**Reportable**

# IN THE SUPREME COURT OF INDIA

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPEAL No.65 OF 2012

Deepak Appellant(s)

VERSUS

State of Haryana Respondent(s)

## J U D G M E N T

**Abhay Manohar Sapre, J.**

1. This criminal appeal is filed by the accused against the final order/judgment dated 15.03.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.2109-SB of 2009 which arises out of judgment/order dated 18.08.2009/20.08.2009 passed by the Additional Sessions Judge, Panipat in Misc. Sessions Case No. 31 of 2007.

2. By impugned judgment/order, the High Court upheld the conviction and sentence of the appellant awarded by the Sessions Court for the offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced him to undergo rigorous imprisonment for 7 years and a fine of Rs.5000/- and in default of payment of fine to undergo rigorous imprisonment for another six months.

3. In order to appreciate the issue involved in the appeal, few relevant facts need mention infra,

4. The prosecutrix (name withheld by us) was a young girl aged around 16 years 3 months at the relevant time. She had no educational background. She was the resident of Vidya Nand Colony, Panipat and was living with her parents and two younger sisters and three brothers. Her father, Abid was a labourer in one factory and her mother was running a small grocery shop in their house. The appellant-

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accused, a young boy in his twenties was also residing with his family as their neighbour. He was also running his own grocery shop in his house.

5. On 02.04.2007, Sub Inspector (SI)-Prithvi Raj of Police Station Chandni Bagh received information about the sexual assault on the prosecutrix, who was taken to the General Hospital, Panipat. After receipt of the information, SI rushed to the General Hospital, Panipat to find out the details. He was told that the prosecutrix was not admitted to the hospital but was got examined by the doctors. He then collected parcel of slides, swab of the prosecutrix, samples of tests done on the prosecutrix and a copy of the MLR and then went to the prosecutrix's residence and met her mother, Ruksana on 04.04.2007.

6. Ruksana-the mother of prosecutrix then gave her statement saying that she has three daughters - the eldest being the prosecutrix aged around 14 years. Her husband was working as labourer and she was

running a small grocery shop. She said that the appellant (accused), their neighbour, entered in their house a few days back in night and when she saw him, he slipped away. She had complained about this behavior of appellant to his parents but his parents did not pay any heed to her complaint. She then said that after some days, in their absence, Sajida-wife of Salim, who was living as their tenant in the same house, came to their house and enticed the prosecutrix on the pretext that she should talk with the appellant-accused regarding her love otherwise he would end his life by consuming poison. Ruksana further narrated that a fortnight back, on hearing the noise, she woke up and saw that her daughter was coming down from the staircase. On being asked, the prosecutrix did not give any response and avoided to give answer. However, later on, she told Ruksana (her mother) that the appellant had raped her in the night forcefully without her consent and threatened her not

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to disclose this incident to her parents or to anyone else she will have to face the dire consequences.

7. This disclosure made by Ruksana led to registration of FIR No. 144 dated 04.04.2007 in the Police Station Chandni Bagh, Panipat against the appellant-accused and Sajida, who as mentioned above, was living as tenant of the prosecutrix's father in the next room. The statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) was recorded. Her ossification test was also got done. The statements of other witnesses were recorded. The appellant and Sajida were arrested. The appellant was medically examined. After completing the investigation and collecting the necessary evidence, a charge-sheet was filed against the appellant and Sajida under Sections 376/506/120-B of IPC.

8. On their appearance, the accused were supplied with all the documents relied on by the prosecution.

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The case was then committed to the Court of Sessions where the court framed the charges. So far as the appellant and Sajida were concerned, both were charged for the offence punishable under Section 120-B IPC. So far as the appellant was concerned, he was also charged for the offence punishable under Section 376 IPC. Both the accused pleaded not guilty and claimed trial.

9. With a view to connect the appellant and Sajida with the crime, the prosecution examined 14 witnesses namely, Ruksana, the Complainant(PW-1), the prosecutrix (PW-2), Dr. Rahul Diwan (PW-3), Dr. Shashi Garg (PW-4), Dr. Nidhi Kharab (PW-5), Dr. Ashwani Kumar (PW-6), Ghansham Dass, ASI (PW-7), Rajbir Singh, ASI (PW-8), Constable Jagbir Singh (PW-9), Head Constable Dharam Pal (PW-10), Constable Joginder (PW-11), Head Constable Dharampal (PW-12), Prithvi Raj, Inspector (PW-13) and ASI Rajbir Singh (PW-14) whereas the defence examined four

witnesses, namely, Hawa Singh, Clerk, Death and Birth, Municipal Council, Panipat as DW-1, Ashok Kumar Bathla, Senior Supervisor, BSNL, Panipat as DW-2, Salim as DW-3 and Head Constable Kuleep as DW-4.

10. The Sessions Judge by judgment/order dated 18.08.2009/20.08.2009 held that no case of conspiracy was proved against the appellant and Sajida of any nature and since involvement of Sajida was not proved in this case, therefore, both of them were acquitted of the charge of conspiracy. So far as the appellant-accused (Deepak) was concerned, it was held that the prosecution was able to prove the commission of offence of rape on the prosecutrix by the appellant and accordingly he was convicted for the offence punishable under Section 376 IPC and was sentenced to undergo 7 years' RI with a fine amount of Rs.5000/- and in default to undergo further RI for 6 months.

11. Feeling aggrieved by the said order/judgment, the appellant filed appeal before the High Court. By impugned judgment/order, the High Court dismissed the appeal and upheld the conviction and sentence awarded to the appellant by the Sessions Court. It is against this judgment/order, the accused-Deepak has filed this appeal by way of special leave.

12. Learned Counsel for the appellant mainly urged three submissions. In the first place, he urged that since there was inordinate delay in filing the FIR of the incident of alleged rape by the victim or/and her family members, the conviction of the appellant becomes unsustainable in law and was, therefore, liable to be set aside. Secondly, he made his submission based on the age of the prosecutrix. According to the learned counsel, since the age of the prosecutrix was above sixteen, it should have been held to be a case of consent given voluntarily by the prosecutrix rendering the appellant's conviction bad in

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law and lastly, the ingredients of rape were not proved against the appellant, no case of rape within the meaning of Section 376 of IPC was made out. It is essentially these three submissions, which were elaborated by the learned counsel in his arguments by referring to the contents of the FIR and the evidence on record.

13. In contra, learned counsel for the respondent-State supported the reasoning and the conclusion of the courts below and contended that the appeal being wholly devoid of merit, the same deserves dismissal.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the learned counsel for the appellant.

15. Coming to the first submission relating to the lodging of the FIR for the commission of the offence is concerned, in our considered opinion, there was no delay in the lodging of the FIR either and if at all there

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was some delay, the same has not only been properly explained by the prosecution but also considering the facts and circumstances of the case, it was natural.

16. The Courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in **State of Punjab vs. Gurmit Singh & Ors.**[ (1996) 2 SCC 384)].

17. Keeping this well settled principle in mind, we find that the FIR in this case was lodged on 04.04.2007 when the prosecutrix disclosed to her mother of the incident first time as to what had happened with her hardly two weeks before the date of disclosure and the mother, in turn, immediately made a complaint to the police station and disclosed to the SI, who visited her place on coming to know of the incident. The late disclosure of the offence by the prosecutrix was also well justified by her in her statement recorded under Section 164 of the Code and also in her evidence wherein she said that the appellant had taken her photographs and had also recorded her talks with him on mobile. The accused was, as per her version, threatening her from raising any kind of alarm with the use of such evidence in his possession.

18. The conduct of the prosecutrix, in this regard, therefore, appears to us to be most natural. She did

not inform the incident immediately to the parents and waited for two weeks to eventually disclose to her mother. It was for the reason that the appellant was all along threatening the prosecutrix of the dire consequences with the use of the evidence, which he was having with him against her.

19. We do not agree with the submission of the learned counsel for the appellant when he contended that since no efforts were made by the prosecution to file the photographs and the recorded conversation of the prosecutrix with the appellant and, therefore, the prosecutrix's version should not be relied on.

20. We cannot overlook the situation in which a young illiterate girl, who had just crossed her 16th year and who was subjected to sexual violence against her will would immediately react. Again, in our considered view, if the Investigating Officer did not conduct the investigation properly in not being able to seize the photographs and recorded conversation then it could

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not have been made a ground to discredit the sworn testimony of the prosecutrix, which was otherwise found to be trustworthy and consistent.

21. No one can dispute that the prosecutrix had no control over the investigating agency and nor the lapse on the part of the investigating agency could in any manner affect the creditability of the statement of the prosecutrix.

22. In our considered opinion, the courts below, therefore, rightly placed reliance on the sworn testimony of the prosecutrix on this issue and came to a just and proper conclusion that having regard to the facts and circumstances of the case coupled with the explanation given by the prosecutrix, there was no delay in lodging the FIR by her mother and even if there was some delay then, in our considered view, the same was satisfactorily explained.

23. This takes us to the next two submissions of the learned counsel for the appellant. The courts below

have held that the age of the prosecutrix on the date of commission of the offence was around 16 years and 3 months. Assuming this finding to be proper, we are of the considered opinion that these submissions have no merit in the light of the statutory presumption contained in Section 114-A of the Evidence Act, 1872 against the appellant, which in our opinion remain unrebutted at the instance of the appellant.

24. Section 114-A of the Indian Evidence Act was brought on statute book with effect from 25.12.1983 by the Criminal Law (Amendment) Act, 1983. It reads as under:

> **"114-A. <u>Presumption as to absence of consent in certain prosecutions for rape</u> – In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."**

25. In order to enable the court to draw presumption

as contained in Section 114-A against the accused, it is necessary to first prove the commission of sexual intercourse by the accused on the prosecutrix and second, it should be proved that it was done without the consent of the prosecutrix. Once the prosecutrix states in her evidence that she did not consent to act of sexual intercourse done by the accused on her which, as per her statement, was committed by the accused against her will and the accused failed to give any satisfactory explanation in his defence evidence on this issue, the court will be entitled to draw the presumption under Section 114-A of the Indian Evidence Act against the accused holding that he committed the act of sexual intercourse on the prosecutrix against her will and without her consent. The question as to whether the sexual intercourse was done with or without consent being a question of fact has to be proved by the evidence in every case before invoking the rigour of Section 114-A of the Indian

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Evidence Act.

26. Coming now to the case in hand, we find that the prosecutrix, in her sworn testimony, in clear terms has said that she did not give her consent for commission of the act to the appellant and that he committed the act of sexual violence on her against her will. The appellant was not able to give any satisfactory explanation in his statement recorded under Section 313 of the Code nor was he able to adduce any defence evidence to rebut the presumption contained in Section 114-A of the Indian Evidence Act, 1872 against him. So far as commission of sexual intercourse is concerned, it is proved with the medical evidence that it was performed by the appellant with the prosecutrix.

27. We are alive to the law laid down by this Court wherein it is ruled that in a case of rape, no self-respecting woman would ever come forward in a court just to make a humiliating statement against her

honour such as is involved in the commission of rape on her. The testimony of the prosecutrix in such cases is vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement or where there are compelling reasons for rejecting of her testimony, there is no justification on the part of the court to reject her testimony.

28. In the instant case, our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness and her testimony suffers no infirmity or blemish whatsoever. That apart, as observed supra, even the medical evidence supports the commission of sexual violence on her and we need not elaborate on this issue any more in the light of concurrent finding of the courts below having been recorded against the appellant holding in clear terms that sign of commission of rape on her by the appellant stood proved by medical evidence beyond

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reasonable doubt. Indeed, even the appellant had not disputed the factum of commission of sexual intercourse by him on the prosecutrix because as taken note of, the appellant's only defence was that since the prosecutrix had consented to the commission of the sexual act, no offence of rape was made out against him. This argument we have already rejected.

29. In the light of this, we have no hesitation in invoking the statutory presumption contemplated under Section 114-A of the Evidence Act against the appellant rendering him liable to suffer the conviction under Section 376 of IPC for commission of offence of rape on the prosecutrix.

30. In the light of foregoing discussion, we uphold the finding of commission of rape by the appellant on the prosecutrix, which in our view, was rightly recorded by the two courts below.

31. The last submission of learned counsel for the

appellant was that looking to the young age of the appellant and further he being the first offender and lastly, the fact that he has already undergone 3 years 1 month in jail, this Court should take some lenient view in the matter of awarding of the sentence to him.

32. We find no merit in this submission for the simple reason that the appellant has been awarded minimum mandatory sentence of 7 years. In other words, once the offence under Section 376 IPC is proved then the minimum sentence is 7 years, which may extend to imprisonment for life and the fine. Therefore, the appellant should feel fortunate that he was awarded only 7 years' sentence else it could have been even more.

33. Since the State has not filed any appeal for enhancement of sentence, we need not go into this question except to reject the submissions urged by the learned counsel for the appellant being totally devoid of substance.

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34. Learned counsel for the appellant had placed reliance on the decision of this Court in **Uday vs. State of Karnataka** [(2003) 4 SCC 46] in support of his submissions. We have gone through the facts of this case and find that in the light of what we have held on appreciation of the evidence of this case, the decision relied upon may not help the appellant. In our opinion, it is distinguishable on facts.

35. In the light of foregoing discussion, we find no merit in this appeal, which fails and is accordingly dismissed. Since the appellant is on bail by the order passed by this Court on 06.01.2012, his bail bonds stand cancelled and he is directed to surrender forthwith to serve out the remaining period of his sentence.

.............................................................J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

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[ABHAY MANOHAR SAPRE]

New Delhi;
March 10, 2015.

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