

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

CRA-D-807-DB-2013 (O&M).

Date of Decision: 02.06.2022.

Rajender

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Karan Bhardwaj, Advocate/Legal Aid Counsel HCLSC
for appellant.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant-convict Rajender, impugning the legality of judgment of conviction dated 21.05.2013 and order on quantum of sentence dated 23.05.2013 rendered by learned Additional Sessions Judge, Faridabad, in terms of which, he was held guilty and convicted for the commission of offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for two months, in case FIR No.372 dated 14.10.2012 under Sections 323 and 376 IPC, Police Station Surajkund, District Faridabad.

2. As per prosecution version, on 14.10.2012 prosecutrix (name not disclosed in view of law laid down in case "**State of Punjab vs.**

Gurmail Singh” 1996 (1) RCR 533), aged 14 years, student of Class-VII made a complaint (Ex.P/2) against her father (accused), stating that her father has been sexually assaulting her since she was seven (7) years of age and when she brought the above said misdeeds of her father to her mother, latter was given beatings by the accused. She further alleged that as she was subjected to sexual assault by her father regularly, she was made to abort by her father while giving her abortion pills. She further alleged that as and when she tried to narrate her sufferings to someone, she was given beatings by her father and for the said reason, she could not narrate her woes to anybody. She further alleged that on 12.10.2012 at about 1:30 AM (midnight), her father again committed rape upon her and ultimately she brought the matter to the notice of her friend's mother. On the basis of these allegations, FIR (Ex.P/14) was registered. Minor prosecutrix was medico-legally examined, vide Medico Legal Report (Ex.P/7) and her vaginal swabs etc. were taken and the same were sent to Forensic Science Laboratory for analysis. Prosecutrix was radio-logically examined, vide report dated 14.10.2012 (Ex.P/4) for ossification test to ascertain her age, in terms of which, her approximate bone age was opined to be 16 to 18 years with margin of error of six months on either side. Statement of prosecutrix as envisaged under Section 164 Cr.P.C. (Ex.P/19) was recorded. Rough site-plan (Ex.P/16) of place of occurrence was prepared. Accused was arrested on 16.10.2012 and he was medico-legally examined, vide Medico Legal Report (Ex.P/8). Scaled site-plan (Ex.P/10) of place of occurrence was prepared. Certificate dated 05.12.2012 (Ex.P/6) was obtained from Principal, Government Senior Secondary School, Sarai Khawaja, Faridabad, in terms of which, date of birth of prosecutrix as per school record was

recorded as 20th May, 1999. Statements of witnesses were recorded. After completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against accused in the Court.

3. Finding a *prima facie* case, accused was charge-sheeted for the commission of offence punishable under Sections 312, 323, 376 and 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

4. To substantiate its case, prosecution has examined PW-1 Lady Constable Meena, PW-2 Ms. Sangeeta Rawat, Legal Aid Counsel, PW-3 Ms. Seema, PW-4 Dr. Naveen Aggarwal, Medical Officer, B.K. Hospital, Faridabad, PW-5 Ram Pal Shastri, Sanskrit Teacher, Government Senior Secondary School, Sarai Khawaja, PW-6 Dr. Smriti, Medical Officer, PW-7 Dr. Sadan Prasad, PW-8 Head Constable Rajesh Kumar, PW-9 Anoj Kumar, Draftsman, PW-10 Constable Sandeep Kumar, PW-11 Constable Mam Chand, PW-12 Head Constable Kamal, PW-13 Sub Inspector Ajit Singh, Investigating Officer, PW-13 minor victim/prosecutrix (wrongly numbered as PW-13 by the Trial Court) and PW-14 Ashok Goyal, Reader to JMIC, Faridabad. After giving up remaining witnesses being unnecessary, prosecution evidence was closed by learned Public Prosecutor for the State.

5. After closure of prosecution evidence, statement of accused as envisaged under Section 313 Cr.P.C. was recorded, wherein all the incriminating material/evidence were put to him, but he has denied all the allegations levelled against him. Accused has stated that he is innocent and has been falsely implicated in the instant case. He further stated that he as well as his wife used to object and they did not permit prosecutrix to stay at her friend's house as they were indulging in objectionable and immoral

activities and then in collusion with her friend's mother, prosecutrix has got registered false case against him.

6. In his defence, accused has examined his wife DW-1 Shanta Devi Bhatt and DW-2 Lokman Singh, Manager, M/s Stalwart Industries.

7. On appreciation of evidence, learned Additional Sessions Judge convicted and sentenced the accused, vide judgment of conviction and order of sentence, in the manner, as detailed above.

8. We have heard learned counsel for the appellant as well as learned State counsel and critically examined the evidence available on record.

9. Learned counsel for the appellant has *inter alia* contended that learned Trial Court has failed to appreciate that DW-1 Shanta Devi Bhatt (mother of prosecutrix) has categorically deposed that she neither witnessed her husband doing any objectionable act with her daughter (prosecutrix) nor her daughter ever complained to her against the alleged misdeeds of appellant. He further urged that as prosecutrix used to stay with her friend, whose entire family was involved in illegal activities, and as appellant as well as his wife (DW-1 Shanta Devi Bhatt) used to warn prosecutrix not to mix up with her friend and her family members, then on collusion with her friend's mother, prosecutrix has got implicated the appellant in a false case. He further urged that even DW-2 Lokman Singh, Manager of Industrial concern, where appellant was employed, has categorically stated that appellant is a man of good character and he never heard that appellant had ever misbehaved with any staff member or his family members. He further urged that since appellant alongwith his family members (total eight in number) was staying in a one room accommodation, it was quite

improbable that he would commit alleged offence and that too with his daughter. He further urged that as per allegations, the prosecutrix was sexually assaulted by her father (appellant herein) for a prolonged period and even she was made to abort multiple times, however, as per medical record, the vagina of prosecutrix was admitting only a tip of finger, which shows that false story of sexual assault has been concocted by the prosecutrix. He further urged that absence of injury marks on the person of prosecutrix as well as absence of semen on the vaginal swabs shows that she was never subjected to sexual assault. He further urged that since prosecution version is discrepant on material particulars and the fact that it is full of infirmities, thus, prosecution has utterly failed to prove its case beyond reasonable doubt and consequently judgment of conviction and order on quantum of sentence are liable to be set aside and resultantly appellant is entitled to be acquitted of charge levelled against him.

10. On the other hand, learned State counsel has vehemently argued that prosecution has proved its case against the appellant by leading cogent and convincing evidence. He further urged that PW-13 prosecutrix when appeared in the witness box has categorically narrated the prosecution version and further PW-3 Seema (mother of friend of prosecutrix) has also come to her rescue. With regard to the testimony of PW-6 Dr. Smriti, he contended that the said witness during her examination while reiterating the Medico Legal Report of prosecutrix categorically stated that in her opinion possibility of sexual intercourse on the person of prosecutrix cannot be ruled out. He further urged that there is nothing to suggest that the accused is not capable of doing sexual activities as is evident from his Medico Legal Report (Ex.P/8). He further contended that though mother of prosecutrix

(DW-2 Shanta Devi Bhatt) has come to the rescue of her husband (appellant herein), however, testimony of said witness cannot be given any weightage and the same has been rightly discarded by the Trial Court, because the prosecutrix during her deposition before the Trial Court has categorically stated that though she had narrated her woes regarding misdeeds of her father to her mother, but latter did not take any action. He further urged that it is very unfortunate and painful that a father, who is protector of his children, has been sexually assaulting his own daughter for several years and keeping in view nature of offence committed by the appellant, he has been rightly convicted and sentenced by the Trial Court.

11. Having considered the submissions made by learned counsel for the parties and after careful perusal of the record of the case, we are of the considered opinion that the prosecution evidence is cogent and reliable. PW-13 prosecutrix when stepped into the witness box deposed that her date of birth is 03.11.1998, (whereas in the Certificate dated 05.12.2012, Ex.P/6 issued by Principal, Government Senior Secondary School, Sarai Khawaja, Faridabad, her date of birth in the school record has been recorded as 20th May, 1999) and when she was barely seven years old, her father committed rape upon her and at that time she was not aware as to what he was doing. She further deposed that when she turned 11 years of age, her father sexually assaulted her and he used to come home drunk and sometimes he used to spare her and sometimes he used to sexually assault her. She further deposed that when she was in the age group of 11-12 years (wrongly typed as 11 to 20 in the testimony of witness), she got pregnant and her pregnancy was three months old, which was aborted. She further deposed that when she turned 13 years of age, her abortion was got conducted twice by her

father. She further deposed that in October, 2012, on the previous night of second Saturday, she was again sexually abused by her father. She further deposed that though being second Saturday, it was a holiday but after telling her father that it was a working day, she escaped from her house and went to the house of her friend and shared all the misdeeds of her father to her friend's mother. PW-3 Seema, mother of friend of prosecutrix, while corroborating the testimony of PW-13 prosecutrix has categorically testified that prosecutrix is the friend of her daughter and when prosecutrix narrated her woes that her father was committing wrong upon her, she suggested her (prosecutrix) to take legal course. She (PW-3 Seema) further deposed that prosecutrix had specifically conveyed to her that her father was violating her with further threat that in case of her refusal, she would be killed. PW-3 Seema has specifically stated that prosecutrix had also told her that she was being violated by her father since she was ten years of age. At this juncture, it is relevant to point out here that PW-6 Dr. Smriti, who conducted medico-legal examination on the person of prosecutrix, has categorically stated that in her opinion possibility of sexual intercourse cannot be ruled out. The evidence of the minor prosecutrix is important piece of evidence against the appellant. None of the witnesses i.e. PW-13 prosecutrix and PW-3 Seema, had any ill-will or enmity against the appellant. DW-1 Shanta Devi Bhatt (mother of prosecutrix), being the protector/guardian of her minor daughter, should have come to the rescue of prosecutrix, however, instead of that, she never supported the prosecutrix and that is why violation went on for seven years continuously and the prosecutrix could not reveal sufferings meted out to her solely for the reason that she was of tender age. The period of sexual assault upon the prosecutrix spanned for almost seven years since her

tender age and once her mother (DW-1 Shanta Devi Bhatt) was not supporting her cause and rather she has come to the rescue of her husband (accused herein), then victim/prosecutrix, who at the time of initial sexual assault by her father, was aged about seven years, made herself courageous after a gap of about seven years to reveal the misdeeds of her father.

12. From the evidence available on the record, it is clearly established that there is no rhyme or reason as to why the victim/prosecutrix should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society.

13. It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

14. In the case of **Bharwada Bhoginbhai Hirjibhai** vs. **State of Gujarat**, 1983(2) RCR (Criminal) 192, Hon'ble Supreme Court pointed out as follows:-

“In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? It was further pointed out that on principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. The aforesaid observation was made by this Court because of the following factors: (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to

secure an alliance with a suitable match from a respectable or as acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.”

15. Hon'ble Supreme Court in case **State of Punjab vs. Gurmit Singh, (SC), (1996)2 SCC 384**, made the following observations:-

“Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murder destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be

relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

16. Regarding contention of appellant that as he alongwith his wife (DW-1 Shanta Devi Bhatt) used to warn prosecutrix not to mix up with her friend as well as her family members as they were indulging in immoral activities, then in a revengeful attitude and that too in collusion with her friend's mother (PW-3 Seema), the prosecutrix got implicated appellant in a false case, it is observed that though testimony of PW-3 Seema was recorded prior to recording of testimony of prosecutrix (PW-13), however, a bare perusal of testimony of Seema (PW-3) reveals that no suggestion was put to her during cross-examination regarding their indulgence in any immoral activities at her house and that too involving the prosecutrix in those activities, whereas said suggestion for the first time was put to prosecutrix (PW-13) when she appeared in the witness box, though she had categorically denied the said suggestion. In this scenario, above said contention raised at the instance of appellant has no footing to stand.

17. With respect to the challenge to the medical evidence, PW-6 Dr. Smriti, who conducted medico legal examination of prosecutrix, has categorically deposed that though on examination of prosecutrix, vagina of patient admits tip of finger, but in her opinion possibility of sexual intercourse cannot be ruled out.

18. In Parikh's Text Book of Medical Jurisprudence and Toxicology, it has been observed as under:-

"Sexual intercourse : In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

19. In Gaur's The Penal Law of India, 6th Edn. 1955(Vol.II), Page 1678, it is observed as under :

"Even valvul penetration has been held to be sufficient for a conviction of rape."

20. In Modi's Text Book of Medical Jurisprudence and Toxicology (21st Edn. Page 369), it has been observed that:

"Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

21. In Taylor's Principles and Practice of Medical Jurisprudence at page 69, rape is defined as under :

"As unlawful sexual intercourse by a man with a female other than his wife, without her consent. The merest penetration of the penis between the labia associated with the lack of consent is sufficient to constitute the offence."

22. In Aman Kumar Vs. State of Haryana, 2004 (1) RCR (Criminal) 925 (SC), Hon'ble Supreme Court had an occasion to consider

the question as to in what circumstances the penetration would constitute the offence of rape and observed as under:-

“x x x x

To constitute the offence of rape it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under section 376 IPC."

23. Hon'ble Supreme Court in **Ranjit Hazarika Vs. State of Assam**, (1998) 8 SCC 635, has held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony and further held that the opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.

24. In the case of **O.M. Baby (dead) by legal representative vs. State of Kerala**, (2012)11 Supreme Court Cases 362, the Hon'ble Supreme Court has held that in any event, absence of injuries or mark of violence on the person of the prosecutrix may not be decisive, particularly, in a situation where the victim did not offer any resistance on account of threat or fear meted out to her.

25. Though there is no ground taken in the appeal regarding any delay in lodging of complaint by the prosecutrix nor any such argument has been raised on behalf of the appellant, still it is observed that mere delay in filing first information report is no ground to doubt the case of the prosecutrix that the evidence given by her should not be accepted. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is

because of society's attitude towards such woman; it casts doubt and shame upon her rather than comfort and sympathize with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. In case State Versus Gurmeet Singh, AIR 1996 Supreme Court 1393, Hon'ble Supreme Court observed as under:-

"The Courts cannot overlook the fact that in sexual offences, delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

26. In the instant case, as prosecutrix was subjected to sexual molestation by her father during her tender age and when she grew up and the misdeeds of her father continued, she made courageous effort to seek legal course for the wrongful act of her father. In this scenario, delay if any, in reporting the matter to the police, has paled into insignificance.

27. In view of the facts and circumstances of the case and the evidence available on record, there is no reason of the false implication of the appellant in this case. Thus, we reach to a safe conclusion that it was appellant, who committed rape upon the prosecutrix and he had been committing such wrongful act upon his minor daughter since she was seven years of age. It is pertinent to mention here that to ascertain the age of prosecutrix, ossification test was got conducted, in terms of which, her approximate bone age was opined to be 16 to 18 years with margin of error of six months on either side, as per report dated 14.10.2012 (Ex.P/4). At this juncture, it is relevant to point out here that PW-5 Rampal Shastri, Teacher,

Government Senior Secondary School, Sarai Khawaja, where prosecutrix used to study at the relevant time, had brought school record (Ex.P/6), in terms of which, date of birth of prosecutrix was recorded as 20th May, 1999 and as such in a given facts prosecutrix was aged less than 14 years as on 14.10.2012. Though appellant alongwith his family members was residing in a one room accommodation, that circumstance alone cannot make the prosecution version improbable by any stretch of imagination. Therefore, the evidence produced by the prosecution is very much consistent, cogent and worth reliance. The prosecution successfully established the charge against the appellant-Rajender for the commission of offence punishable under Section 376 IPC. Accordingly, the judgment of conviction recorded by the Trial Court is upheld.

28. With regard to the order on quantum of sentence, it is observed that the sexual abuse of the children is alarming and there is no respite although the legislature has provided stringent punishments for the sexual offences. Before arriving at an appropriate conclusion regarding the punishment to be inflicted on the appellant, it is necessary to refer to certain principles laid down by Hon'ble Supreme Court in the matter of awarding sentence in such a case. In case **State of Himachal Pradesh vs. Asha Ram, 2006(1) R.C.R. (Criminal) 139**, it has been held as under:-

“20. x x x x Here is the case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence

of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 A.M. he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.

21. Having said so, regarding sentence we are tempted to quote the observation of Justice Pandian in the case of Madan Gopal Kakkad (supra) where it has been observed that "Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand."

29. In our view, the appellant has taken undue advantage of the loneliness and haplessness of the minor victim and prosecutrix fell prey to his bestiality. Perpetrators of sexual offences on innocent children are psycho-social deviants, who cannot lay any claim to leniency. It is in the order of nature, and is the sacred right of every living being to blossom from infancy, to childhood, to adolescence and, finally, to adulthood. This order of nature is thrown into violent disarray by the sexual predators of children. The innocence of the prosecutrix in the present case, who had barely savoured the first fragrance of childhood, let alone adolescence, was brutally plundered by the appellant, the deviancy of his act being augmented

by the fact that he chose to sodomise her. The trauma that the prosecutrix is bound to suffer, on account of the appellant, is bound to be lifelong. Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.

30. In view of the above discussion, there is no scope to interfere in the sentence awarded by the Trial Court and as such, order of sentence is upheld.

31. As a sequel to above discussion and findings, the appeal, being devoid of any merit, is dismissed.

(Tejinder Singh Dhindsa)
Judge

(Lalit Batra)
Judge

02.06.2022
jitender

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