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**(2008) 03 P&H CK 0068**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Sukhdev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** March 14, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 376, 506

**Citation:** (2008) CriLJ 3836 : (2008) 3 RCR(Criminal) 516

**Hon'ble Judges:** Uma Nath Singh, J; A.N. Jindal, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

A.N. Jindal, J.

Sukhdev Singh accused appellant (hereinafter referred to as "the accused") was tried, convicted and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/- u/s 376, IPC and for one year u/s 506, IPC for committing rape upon her own daughters Amarjit Kaur and Gurmit Kaur and criminally intimidating, vide judgment dated 4-4-2003 passed by the learned Additional Sessions Judge (Ad hoc) Fast Track, Amritsar.

2. The facts as unfolded by the prosecution are that the accused was married to Jasbir Kaur and out of the wedlock, two daughters namely Amarjit Kaur and Gurmit Kaur and three sons were born. Jasbir Kaur complainant (hereinafter referred to as "the complainant"), in her statement Ex. PF dated 29-8-2001 disclosed before SI Harjinder Singh, Police Station, Gharinda that previously her husband had been committing rape upon her elder daughter but the police had implicated him in some other case. Now he has been committing rape upon her younger daughter namely Gurmit Kaur. Whenever she resisted, she was beaten up badly. On 27-8-2001, he beat her up in connection with the aforesaid affairs and caused latent blows on

umbilicus but she had a narrow escape. On the basis of the aforesaid statement Ex. PF, FIR Ex. PF/2 was registered at Police Station, Gharinda, Amritsar, consequent upon which the police swung into action. SI Harjinder Singh recorded statements of Amrajit Kaur and Gurmit Kaur; got Gurmit Kaur medico-legally examined; collected X-ray reports; arrested the accused and on completion of the investigation challan against him was presented in the Court.

3. On commitment, he was charged under Sections 376/506, IPC to which he pleaded not guilty and opted for trial.

4. The prosecution in order to substantiate the charge examined Dr. Guneet Kaur, Medical Officer, Civil Hospital. Patti as PW-1 who medico-legally examined Gurmit Kaur and observed as under:

There was no evidence of any fresh external injuries on her person.

Secondary sex characters well developed. Breast developed. Nipples and areolae dark in colour. Axillary and pubic hair were present.

There was no bleeding per vagina. Hymen was torn, margins irregular, healed, granular and non-oedematous. Vaginal swabs were taken:

(i) from lower vagina; and

(ii) from upper vagina.

Vaginal swabs were sent to Patlala for confirmation of spermatozoa. Introitus admitted one finger.

P/view uterus normal size, both fornices clear. Advised ultra-sonography, Pelvic organs and urine for pregnancy.

Advised X-rays for bone age confirmation.

Her L.M.P. was three months back (as told by her) M.F. is equal to 3-5/28 to 32 regular.

5. She proved the MLR Ex. PA, police ruqa Ex. PB, her report Ex. PB/1 wherein she opined that possibility of Gurmit Kaur subjected to sexual intercourse cannot be ruled out. She also proved the report of the Chemical Examiner Ex. PC.

6. PW-2 Dr. Arvinderjit Singh, Radiologist, Civil Hospital, Amritsar conducted X-ray examination of Gurmit Kaur and proved his report Ex. PD and skiagram Ex. PD/1 to Ex. PD/4. According to him, age of the prosecutrix was between 15 to 17 years.

7. PW-3 Rishi Ram, Draftsman proved the scaled site plan Ex. PE.

8. PW-4 Jasbir Kaur complainant, wife of the accused, has reiterated the allegations as set up by her in her statement Ex. PF.

9. PW-5 being the prosecutrix has deposed about the sequence of events which happened with her.

10. PW-6 SI Harjinder Singh, Investigating Officer has testified about the steps taken by him during the period of investigation.

11. PW-7 MHC Varinder Singh stated on affidavit Ex. PJ and PW-8 Mukhtiar Singh proved his affidavit Ex. PK.

12. PW-9 Dr. Bikramjit Singh, Senior Medical Officer, In-charge Mini PHC, Attari has proved the medico-legal examination of Sukhdev Singh accused Ex. PL and also Jasbir Kaur Ex. PM.

13. In his statement u/s 313, Cr.P.C. the accused denied all the allegations and pleaded his false implication. However, he did not lead any evidence in defence.

14. Ultimately the trial ended in conviction. Hence this appeal.

15. Heard. Learned Counsel for the appellant, while assailing the age of Gurmit Kaur, submitted that in the absence of any documentary evidence, report of the Radiologist cannot be believed and the same is not a conclusive evidence to determine the age. Ossification test could be read with a variation of two years either side. He further stated that Dr. Guneet (PW1) did not observe any injury on the private parts of the prosecutrix. No marks of resistance were observed by her. Amarjit Kaur, has not been examined who, allegedly, was also raped by the accused. No medical evidence relating to Amarjit Kaur has also been proved on record. While taking the argument on the climax, learned Counsel urged that since Jasbir Kaur-complainant, according to her own admissions, was having strained relations with the accused from the very inception of the marriage and that the accused had sold 5 acres of the land belonging to her forcibly so she wanted to get rid of the accused, therefore, it appears that she in connivance with Gurmit Kaur (PW5) got him implicated in the case of rape. It has been further urged that Jasbir Kaur (PW4) and Gurmit Kaur (PW5) have not given any specific date and time of commission of the alleged rape by the accused. They did not complain to the police officers or other authority immediately after the commission of the rape committed by the accused. No explanation has come forth for not informing the police or respectables of the village immediately at the time of commission of the crime. It has been further urged that the complainant has admitted that the in-laws of Amarjit Kaur were in the knowledge of the act of the accused then they would be the last persons to rehabilitate her and they also did not lodge any complaint against the accused.

16. To the contrary, the prosecution has supported the trial Court judgment and has stated that there is no reason to discard the testimony of Jasbir Kaur (PW4) and Gurmit Kaur (PW5). Non-examination of Amarjit Kaur hardly effects the prosecution case. Testimony of Gurmit Kaur (PW5) finds support from the medical evidence. Since Gurmit Kaur (PW5) being the daughter had no reason to falsely implicate her

own father, therefore, she should not be disbelieved.

17. Having given our thoughtful consideration to the rival contentions, we may observe that the prosecution is banking its case upon the testimony of the complainant-Jasbir Kaur (PW4) and Gurmit Kaur (PW5). That apart, there is evidence of Dr. Guneet (PW1) who medico-legally examined Gurmit Kaur. Out of the aforesaid pieces of evidence, we are not inclined to believe Jasbir Kaur (PW-4) who had strained relations with her husband i.e. the accused. First of all, she has not given any date, time and place of rape committed upon her daughters. Furthermore, at the time when the accused committed rape upon Arnarjit Kaur she must have moved to the police but no such application has been proved on record. Even the case registered by the police u/s 61 of the Excise Act has not been brought on record in order to tag the earlier occurrence of rape committed upon Arnarjit Kaur with the alleged rape committed upon Gurmit Kaur. Moreover, she has admitted in her cross-examination that the accused had been maltreating her since the day of her marriage and their relations remained strained through put; he has been levelling allegations upon her character and there used to be a quarrel between him and her husband when he used to level allegations of loose character against her. There also remained dispute between her and the accused regarding alienation of immovable property belonging to her and ultimately he got sold the said property from her forcibly. In the end, she has stated that she was not ready to live with him. All this goes to show that the complainant may be desirous of getting rid of him by seeking divorce or otherwise.

18. While analyzing her statement from another angle, she has stated that she is an eye-witness of the rape upon Arnarjit Kaur and Gurmit Kaur. She did not complain about the same immediately when she had seen the accused committing rape. Her testimony also does not fit in with the medical evidence. She has stated that the accused used to commit rape upon her elder daughter Arnarjit Kaur two years prior to her marriage and thereafter he started committing rape upon Gurmit Kaur and continued raping her for 3-4 months prior to the date she filed the complaint Ex. PF before Senior Superintendent of Police, Amritsar. In this regard it may be observed that no medical record of Arnarjit Kaur has been brought on record and the medico-legal examination of Gurmit Kaur indicates that her vagina admitted only one finger. The doctor has also opined that she was not habitual to sexual intercourse. Had the accused committed rape upon the prosecutrix for 3-4 months then there would have been a definite opinion that the prosecutrix was habitual to sexual intercourse. On the other hand the doctor has just opined that there was nothing suggestive that she could not be subjected to sexual intercourse and that possibility of sexual intercourse cannot be ruled but. Thus, no reliance could be placed on the testimony of such witness.

19. Nevertheless, we are still left with the testimony of Gurmit Kaur (PW5), a young girl of 19 years who is none else but the daughter of the accused. Be that it may, she

was siding her mother, yet she could not sacrifice her what was dearest to her at the instance of her mother and purchase ill repute for her for no reason. She had the courage to step into the witness box and say that accused used to commit rape upon her by threatening her. Though, she was unable to give any date of commission of, crime at the hands of the accused, yet she has stated that the accused committed rape upon her for two months prior to the occurrence. She has withstood the test of cross-examination. No material could be elicited during her cross-examination which could be helpful to the accused. Her testimony also stands corroborated by the medical evidence. Since Gurmit Kaur had torn her abdomen while stepping into the witness box and levelled such serious allegations upon her own father and her testimony stands corroborated by the medical evidence, then we do not find any reason to ignore her so as to ask for further corroboration. The Supreme Court in case [State of Punjab Vs. Gurmit Singh and Others](#), has issued some guidelines for evaluating the evidence of the prosecutrix. The relevant extract of the observations is reproduced as under:

We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably cause serious psychological as well as physical harm in the process. 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 of 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 molestation.

20. In the instant case also the prosecutrix having raised allegations of rape upon her own father, appeared in the Court and withstood the test of cross-examination, then why we should look for any further corroboration. The medical evidence also supports the testimony of the prosecutrix. Though the prosecution has failed to examine the rape upon the prosecutrix Amarjit Kaur while leading any cogent evidence but since we have no reasons to disbelieve Gurmit Kaur, therefore, we observe that the prosecution has been successful in establishing the commission of crime of rape against the accused.

21. Now coming to the quantum of sentence, it has been observed that since the prosecution was also not fair in putting forth the case qua rape upon two daughters and also that it did not examine Amarjit Kaur to prove the allegations. Jasbir Kaur wife of the accused was inimical to him from the very inception of the marriage. Amarjit Kaur was not medico-legally examined. No complaint has been made at the appropriate time, therefore, it is fit case where full dose of life imprisonment would not be appropriate to be awarded to the accused.

22. Having deliberated over the aforesaid contention, we find some merit in it.

23. Consequently, we dismiss the appeal with the modification in the sentence which is reduced to 7 years without alterations in the sentence of fine and also maintain the conviction and sentence u/s 506. IPC. Copy of the judgment be sent to the Chief Judicial Magistrate, Amritsar for compliance.