

Pawan Kumar vs State Of Haryana on 1 May, 2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

206

CRA-S-2843-2019 (O&M)

Date of order: 01.05.2024

Pawan Kumar

.....Appellant(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM:

HON'BLE MS. JUSTICE NIDHI GUPTA

Present:-

Mr. Sandeep Gahlawat, Advocate
for the appellant.

Mr. Surinder Kumar Dagar, DAG Haryana.

Nidhi Gupta, J.

CRM-30626-2019 This is an application under Section 5 of Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 155 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions and delay of 155 days in filing the present appeal is condoned.

MAIN CASE Present appeal has been filed against judgment and order of sentence dated 22.02.2019 passed by learned Sessions Judge, Faridabad, in case FIR No.877 dated 24.09.2017 registered under Sections 1 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 376,506 IPC and Section 6 of the POCSO Act at P.S. Saran, District Faridabad, whereby the appellant has been convicted as follows:-

Offence under Period of Amount of fine Imprisonment in which convict
imprisonment imposed default of has been payment of ine sentenced 506 IPC
Rigorous Rs.1,000/- Rigorous imprisonment for imprisonment for 1 year one month.

8 POCSO Act

Rigorous
imprisonment for
5 years

Rs.5,000/-

Rigorous
imprisonment for
three months.

2. Learned counsel for the appellant inter alia submits that the occurrence is alleged to have taken place on 18.09.2017. Six days later on 24.09.2017, a complaint for registration of case against the appellant was moved by PW-2 Pardeep Kumar Garg (father of alleged victim) before S.H.O. of P.S. Saran, Faridabad, alleging that his daughter (victim, age 12 years/DOB: 15.01.2005 as per school record) student of 7th class was upset from few days and when his wife asked the daughter about the same then she disclosed that the appellant dragged her to bathroom and he removed her lower (trouser) and also removed his own clothes and then he touched her private part with his own private part and further the appellant threatened her that in case she disclosed about the same to the parents then he will kill her and this incident has taken place thrice in a week.

3. Pursuant thereto, present FIR No.877 dated 24.09.2017, was registered under Sections 376, 506 IPC and Section 6 of the POCSO Act at P.S. Saran, District Faridabad. The statement of victim was also recorded by Legal Aid prosecution counsel but this witness was given

2 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 up. The alleged victim was medico legally examined at Civil Hospital Faridabad but no mark of external injury was seen. On 22.11.2017, charges under Sections 376(2)(i)(n), 506 IPC and Section 6 of the POCSO Act were framed against the accused/appellant. Thereafter, trial commenced, and the following witnesses were examined: -

PW1: Prosecutrix - Age 12 years, student of 7th class, on the day of occurrence (Khushi Garg).

Pw2: Pardeep Kumar (complainant) - Moved an application Ex.PD upon which FIR Ex.PJ was registered. Declared hostile and did not support the case of prosecution as he said that his daughter told that one unknown person forcibly did all this. Accused present in the Court did not commit the above said act with my daughter and she did not disclose his name before us.

PW3: Dr. Rohit Gaur - Medico legally examined accused/appellant on 06.10.2017.

PW4: Dr. Pronita Ahlawat - Medico legally examined victim (aged 12 years) and prepared MLR (Ex.PF).

PW5: Constable Ajit Singh - Affidavit Ex.PW-5/A, tendered his duly sworn that he deposited the case property at FSL Madhuban. PW6: SI Anoj Kumar (Draftsman) - prepared scaled site plan Ex.PG on 30.09.2017 on the direction and demarcation of SI Alpana. PW7: HC Arvind Mohan (Posted as MM in Police Station) Case property was deposited with him in the Malkhana and later on he got deposited the same in FSL Bhondsi.

3 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 PW8: Avdesh Kumar (Physical teacher) AD Sr. Sec. School, Dabua Colony, Faridabad - Brought school record; victim was admitted in School on 20.05.2016 and as per record, her date of birth is 15.01.2005; copy of birth certificate submitted by parents at the time of admission is Ex.PH/2. PW9: SI Alpana - Investigating Officer.

PWs Ms. Bhanu Priya (Legal Aid Counsel), Sh. Alok Anand (JMIC), Deepa (Director, RFSL Bhondsi), Meenu Sharma (CWC Member), HC Satish Kumar, Inspector/SHO Ved Parkash were given up.

Statement under Section 313 Cr.P.C.: Appellant denied all allegations and pleaded false implication.

DW1: Sushila Devi wife of Kamlakar Pandey.

DW2: Satish Chandra son of Tota Nand Panwar.

DW3: Jagdish son of Asha Ram.

4. Ld. Counsel for the appellant submits that the appellant has been falsely implicated in the matter as there was a monetary dispute between the complainant and the appellant. This fact has been admitted by the complainant. It is stated that the present FIR is a result of the said monetary dispute.

5. Ld. Counsel further submits that there is no medical evidence on record to incriminate the appellant. It is stated that it has been clearly recorded in the MLR (Ex.PF) that there is no external injury on the person of the victim. It is contended that accordingly the conviction of the appellant deserves to be set aside.

6. It is further argued that the complainant has failed to identify the appellant during his evidence, and he has turned hostile.

4 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 Learned counsel further submits that there is no proof of age of the victim as no birth certificate has been produced by the prosecution in this regard.

7. It has also been vehemently submitted by learned counsel for the appellant that out of total sentence of 5 years, which is the maximum sentence to be awarded under Section 8 of the POCSO Act, the appellant has already undergone 3 years 5 months and 6 days and it is prayed that present appeal be allowed with the period undergone. It is further informed that vide order dated 17.12.2020 passed by coordinate bench of this Court in application bearing No.CRM-20509-2020 for Suspension of Sentence was allowed after custody of 3 years 5 months 6 days.

8. Learned State Counsel files custody certificate dated 14.03.2024, which is taken on record.

9. Learned State Counsel vehemently contests the present appeal and submits that very serious allegations have been made against the appellant in the present case. It is submitted that the victim in her statement under Section 164 Cr.P.C. as also in her testimony as PW1 has fully supported the prosecution case. It is pointed out that even the incident was not of only one day but the offence was repeated several times by the appellant.

10. As regards contention of the learned counsel for the appellant that the complainant/father of the victim/PW2 has turned hostile, learned State Counsel argues that perusal of the testimony of the complainant/PW2 shows that he has not denied the allegations made by the victim; but he is only not identifying the appellant.

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11. In rebuttal, learned counsel for the appellant refers to the impugned order, wherein learned trial Court has referred to the testimony of PW2, whereby at page 17 of the paper book, it is recorded that "...He does not know the name of that unknown person. Accused Pawan did not commit the above-said act with his daughter and she did not disclose his name before them".

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel for the parties and perused the case file as also the Lower Court Record in great detail.

14. Brief facts of the case as recorded in para 2 of the impugned judgment are as under: -

"Present case was registered on the basis of complaint moved by complainant Pardeep Kumar Garg before police on 24.9.2017 with the allegations that he is tenant at house no.E1257 Dabua Colony, Faridabad and he sells Kachori (eatable item) on cycle. He has three children. His daughter (name withheld in order to protect her identity), aged 12 years is a student us 7" class. Accused Pawan alongwith his family also used to reside as tenant in his said tenanted house. For some days, his daughter was in depression. On asking, she disclose to his wife that on 18.9.2017, accused dragged her in bathroom and removed her lower (pant) and he (accused) also removed his clothes and touched his male organ with her vagina. Accused also threatened to kill her and her family members in case she disclosed the incident to anyone. Accused did this act three times in a week. Complainant sought action against the accused."

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15. On the basis of pleadings and evidence produced by the parties, learned trial Court had formulated the following questions that required determination:-

"The following questions are required for determination as required under section 354 (1) (b) Cr.P.C.:

- 1-Whether prosecutrix was minor at the time of commission of the offence, if any;
- 2-Whether accused repeatedly committed rape upon prosecutrix without her consent;
- 3-Whether accused committed criminal intimidation to prosecutrix;
- 4-Whether accused committed aggravated penetrative sexual assault upon prosecutrix."

16. On the basis of the pleadings and evidence placed before it, the learned trial court had convicted the appellant as noticed here in above. The sentence of the appellant was suspended by a Co-ordinate Bench of this Court vide order dated 17.12.2020. As per the aforesaid custody certificate, the appellant has undergone total sentence including remission of 3 years 6 months and 12 day.

17. I shall now consider each argument raised on behalf of the appellant.

18. It has been contented on behalf of the appellant that there is a delay of seven days in the registration of the FIR. However, the said argument is misplaced as it has been categorically stated by the complainant that after the commission of offence by the appellant, the victim used to remain depressed. When this was noticed by the mother of 7 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 the victim, and she questioned the victim, it is only then that the victim disclosed what had transpired. It has to be understood that upon having been sexually assaulted by the appellant, the 12-year-old victim child would not have been able to mentally comprehend the nature of what had been done to her. Though the victim could narrate and describe what had been done to her as, at that age there is no sense of shame attached to the act, however, it would not have been possible for the victim to mentally understand or comprehend the crime committed upon her. In such circumstances, it is understandable that some delay would occur while the victim is trying to come to grips with or fathom what had transpired. Moreover, it has also been recorded in the impugned order that the appellant had "extended threats to kill her and her parents in case she confided the matter to anyone." As such, minor delay in registration of FIR will not be fatal to the case.

19. Counsel for the appellant has also contended that there was no proof of age of the victim as her birth certificate was not produced. Said argument of the appellant is rejected outright as perusal of record of the case shows that age of the victim was irrevocably established to be 12 years and 7 months on the date of incident, on the basis of her school certificate (Ex.PH/3) and admission form (Ex.PH/1), which was duly proved by PW8 Avdesh Kumar (Physical Teacher) AD Sr. Sec. School, Dabua Colony, Faridabad. Her date of birth was determined to be 15.01.2005 as per her birth certificate (Ex.PH/2) issued by Registrar, Birth and Death of Delhi Government, whereas the date of incident is 18.09.2017. As such, on the date of occurrence, the victim was 12 years and 7 months old

whereas the 8 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 appellant was 21 years of age. Moreover, complainant has admitted age of the prosecutrix to be 12 years in the FIR.

20. It has been argued on behalf of the appellant that as has been noted by learned trial Court in Para 9 of the impugned judgment that the complainant/PW2 has deposed that "...He does not know the name of that unknown person. Accused Pawan did not commit the above-said act with his daughter and she did not disclose his name before them". However, perusal of the statement of the complainant (Ex.PD), on the basis of which present FIR was registered, shows the said testimony to be in direct contradiction of Ex.PD, wherein the complainant has categorically named the appellant. The very first information was received before the police vide complaint/statement filed by the complainant/PW2. Following is the relevant extract of the complaint (Ex.PD) moved by father of prosecutrix and the same reads as under:

"Accused has been living in a rented house with his family. From so many days, his daughter was under

depression and on asking by his wife, she told that on 18.9.2017, Pawan uncle pushed her in the bathroom and put off her lower as well as his clothes and touched her vagina from his male organ and he gave threaten to kill her family members. He has committed this offence three times in a week."

21. It is only subsequently, that the complainant for unknown reasons turned hostile. Admittedly, there was a money dispute also between the complainant and the appellant. As such, the entire evidence has to be read in context.

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22. It has also been argued on behalf of the appellant that there is no medical evidence to incriminate the appellant. However, the said argument is also misplaced as, as per the testimony of PW4 Dr. Pronita Ahlawat, who medico-legally examined the victim, and deposed that she had medico-legally examined the prosecutrix on 24.09.2017, and prepared the MLR (Ex.PF) (available at page 139 of the LCR), wherein she had opined that "the possibility of sexual intercourse cannot be ruled out". Learned counsel for the appellant has also submitted that even as per the MLR, no external injury was seen on the body of the prosecutrix. However, it may also be noticed that it has been recorded in the MLR (at page 154 of the LCR) that "hymen intact. Small lacerations about 1 cm present on the fourchette".

23. It has further been contended on behalf of the appellant that the present FIR is motivated as there was a money dispute between the complainant and the appellant. However, the said argument also deserves to be rejected as admittedly, the complainant has turned hostile.

24. In any event, the said argument will not hold any weight in view of the unassailable and consistent testimony of the prosecutrix herself. The statement of the prosecutrix was firstly recorded by police on the same day of moving the complaint. This statement (Ex.PA) was recorded in the

presence of legal aid counsel with crux as under:

"On 18.9.2017, accused pushed her in bathroom, put off her lower and his own clothes and touched her private part (susu) with his male organ (susu) and this Pawan uncle has committed this offence 3-4 times and he gave 10 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 threaten to kill her family members if he will tell the incident to anybody."

25. Thereafter, the prosecutrix was produced before the Ld. Ilaqa Magistrate on the same day i.e. 24.9.2017 where she gave her statement (Ex.PB) Crux of the same is as under:

"Pawan uncle has been residing in a rented adjoining accommodation and from last one week, he had been harassing her. He locked the latches and she was not allowed in go outside and he committed obscene/objectionable acts and gave threaten to kill her family members. He committed this offence three times and he used to say that he will come in the night at 3.00 a.m. and she should remain open the door."

26. Then on 25.09.2017, the victim was produced before the Child Welfare Committee, where in her statement (Ex.PC) she stated as under:

"On 22.9.2017 when she was going in her room, then accused pushed her in bathroom, gagged her mouth, put off her lower and his own clothes and touched her susu (vagina) with his susu (male organ) and gave threaten to kill."

27. Even in her deposition before the trial court, as PW1, the victim did not change her statement one fraction. The deposition of the prosecutrix as recorded in the impugned judgment is as under:

"9. PW1 prosecutrix deposed that she has one sister and one brother. Her brother is elder to her and her sister is 11 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 younger to her. Her date of birth is 15.01.2005. Her father is running katchauri cart and her mother is a housewife. She is studying in VII class in A.D. Senior Secondary School. They are residing as a tenant on the ground floor in the above-said house. She know accused Pawan being co-tenant in the same house on the ground floor. On 18.9.2017, accused Pawan forcibly dragged her in the bathroom and he removed his clothes and also removed her lower. He touched his penis with her vagina and he extended threats to kill her and her parents in case she confided the matter to anyone. However, she managed to escape from there and came outside. Thereafter accused repeated the same acts for three four times on different dates in the year 2017. Her mother asked her reason for her depression then she narrated the above-said incidents to her mother. Thereafter, her mother disclosed the incidents to her father. Then her father reported the matter to the police. Police recorded her statement Ex.PA in the presence of legal aid counsel which bears her signature. Police got her medico-legally examined from B.K. Hospital, Faridabad. She also got recorded her statement Ex.PB before the learned Ilaqa Magistrate. Police also got

recorded her statement Ex.PC before CWC which also bears her signature."

28. From the above, it is crystal clear that the victim has stuck to her story and has honestly, guilelessly and consistently narrated the events as they transpired. In these facts, factor of the complainant turning hostile will not hold much weight. As such, I am in complete agreement with the following reasoning of the learned trial court: -

12 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 "21. Father of this prosecutrix appeared as PW2. Except the identity of accused, he has admitted complete facts.

He admitted facts of depression of his daughter and on asking by his wife, she told that on 18.9.2017, one unknown person forcibly dragged her in the bathroom and he removed his clothes as well as her lower and touched his penis with her vagina and threatened to kill in case she discloses the incident to anyone or raise any noise. His wife told the said facts to him and he got verified these facts from his daughter but she did not know name of that unknown person. Though, in his own application Ex.PD, the father has admitted his signatures, but he deposed that these signatures were obtained by police on blank papers. The police moved application for giving up wife of complainant on account of being won over."

29. Reference may be made to judgment of the Hon'ble Supreme Court in "State of Himachal Pradesh Vs. Manga Singh" Law Finder Doc ID # 1325059, 2019(16) SCC 759, wherein it has been held as under:-

"A. Indian Penal Code, 1860 Section 376 Rape Testimony of victim - Reliability - Corroboration is not sine qua non for conviction in rape case - If evidence of victim does not suffer from any basic infirmity and 'probabilities factor' does not render it unworthy of credence there is no reason to insist on corroboration except from medical evidence - However, medical evidence may not be available - In such cases, solitary testimony of prosecutrix would be sufficient to base conviction, if it inspires confidence of court. [Para 12] 13 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 B. Indian Penal Code, 1860 Section 376 Rape Testimony of victim - Reliability - Prosecutrix was aged only nine years - She had no reason to falsely implicate her cousin - Since prosecutrix has been compelled to face ordeal of sleeping with accused everyday night she refused to go house of her aunt - Considering evidence prosecutrix of tender year corroboration from independent source not required - Evidence of the prosecutrix clearly established that accused was committing rape on her by penetration - When Trial Court recorded finding of fact that evidence of prosecutrix was convincing High Court ought not have interfered with finding merely on ground that as no injury marks found there was no question of sexual intercourse - Order of High Court set aside - Appeal allowed. XXX

12. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does

not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court."

30. Another relevant judgment of the Hon'ble Supreme Court is in "State of Punjab Vs. Gurmit Singh" Law Finder doc ID # 41530, 1996 (2) SCC 384, wherein it has been held as under:-

"D. Indian Penal Code, Section 376 - Rape case - Testimony of rape victim - Prosecutrix could not state the make of car in which she was pushed in - She also could not give distinction 14 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 between different makes of cars - Minor contradictions or insignificant discrepancies in statement of prosecutrix which are not fatal - Court not to get swayed away - If evidence of prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. E. Indian Penal Code, Section 376 - Rape case - Evidence of prosecutrix - Corroboration of - Evidence of a girl or a woman who complains of a rape or sexual molestation be not viewed with doubt, disbelief or suspicion - Evidence of victim of sexual assault stands almost at par, with evidence of an injured witness and to an extent even more reliable - Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be good witness in the sense that he is least likely to shield the real culprit, evidence of victim of sexual offence is entitled to great weight. XXX I. Indian Penal Code, Section 376 - Rape case - Defence version that father of prosecutrix had lodged false complaint due to enmity - Contention not tenable - Even if there was some litigation, a father will not put forth his daughter to make wild allegations with a view to take revenge - It defies human probability - No father could stoop so low as to bring forth a false charge of rape on his unmarried daughter with a view to take revenge.

J. Indian Penal Code, Section 376 - Rape is not merely a physical assault - It is often destructive of the whole personality of the victim - A murderer destroy the physical body of his victim - A rapist degrades the very soul of helpless female - Court should deal such a case with utmost sensitivity."

31. Reliance may also be placed upon judgment of Hon'ble Supreme Court in "Narinder Kumar Vs. State (NCT of Delhi) 2012(7) SCC 15 of 16 Neutral Citation No:=2024:PHHC:059948 2024:PHHC:059948 171, wherein it has been held that "It is settled legal proposition that once the statement of the prosecutrix inspires confidence and accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of her statement".

32. After considering all the relevant facts and circumstances of the present case, this Court is of the view that statement of the prosecutrix inspires confidence of this Court and no further corroboration is required.

33. In view of the above noted factual and legal position, present appeal is dismissed.

34. Pending application(s) if any also stand(s) disposed of.

01.05.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No