

**(2015) 05 P&H CK 0031**

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

**Case No:** Criminal Appeal-D No. 541-DB of 2012 (O&M) and Crl. Appeal-S No. 1739-SB of 2012 (O&M)

Rohit Kumar and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** May 11, 2015

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313, 319
- Penal Code, 1860 (IPC) - Section 363, 366, 376

**Hon'ble Judges:** Hemant Gupta, J; Lisa Gill, J

**Bench:** Division Bench

**Advocate:** Gurpal Kaur Dulat, for the Appellant; Manjari Nehru Kaul, A.A.G, Advocates for the Respondent

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**Judgement**

Lisa Gill, J.

1. This judgment shall dispose of CRA-D No. 541-DB of 2012 (Rohit Kumar v. State of Punjab) and CRA-S No. 1739-SB of 2012 (Ashok Khan @ Shyokla @ Shaukat v. State of Punjab) which arise out of common judgment and order dated 21.02.2012 passed by learned Additional Sessions Judge, Sri Muktsar Sahib.

2. Appellants Rohit Kumar and Ashok Khan @ Shyokla @ Shaukat have been convicted and sentenced to undergo rigorous imprisonment for ten years each, besides, pay a fine of Rs. 10,000/- each and in default thereof to further undergo imprisonment for two years for offence punishable under Section 376 IPC. Appellant Rohit has been convicted additionally for offences punishable under Sections 363/366 IPC and sentenced to undergo rigorous imprisonment for three years each, besides, pay a fine of Rs. 5,000/- each and in default thereof, to further undergo imprisonment for six months.

3. Prosecution was set in motion on the statement Ex. PW 9/A of complainant Kanwaljit Singh son of Sher Singh, father of the prosecutrix. He has averred that he was serving as Security Guard at Bathinda and his wife Veena Rani was a teacher in DAV School at Jaitu. He has two sons and two daughters. Eldest daughter i.e., prosecutrix was 16-3/4 years old and all remaining children were younger to her. Due to nature of his work, their eldest daughter used to go her maternal uncle's house at Mansa. Complainant and his wife proceeded for their duties on 11.07.2008 but did not find their daughter on returning home in the evening. Despite efforts, prosecutrix could not be traced out. He came to know that appellant - Rohit Kumar had allured her with a promise to marry her. He kept searching for his daughter. On 20.07.2008 he came to know that his daughter had come to his sister, namely, Sushma Rani's house at Dhuri. In the presence of his sister, his daughter disclosed the entire story that she had gone to Mansa at her maternal uncle's home where she met appellant Rohit Kumar who used to visit her maternal uncle's home. When she came back to Jaitu, appellant Rohit Kumar also came there on 11.07.2008. He promised to marry her and committed rape upon her at Jaitu without her consent. Thereafter, they went to Mansa and Dera Beas where they stayed for two days. After returning from Dera Beas, they went to the house of Rohit's aunt (mother's sister) where rape was committed by Rohit again without her consent. He kept her in an old room situated near Raman Cinema at Mansa. When Rohit's parents came to know about this fact, his family members beat him. Due to fear, prosecutrix did not come back to Jaitu but went to Jakhal from Mansa by train but came back to Dhuri after changing the train. She narrated the whole story to her aunt Sushma Rani. Events were narrated to the complainant on which he and his sister Sushma Rani as well as the prosecutrix came back to Jaitu and got her statement recorded with the police. Legal action against Rohit Kumar was prayed for as he allured his daughter on a false promise of marriage and committed rape upon her without her consent. On this statement, formal FIR No. 115 dated 20.07.2008 (Ex. P.W. 8/B) was registered at police station Jaitu. Prosecutrix was medico legally examined on 21.07.2008 by PW 10 Dr. Madhu Goyal. She opined that the prosecutrix had been subjected to sexual intercourse. Accused Rohit Kumar was arrested on 08.08.2008 and medico legally examined.

4. On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against Rohit Kumar. Charge was framed against him.

5. Statement of prosecutrix was recorded wherein she disclosed a different version to the effect that she had appeared for her 10th Class examination in the year 2008 pursuant to which she went to his maternal uncle, Gurpal Singh's house at Mansa. She further disclosed that Gurpal Singh used to go out for work. Her maternal grand-mother (Nani) and maternal aunt (Mami), namely, Jaswinder Kaur wife of Gurpal Singh used to stay at home. Jaswinder Kaur, her maternal aunt used to administer milk mixed with sleeping pills to all the family members. One day prosecutrix found a young boy sitting with Jaswinder Kaur on which Jaswinder Kaur

sent out the boy and asked the prosecutrix to go back upstairs. Next day Jaswinder Kaur again administered milk laced with sleeping pills to all the family members including the prosecutrix. When she woke up, accused Rohit was committing rape upon her. When she raised hue and cry, Jaswinder Kaur arrived, put a hand upon her mouth and sent Rohit away. Jaswinder Kaur threatened her not to disclose this fact to anyone otherwise she would put the blame upon the prosecutrix. Due to fear, prosecutrix did not reveal this fact to anyone. She thereafter came back to her home at Jaitu. She was all alone at home on 11.07.2008 when accused Rohit came to her house and asked her to accompany him. On his refusal Rohit telephonically called Jaswinder Kaur and she told the prosecutrix to accompany Rohit who committed rape upon her at her residence. She was thereafter taken to Bus Stand Jaitu. Jaswinder Kaur also came there. Prosecutrix was then taken to Mansa by Jaswinder Kaur and Rohit. Jaswinder Kaur left them at the Bus Stand, Mansa. She was then taken to Dera Beas where she was kept for two days and subjected to rape. Thereafter, she was kept for four days at a room near Raman Theater at Mansa where rape was committed upon her by Rohit. Appellant Ashok Khan @ Shaukat and one Neena who were residing in the same room forcibly raped her when Rohit went outside the room. She was threatened not to disclose any of these events otherwise they would report to the police. Thereafter, Rohit's brother Rinku took her to Jakhal from where she was made to board a train for Dhuri. On arrival at Dhuri railway station, she was arrested by the Railway Police, Dhuri and kept in the lock up. On the next day, her parents and police of Police Station, Jaitu visited Railway Police Post, Dhuri from where she was taken to Police Station, Jaitu. She was not allowed to meet her parents and was kept in police custody for four days. Thereafter she was sent with her aunt i.e. father's sister (Bhua). Whole version was narrated by the prosecutrix to her Bhua. Her signatures were obtained on some blank papers. She later came to know that police had registered a case against Rohit Kumar only. Her parents moved applications to the higher authorities.

6. Kanwaljit Singh, complainant, also deposed on 17.05.2003 that his daughter had gone to maternal uncle's home at Mansa after her 10th Class examination. She returned back to Jaitu. When he and his wife returned back from duty on 11.07.2008, their daughter was not traceable. They made a complaint to the police on 11.07.2008 itself but he was told to trace his daughter amongst relations. But she was not found despite best efforts. His brother-in-law's wife Jaswinder Kaur was interrogated by the police on which she disclosed that the prosecutrix had been got enticed away with some person from Mansa. On 20.07.2008, he was informed by the police that his daughter had been traced. He reached at the police station, where he found Jaswinder Kaur, her husband Gurbal Singh, Rohit, Neena and Ashok Khan @ Shaukat to be present. He was not allowed to meet his daughter who was kept in the police custody for 3-4 days. He went to the house of his sister to whom his daughter disclosed the entire sequence of events as narrated by her in court. He subsequently stated that his signatures were obtained by the police on blank papers

and he later came to know that FIR was registered only against Rohit Kumar. He moved various applications to Senior Superintendent of Police, Faridkot, Deputy Inspector General of Police, Bathinda and Deputy Superintendent of Police, Kotkapura against the accused. He also filed a petition (Ex. P1/P.W. 6/B) before this Court.

7. An application under Section 319 Cr.P.C. was moved for summoning additional accused. The said application was allowed on 24.07.2010 and appellant Ashok Khan @ Shaukat, Jaswinder Kaur wife of Gurpal Singh, Gurpal Singh son of Krishan Lal and Neena son of Jeeta Singh were summoned as additional accused. Except appellant Ashok Khan @ Shaukat, presence of other accused could not be procured who were ultimately declared proclaimed offenders. Charge was framed against both the accused to which they pleaded innocence and claimed trial.

8. As many as ten (10) witnesses were examined by the prosecution to prove its case against the accused. While denying the incriminating material put to them accused pleaded innocence and false implication in their statements recorded under Section 313 Cr.P.C. It is stated by the accused that the dispute is between the complainant and his brother-in-law (wife's sister's husband).

9. Learned trial court on appraisal of the evidence on record and considering the facts and circumstances of the case, concluded that the prosecution has successfully proved its case beyond reasonable doubt qua the appellants, consequently, convicting and sentencing them as mentioned above. Aggrieved therefrom, present appeals have been filed impugning their conviction and sentence.

10. Learned counsel for the appellants submits that the prosecution has woefully failed to prove the commission of the offences as charged qua the appellants. It is submitted that prosecutrix was over 16 years of age. She never resisted overtures made by the accused but willingly stayed with him at a number of places as disclosed by her. There is nothing on record to suggest that she has been subjected to rape by the accused persons. Furthermore, there is a complete lack of evidence to prove commission of offences punishable under Sections 363/366 IPC. It is also pleaded that there are material discrepancies and contradictions in the statement of prosecutrix which prove fatal for the prosecution case. It is submitted that the prosecutrix as well as the complainant have changed the version given by them earlier. Non-examination of the aunt of prosecutrix to whom she is alleged to have revealed the events is another factor which causes a serious dent on the prosecution version.

11. It is urged that Jaswinder Kaur has subsequently been acquitted by the trial court on 22.07.2013 by extending the benefit of doubt to her. Therefore, in this situation conviction of the appellants is not justified and deserves to be set aside.

12. Learned counsel for the State while refuting these pleas submits that sufficient and cogent evidence has been led to prove the complicity of the appellants in this

heinous crime. He prays for upholding the impugned judgment and order passed by learned Additional Sessions Judge, Sri Muktsar Sahib.

13. We have heard learned counsel for the parties and gone through the record.

14. Perusal of the statement of prosecutrix reveals that she has given a consistent version of the events as they unfolded. Factum of a different version emerging at the time of registration of the FIR is clearly explained. It has been proved on record that complainant Kanwaljit Singh took necessary steps once came to know that the police has registered the FIR only against appellant Rohit Kumar. He admittedly moved Crl. Misc. No. M-20414 of 2008 before this Court seeking direction for proper investigation of FIR No. 115 dated 20.07.2008. All the five accused were arrayed as respondents in this case. Order dated 13.08.2008 (Ex. P.W. 6/B) is proved on record. Kanwaljit Singh was declared hostile and cross-examined by the Public Prosecutor wherein he has specifically stated that his signatures were obtained by the police on blank papers. He stated that he had filed the abovesaid petition before this Court and he had also moved complaint against the accused before Senior Superintendent of Police, Faridkot, Deputy Inspector General of Police, Bathinda and Deputy Superintendent of Police, Kotkapura. Mark "P" was identified as the photocopy of the writ petition filed by him.

15. Contention of the learned counsel for the appellants that the prosecutrix was in fact a consenting party is devoid of any merit. A close scrutiny of her testimony reveals that she was under constant threat and fear. Prosecutrix, who had just taken her 10th Class examination, was subjected to repeated sexual exploitation at the hands of the accused. PW 10 Dr. Madhu Goyal has clearly stated that prosecutrix was subjected to sexual intercourse. There is no reason whatsoever to disbelieve the account as given by the prosecutrix. It is a settled position of law that in a given case conviction can be based solely on the statement of prosecutrix. In the present case, version of the prosecutrix is duly corroborated by medical evidence.

16. Similarly, subsequent acquittal of Jaswinder Kaur, that too on the basis of benefit of doubt being extended to her cannot be of any avail to the present appellants. Mere act of helpless resignation or non-resistance cannot be deemed to be consent thereby entitling the accused to acquittal. Trauma of a young girl being subjected to rape in such a situation is clearly unimaginable. Learned counsel for the appellants is unable to point to any evidence on record which would be indicative of their innocence.

17. Similarly, the contention that no case under Section 363/366 IPC is made out, is devoid of any merit and is rejected. Prosecution has indeed succeeded in proving its case beyond any reasonable doubt against the appellants.

18. At this stage, learned counsel for appellant - Rohit Kumar prays for the indulgence of this Court to the extent that the sentence imposed upon him be reduced. It is also prayed that sentence imposed upon him under various Sections

has not been directed to run concurrently which is unjustified in the facts and circumstances of the case.

19. Though finding no merit in the plea for reduction in the sentence imposed upon either of the appellants, we do find that the various sentences imposed upon Rohit Kumar should be ordered to run concurrently.

20. Accordingly, it is ordered that sentence imposed upon appellant - Rohit Kumar for the offences punishable under various Sections shall run concurrently.

21. Consequently, with the said modification in the order of sentence CrI. A-D No. 541-DB of 2012 is dismissed.

22. CRA-S No. 1739-SB of 2012 is also dismissed being devoid of any merit.