

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

**CRA-D-700-DB-2010
Reserved on:25.08.2022
Pronounced on :31.08.2022**

Chaman Lal Chimnu

...Appellant

Versus

State of Haryana

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Randeep S. Dhull, Advocate,
for the appellant.

Mr. P.P. Chahar, DAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 30.11.2009 and order of sentence dated 19.12.2009 passed by the learned Additional Sessions Judge, Kurukshetra, whereby the appellant has been convicted for the offences under Sections 376, 452 and 506 IPC and sentenced as under:-

Offence	Sentence
376 IPC	To undergo life imprisonment along with fine of Rs.50,000/-, in default of payment of fine to further undergo simple imprisonment of one year;
452 IPC	To undergo rigorous imprisonment of five years along with a fine of Rs.2,000/-, in default of payment of fine to further undergo simple imprisonment of one month;
506 IPC	To undergo rigorous imprisonment of one year

along with a fine of Rs.1,000/-, in default of payment of fine to further undergo simple imprisonment for 15 days.

We do not propose to mention the name of the victim in view of Section 228-A of the Indian Penal Code, which makes the disclosure of identity of victim of certain offences punishable. The Hon'ble Supreme Court in the matter of **State of Karnataka Vs. Putttaraja, 2004(1) RCR (Crl.) 113** held that keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228-A IPC has been enacted, it would be appropriate that in the judgments, be it of the Hon'ble Supreme Court, this Court or Lower Court, the name of victim should not be indicated. Consequently, we have chosen to describe her as "victim" in the judgment.

The prosecution story as unfolded during trial is that the FIR (Ex. P-11) in the instant case was registered on the basis of the statement made by PW-10 Ashok Kumar, father of the victim. PW-10 Ashok Kumar stated that he was a labourer and had five children. The 'victim' is the eldest daughter, who was aged about 12 years and was studying in 6th standard in a Government School, Dhantori. On 19.08.2008, the 'victim' had gone for tuition after returning from the school. When she returned back, at that time the complainant and his wife were not at home and had gone to Kurukshetra for taking the medicines. When they returned in the evening after taking the medicines, his daughter was lying on cot silently. They enquired from the 'victim' as to what was the matter, but the victim did not reply anything. On the next day, the complainant had gone to Bus Stand, Dhantori for work and when he returned in the evening, his daughter,

that is the 'victim', was lying silently and fearfully on the cot. The complainant and his wife Karmo Devi enquired from her gently, on which she started weeping and told that on 19.08.2008, when the complainant and his wife had gone to Kurukshetra for taking the medicines, her uncle Chaman Lal @ Chimnu (appellant) had entered their house. The appellant turned out her younger brothers and sisters and the 'victim' was forcibly taken inside the room, after catching her from her arms. The accused bolted the room from inside and had put her on a cot. When the victim tried to raise noise, he had put his hand on her mouth and had committed rape upon her after removing her Salwar forcibly. After committing the crime, he went away and threatened that he would kill the victim, in case she reported the matter to anybody. Thereafter, on the next day, the complainant made telephonic calls to his relatives in that regard and brought his daughter, i.e. the 'victim' to Civil Hospital, Kurukshetra. He got his daughter admitted in the hospital and prayed for legal action against the appellant/accused.

After registration of the FIR, the medico legal examination was conducted by Dr. Anupama Singh, Medical Officer, L.N.J.P. Hospital, Kurukshetra. The doctor found injury on her private parts and opined that the possibility that she had been subjected to sexual assault, cannot be ruled out. She prepared the MLR (Ex.P1). The police reached the hospital and moved an application (Ex.P2), on which, she declared the patient, i.e. the 'victim' to be fit to make her statement. She made her endorsement Ex.P3 on the police request Ex.P2. Thereafter, her statement was recorded and the accused was arrested. Thereafter, the police found sufficient incriminating evidence against the appellant/accused and presented the final report under Section 173 of the Code of Criminal Procedure.

During the course of trial, the prosecution examined as many as 14 witnesses to prove the case.

In his statement under Section 313 Cr.P.C., the appellant took his stand that he was innocent and had been falsely implicated in the said case due to party faction in the village. The accused opted not to lead evidence in his defence during the course of trial. Vide the impugned judgment and order passed by the court of learned Additional Sessions Judge, Kurukshetra, the appellant was held guilty under Sections 376, 452 and 506 IPC and was sentenced as recorded above.

Assailing the findings recorded by the learned trial Court, the appellant has preferred the instant appeal before this Court.

Learned counsel for the appellant has argued that due to dispute of the ancestral land, a false case has been planted on him. He has submitted that PW-10 Ashok Kumar, father of the victim, was inimical towards him and has got the FIR registered against him falsely just to settle scores. He has further submitted that there are contradictions in the statements of PW-11 the 'victim' and PW-10 Ashok Kumar (complainant). He has further submitted that even the clothes, worn by the 'victim' on 19.08.2008, were not sent to the Forensic Science Laboratory, Madhuban and this is a good ground to discredit the testimony of the 'victim'.

On the other hand, learned counsel for the State has vehemently argued that the learned trial court has passed a well reasoned judgment and the same is liable to be upheld by this Court. He has further submitted that the testimony of the 'victim' has to be treated like an injured witness and all the material prosecution witnesses had withstood the test of cross-examination. The statements of PW-10 Ashok Kumar and PW-11

prosecutrix/victim are truthful and the conviction can be based solely on the said two testimonies. He further submitted that the prosecution had examined PW-12 Rekha Rani, Teacher (In charge), Government Middle School, Dhantori, who produced the summoned record and as per the record, the date of birth of the 'victim' was 06.02.1996. Still further, the learned State counsel referred to the statement of PW1 Dr. Anupama Singh, who stated that the possibility of sexual assault cannot be ruled out. He has further referred to the statement of PW-8 Dr.R.L. Arya and submitted that in his opinion, there was nothing to suggest that the patient was unable to perform sexual intercourse and submitted that since the appellant had committed a heinous crime, therefore, the present appeal is liable to be dismissed by this Court.

We have heard the learned counsel for the parties and examined the evidence led by the prosecution in support of the charge.

The factual matrix of this appeal is unfortunately related to a sordid and obnoxious incident, where the appellant, who is the real uncle of the victim, raped his niece, a girl child of the tender age of 12 years. The result was that the sacred relationship of uncle and niece was besmirched. Such offenders are a menace to the civilised society and have to be dealt with strictly as per law. It is an act, which is not only a blow to her supreme honour and offends her self-esteem and dignity, it degrades and humiliates the victim and where the victim is a helpless child or a minor, it leaves behind a traumatic experience. Such crime is not only a crime against a minor innocent child, rather it is a crime against the entire society.

In **Bodhisattwa Gautam Vs. Miss Subhra Chakraborty**, 1996 (3) RCR (Crl.) 786, the Hon'ble Supreme Court has held as under:-

“9. Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantageous position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are Mother, Daughter, Sister and Wife and not play things for centrespreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating woman. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects”.

Learned counsel for the appellant has submitted that the

appellant has been falsely implicated in the instant case due to dispute over the ancestral property inherited by the complainant and his real brother, i.e. the present appellant. He further submitted that it was a concocted story, in which the complainant joined the hands with his wife to falsely implicate the appellant. He further submitted that the accused/appellant never visited the house of the complainant on the alleged date of occurrence and there was no question of committing any crime.

In fact, there is no substance in the arguments raised by the learned counsel for the appellant. The prosecution examined PW-10 Ashok Kumar, who supported the case of the prosecution in his testimony. Similarly, the 'victim' was examined as PW-11 and the learned trial Court observed that she is reasonable, prudent and sensible to give her testimony in the court. The trial Court recorded her statement as PW-11 and she narrated the entire incident in her testimony. The defence had cross-examined both the witnesses at length but nothing material could be elicited from that. Still further, the 'victim' had narrated the entire incident in her testimony and her testimony inspires confidence. The prosecution examined PW-10 Ashok Kumar, who is the real brother of the present appellant and he had supported the case of the prosecution. It is highly unbelievable that he will level false allegations of sexual assault on his daughter, just on account of some minor dispute relating to inheritance of the property. Further, it is equally inconceivable that a girl of 12 years of age would invent on her own a false story of sexual assault/rape upon her by her own real uncle. It is unthinkable that the parents would also tutor their minor daughter to concoct such a story in order to wreak vengeance on some one. They would not do so for the simple reason that it would bring

down their own social status in the society apart from ruining future prospects of their own child. They would also be expected to be conscious of the traumatic effect on the psychology of the child and the disastrous consequences likely to ensue when she grows up. We, therefore, refuse to countenance the suggestions made by the learned defence counsel that the appellant had been falsely roped at the instance of the father of the victim.

The testimonies of PW-10 Ashok Kumar and PW-11 the 'victim' have been duly supported by the testimony of PW-1 Dr. Anupama Singh, Medical Officer, L.N.J.P. Hospital, Kurukshetra. The relevant part of the testimony of PW-1 Dr. Anupama Singh has been reproduced below:-

“xxx xxx xxx xxx xxx
 xxx xxx xxx xxx

3. *Local Examination: Public hairs were taken for chemical examination. Labia majora and labia minora were healthy and whitish discharge was present on it. On the inner side of right labia minora, there was a reddish abrasion present. Reddish abrasion was present on the fourchette. Two swabs were prepared from the area and sent for chemical Examination.*

4. *The patient was admitted in the Hospital vide C.R. no.4192.*

5. *The following things were handed over to the police:*

- i) *Copy of M.L.R.*
- ii) *A parcel with one seal containing clothes and swabs.*
- iii) *An envelope with five seals containing copy of M.L.R., forwarding letter and sample seal.*
- iv) *Sample Seal.*

6. *The possibility that she had been subjected to sexual assault cannot be ruled out. The carbon copy Ex.P1 of the M.L.R. is true and correct copy of the original brought by me today, which bears my signatures. On 21.8.2008, the police came in the Hospital and moved an application is Ex.P2, on*

which, I declared the patient to be fit to make her statement. In this regard, my endorsement is Ex.P-3 on the police request Ex.P2, which bears my signatures.”

Still further, the prosecution examined PW-8 Dr. R.L. Arya, Medical Officer, CHC Shahabad, who examined the appellant/accused and clearly opined that there was nothing to suggest that the patient was unable to perform sexual intercourse.

Learned counsel for the appellant has further referred to certain minor contradictions in the testimonies of PW-10 Ashok Kumar and PW-11 the ‘victim’, which cannot be the basis to discard their evidence. The testimony of a rape victim has its own efficacy and relevance. She also suffered injuries on her private parts and the evidence of such a witness must be given due weightage and the case of the prosecution cannot be doubted on simple suggestions by the defence. Rather the testimony of a victim of a sexual assault is accorded special status in law. Consequently, there are no grounds for rejection of the evidence of PW-10 Ashok Kumar and PW-11 the ‘victim’ on the basis of minor discrepancies, which are bound to creep in the testimonies of truthful witnesses.

The prosecution examined PW-12 Rekha Rani, Teacher (In charge), Govt. Middle School, Dhantori, District Kurukshetra, who brought the relevant record and deposed that the date of birth of the victim is 06.02.1996, i.e. she was aged about 12 years at the time of the incident. The prosecution also examined SI Swaran Singh as PW-13, who conducted the initial investigation. The prosecution further examined ASI Pritam Singh as PW-14, who deposed with regard to various steps taken by the investigating agency during the course of investigation. The statements of all the witnesses clearly established that the appellant had committed the crime.

Learned counsel for the appellant has further submitted that the clothes of the prosecutrix, worn by her on 19.08.2008, i.e. the date of occurrence, were not sent to the Forensic Science Laboratory, Madhuban. But this is hardly a ground to reject the testimony of the 'victim' which is otherwise found to be truthful and cannot be punished for a minor lapse on the part of the investigating officer. The testimony of the 'victim' finds full corroboration from the testimonies of PW-10 Ashok Kumar and PW-1 Dr. Anupama Singh and the case of the prosecution is liable to be believed.

Consequently, we find no substance in the arguments raised by the learned counsel for the appellant and thus, the present appeal is dismissed, being devoid of any merit. The impugned judgment of conviction dated 30.11.2009 and order of sentence dated 19.12.2009 passed by the court of learned Additional Sessions Judge, Kurukshetra, are upheld.

Pending application(s), if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

31.08.2022
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO