrasound film, Ex.PQ reporting foetus of  $23 \pm 2$  weeks. PW15 ASI Dhanpati, Investigating Officer has proved investigation as carried out. Taking of DNA samples from new born baby and drawing of blood sample from victim as well as appellant, is also proved by her. Therefore, facts and circumstances leave not an iota of doubt regarding the commission of offence by the appellant.

14. In the given facts and circumstances, prosecution has doubtlessly proved the case against appellant for offences punishable under Section 376(2)(n) IPC and Section 6 of POCSO Act beyond reasonable doubt.

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15. Learned counsel for appellant, at this stage, submits that appellant has been incorrectly sentenced to life imprisonment for remainder of his natural life. She relies upon judgment of Hon'ble the Supreme Court in **Union of India versus V. Sriharan @ Muruganand and others 2016 (7) SCC 1**, thereafter reiterated in **Narendera Singh @ Mukesh @ Bhura versus The State of Rajasthan 2022 Livelaw (SC) 247**. It was held by Hon'ble the Supreme Court in the case of **Sriharan** (supra) that:-

“234. The law on the point of life imprisonment as laid down in Godse's case (supra) is clear that life imprisonment means till the end of one's life and that by very nature the sentence is indeterminable. Any fixed term sentence characterised as minimum which must be undergone before any remission could be considered, cannot affect the character of life imprisonment but such direction goes and restricts the exercise of power of remission before the expiry of such stipulated period. In essence, any such direction would increase or expand the statutory period prescribed under Section 433A of Cr.P.C. Any such stipulation of mandatory minimum period inconsistent with the one in Section 433A, in our view, would not be within the powers of the Court.”

16. In view of the above, sentence of ‘rigorous imprisonment for life, that is remainder of his natural life’ imposed upon appellant vide order dated 23.08.2018 is modified to read as ‘rigorous imprisonment for life’. Rest of the sentence is maintained.

17. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in impugned judgment dated 21.08.2018 and order dated 23.08.2018 passed by learned Additional Sessions

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Judge, Kaithal except modification as above in the order of sentence dated 23.08.2018.

18. Appeal is, accordingly, dismissed with modification in the sentence as above.

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

**January 22, 2025**  
Rts

**(ALOK JAIN)**  
**JUDGE**

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