IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1366-SB of 2004 (O&M)
Reserved on:- 19.09.2025
Date of Decision: 30.09.2025

Satpal @ Pala .....Appellant

Versus

State of Haryana .....Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Ashit Malik, Advocate
for the appellant.

Ms. Saumya Ahluwalia, Sr. DAG, Haryana.

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KIRTI SINGH, J. (ORAL)

1. The instant appeal has been preferred against the judgment of conviction and order of sentence dated 21.04.2004 passed by the learned Additional Sessions Judge, Panipat, in case FIR No. 44 dated 05.2.2002, under Sections 363, 366 and 376 IPC, registered at Police Station Chandni Bagh, Panipat, whereby the appellant has been convicted under Section 376 read with Section 511 IPC and sentenced to undergo imprisonment along with fine as under:-

Under Section	**Sentence**	**Fine**	**In default of payment of fine**
376 read with Section 511 IPC	Rigorous imprisonment for seven years	5000/-	Simple imprisonment for six months

2. The period of detention as undergone by the convict, during the investigation, and trial of the case, was ordered to be set off from the above imposed sentence(s) of imprisonment awarded to him.

Factual matrix

3. The brief facts of the case are that on 05.2.2002, the prosecutrix, 14 years of age at that time, got recorded her statement before SI Rajesh Kumar that on that day at about 7.30 P.M., when she was on her way from the house of her friend, she saw the appellant along with another boy, with whom she was not acquainted, on the street. One of them caught hold of her and the other gagged her mouth, and they took her to an open plot. Appellant Satpal broke the string of her salwar and the other boy gagged her mouth. Thereafter, appellant Satpal raped her, whereupon she became unconscious. When she regained consciousness, she found herself lying in the street in front of her house. Her mother took her to the house. On the basis of the above statement, the present FIR was registered. Investigation was carried out.

4. During investigation, the statement of the prosecutrix under Section 164 Cr.P.C. was recorded and her medical examination was got conducted. The accused was arrested and after completion of investigation, challan was presented before the Court of learned Area Magistrate.

5. Since the offences under Section 366 and 376 IPC were exclusively triable by the Court of Session, therefore, the learned committal Court concerned, through a committal order dated 02.5.2002 committed the case to the Court of Session.

6. Charges were framed against the accused under Sections 363, 366 and 376 IPC, to which he pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined as many as 14 witnesses.

8. In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication. The

accused chose to lead defence evidence, however, he did not lead any witness into the witness box.

Submissions made by learned counsel for the appellant

9. Learned counsel for the appellant has argued that the appellant has been wrongly convicted in the present case. In fact, there are major discrepancies inter se the statements of the prosecutrix recorded before the police and in the statement recorded under Section 164 Cr.P.C. Moreover, the prosecutrix as well as her mother and father, who appeared in to the witness box as PW-7 and PW-8 respectively, did not support the prosecution version, and were declared hostile. It has further been argued that since there was no credible evidence on record with regard to the age of the prosecutrix, therefore, the learned trial Court had rightly disbelieved the school certificate of the prosecutrix (Ex PW-14/B). Further, as per the FSL report of Dr. Anita Varmani (PW-3) there were no injury marks on the body of the prosecutrix. Moreover, as per the FSL report (Ex. PE), no semen was found on the swabs and slides. Therefore, it is argued that the testimony of the PW-3 and the FSL report (Ex. PE) clearly show that no alleged sexual intercourse had taken place between the prosecutrix and the accused. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court passed in ***Aman Kumar v. State of Haryana, 2004(1) RCR (Criminal) 925***, in support of his submission that the charge of attempt to rape in the present case does not stand proved. It is submitted that there has been no allegation against the appellant herein of undressing himself or committing any such act that would indicate that he had the intention of raping the prosecutrix but could not carry out the same. It is submitted that the test of an act falling under the category of an attempt to rape is that except for the failure to consummate, all the elements of the substantive

crime stand fulfilled, which is not so in the present case. Therefore, in the absence any evidence to even remotely indicate that the appellant indeed had the intention to commit rape upon the prosecutrix, he can at most be charged for indecent sexual assault which is punishable under Section 354 of the IPC. It is also prayed that the young age of the appellant at the time of the alleged incident, his conduct thereafter, and the time that has since elapsed be considered while deciding the appeal.

Submissions made by the learned State counsel

10. Per contra, learned State counsel has vehemently opposed the arguments made on behalf of the appellant. She submits that from the testimony of the prosecutrix, it has been established that the appellant had made an attempt to commit rape upon the prosecutrix. Further, though in the FSL report it is mentioned that semen was not found either on the swabs or on the slides, however, it was detected on the salwar of the prosecutrix. Therefore, the verdict of conviction, and consequent thereto sentence(s) (supra) as imposed upon the convict-appellant are well merited, and do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. It is thus submitted that the conviction of the appellant under attempt to rape be upheld.

Analysis & conclusion

11. Before proceedings to make an adjudication upon the present appeal, it would be apposite to refer to the provisions of Section 376 of the IPC, as existed prior to the amendment of 2013. The said provisions are reproduced hereinafter.

> *"**376. Punishment for rape-***
>
> *(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but*

which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

x x x x

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him;

or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail,remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons

to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years."

12. In criminal jurisprudence, there are two elements which constitute a crime, those being *mens rea* or the mental element i.e the intention to commit a crime and *actus reas* that is any act done in furtherance of that common intention. The progressions in the stage of crime are that its inception begins with intention, followed by preparation. It is thereafter that an attempt is made, and it that attempt becomes successful, a crime is said to have taken place.

13. The Hon'ble Supreme Court in ***Koppula Venkat Rao vs. State of A.P., (2004) 3 SCC 602***, elicited the difference between `attempt' and `preparation' in a rape case by holding that:

> *"11 In order to find an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."*

14. Most recently, in ***State Of Madhya Pradesh vs. Mahendra Alias Golu, 2021(4) RCR (Criminal), 613***, the Hon'ble Supreme Court reiterated the distinction between preparation and attempt to rape by observing thus:

> *"11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit),secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is*

punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. `Attempt' starts where `preparation' comes to an end, though it falls short of actual commission of the crime.

x x x x x

20. We may at the outset explain that what constitutes an `attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes."

15. A gainful reference can also be made to the judgment passed in ***Chaitu Lal Vs. State of Uttarakhand Criminal Appeal No. 2127 Of 2009*** decided on ***20.11.2019***, wherein accused though had not undressed himself but had pounced upon the victim in the presence of her daughter who also pleaded before the accused, and lifted her petticoat while the prosecutrix protested and wept, and it was only due to the arrival of a neighbour that the accused ran away after threatening the complainant. While upholding the conviction of the accused appellant therein under Section 354 and Section 511 read with Section 376 IPC for a period of two years, the Hon'ble Supreme Court held that:

"10. Herein, although the complainant-victim and her

daughter were pleading with the accused to let the complainant-victim go, the accused-appellant did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the accused-appellant would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.

11. The counsel on behalf of the accused-appellant placed reliance upon the case of ***Tarkeshwar Sahu v. State of Bihar (Now Jharkhand), (2006) 8 SCC 560*** *to claim the benefit of acquittal for offence under Section 511 read with Section 376 of IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the accused-appellant in forcibly entering the house of the complainant-victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.*"

16. The case of ***Aman Kumar*** (supra) on which learned counsel for the appellant has placed heavy reliance is distinguishable from the facts of the present case since first, there was enmity between the complainant and accused sides; further, the only basis of conviction was the testimony of the prosecutrix which also suffered from minor inconsistencies and did not contain therein the allegations of penetration, which are a sine qua non for invocation of the charge of rape; and third, the prosecution witnesses including the father of the prosecutrix, had turned hostile in that case. Therefore it could not be proved that the accused therein had intentions of committing rape, and thus they were convicted under 354 IPC. However, the present case stands on a completely different footing.

17. Reverting to the case in hand, in her deposition the prosecutrix (PW-1) stated that the accused had removed his pant, and torn her shirt. The appellant pushed her on the ground, and laid himself on her. The appellant had also given her scratches with nails and had tried to grab her. Though, she further deposed therein that the appellant did not proceed further, however, in her cross examination she admitted her signatures on the statement (Ex. PE) recorded by the investigating officer concerned. The testimony of the statement stood corroborated by FSL report (Ex. PF), as per which, though no semen was found on the swabs and slides, however, it was found on the salwar of the prosecutrix. Therefore, the conduct of the appellant therefore speaks of his intention to commit the said offence. In these circumstances, this Court has no inhibition in holding the appellant guilty of the offence of attempt to rape.

18. The appellant herein was held guilty under section 376 read with Section 511 of the IPC. The minimum punishment prescribed for the offence under the said provision of Section 376 IPC, at the relevant time, was of 07 years, however, the proviso to the same provided that the Court may, for adequate and special reasons to be recorded in writing, sentence the accused for a term less than the minimum period prescribed. Section 511 IPC contains the provisions for punishment of attempt to commit offences for which a specific provision is not contained in the penal code. The harmonious interpretation of the proviso to Section 376(2) IPC (as it was prior to the 2013 amendment) and Section 511 IPC empowers the Court to sentence the accused, for reasons so recorded, for a period less than the minimum limit so prescribed.

19. Speaking of the quantum of sentence, the sword of damocles has been hanging over the head of the appellant for more than two decades.

The sentence of the appellant was suspended vide order dated 19.8.2004. Custody certificate dated 02.8.2025 of the appellant shows that out of the awarded substantive sentence of 07 years, he had undergone a total sentence of 02 years, 06 months and 16 days. The appellant is stated to be now aged 42 years. He is the sole caretaker of his two children aged 13 years and 15 years respectively, since his mother and father are aged 70 and 79 years respectively and his wife has already expired. The State has not shown any other criminal record of the appellant during the subsequent period, showcasing that he has not misused the concession of bail granted to him, and that he has integrated into the mainstream society, which is the aim of the reformative school of justice, on which foundation the entire structure of legal system is built. This Court feels that it would not be appropriate to send the appellant behind the bars at this juncture, especially so when he has had a chance to repent his wrong-doings and turn over a new leaf. As such, the sentence already undergone by the appellant when seen in light of the protracted litigation that has been suffered can be seen as commensurate to the crime that has been committed. Therefore, given these circumstances, but in no way undermining the gravity of the offence that the appellant is guilty of committing, this Court deems it a fit case to reduce the quantum of sentence awarded to the appellant to the period already undergone by him.

20. Accordingly, the present appeal is partly allowed. The impugned judgment of conviction dated 21.04.2004 passed by the learned Additional Sessions Judge, Panipat is upheld, however, sentence of the appellant is reduced to the period already undergone by him. The quantum of fine is enhanced from ₹ 5,000/- to ₹50,000/-, to be deposited by the appellant in the Poor Patient Welfare Fund, PGIMER, Chandigarh, within a period of two months from the date of this judgment, in default of payment

of which, he will be liable to undergo simple imprisonment of three months. The amount of ₹ 5,000/-, if deposited previously, shall be adjusted. The bail bonds of the appellant stand discharged.

21. Record of the case(s), if any, be sent back to the Court(s) below.

22. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s).

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

(KIRTI SINGH)
JUDGE

September 30th, 2025
Gurpreet Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No