

*Before Virender Singh, J.*

KULDIP SINGH & ANOTHER—Appellants

*versus*

STATE OF PUNJAB—Respondent

*Crl. Appeal No. 437/SB of 1990*

23rd April, 2003

*Indian Penal Code, 1860—Ss. 366, 376—Conviction of four accused for committing rape of a girl below 16 years after abducting from her house—No action taken by the Police—Complaint before the SSP—Delay of 12 days in lodging FIR is well explained—Evidence of prosecution does not suffer from any basic infirmity or improbability—Involvement of all the four accused amply proved—Conviction & sentence of 10 years imprisonment deserve to be affirmed—Action of DSP to help some of the accused for certain ulterior considerations is unbecoming of police officer & strongly condemnable.*

Held, that the complainant side had been just waiting '& watching the outcome of the investigation from 26th June, 1989 to 5th July, 1989. No doubt in this case no information was reduced in to writing on 26th June, 1989 at police station Raikot. It appears that the old woman was made to understand on 26th June, 1989 that her information has been recorded in the police station. The police appears to have obtained some thumb impression of the mother of the prosecutrix or even the signatures of the prosecutrix on that day. Keeping in view the inaction on the part of the police machinery, the delay is deemed to have been well explained and it cannot be taken as a ground to throw the prosecution case in its entirety.

(Para 47)

Further held, that no woman of honour would accuse another of rape since she sacrifices there what is dearest to her. The alleged dispute of common wall was not such a grave nature that the entire family of the prosecutrix would go to the extent of putting at stake the reputation and fair name of their young daughter to settle the scores

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with the appellants. The defence as projected by the appellants has no nexus with the reality. The evidence of the prosecution does not suffer from any basic infirmity or improbability which may render it unworthy of credence. The prosecution version is highly probable. The present four appellants abruptly trespassed into the courtyard of the prosecutrix. It was not at all difficult for them to do so because there was no outer gate to her house. One of the appellants brandished pistol at her and threatened to kill her if she cried. It was but natural for the poor young girl to become speechless and ultimately she has fallen prey at the hands of the four appellants. Having regard to the totality of the circumstances of the case, there appears to be nothing improbable in the prosecution version and the involvement of all the four appellants is amply proved in this case.

(Para 48)

Further held, that the present case does not call for any special reason in favour of the appellants for the purpose of reducing the sentence from the minimum provided by the Statute. Consequently, the sentence part of the impugned judgment is also affirmed.

(Para 51)

M.L. Sharma, Advocate *for the appellants*, Kuldip Singh and Charan Singh.

T.P.S. Mann, Advocate for the appellants, Jaswant Singh and Major Singh

H.P.S. Raja, AAG Punjab, *for the respondent*.

### JUDGEMENT

*VIRENDER SINGH, J.*

(1) The case in hand is of gang-rape, in which all the four appellants namely Kuldip Singh, Jaswant Singh, Major Singh and Charan Singh have earned conviction as per the impugned judgment passed by learned Additional Sessions Judge, Ludhiana dated 13th October, 1990 and consequently filed these three separate appeals i.e. Criminal Appeal No. 437-SB of 1990 (**Kuldip Singh and another versus State of Punjab**), Criminal Appeal No. 439-SB of 1990 (**Major Singh alias Maiji versus State of Punjab**) and Criminal Appeal No.

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399-SB of 1990 (**Jaswant Singh versus State of Punjab**). The appellants have been convicted on two counts viz. under Section 376 IPC and U/s 366 IPC and have been sentenced as under :

U/S 376 IPC                      To undergo RI for ten years and to pay a fine of Rs. 1,000 each. In default of payment of fine to undergo further RI of six months.

U/S 366                              RI for five years and to pay a fine of Rs. 1,000 each. In default of payment of fine to undergo further RI for six months.

(2) Out of the total amount of fine if recovered, Rs. 4,000 was ordered to be paid to the prosecutrix as compensation.

(3) The substantive sentences were, however, ordered to run concurrently.

(4) PW-2 the prosecutrix (the name is not being disclosed) is daughter of Amar Singh (PW7) son of Kartar Singh. She was adopted by Surjit Kaur (PW4) wife of Jagir Singh. Surjit Kaur is real sister of Amar Singh. Jagir Singh is resident of village Talwandi Rai Singh. Since her childhood, she was living with them and started her studies in village Talwandi Rai. She completed her primary education in Primary School of that village. Thereafter she passed matriculation examination from the Government High School of that village.

(5) The prosecution case goes as under :

(6) On the night intervening 25th/26th June, 1989, the prosecutrix was sleeping in the courtyard of her house. Her adoptive father and mother were also sleeping in the said court-yard. Around 11-00 P.M. she got up for urinating. The court-yard has no outer gate. When she passed urine in the court-yard, the four appellants barged into the court-yard of their house, gagged her mouth all of a sudden. Kuldip Singh appellant *alias* Rana pointed a pistol at her and then all of them carried her to the house of Jaswant Singh appellant. Out of fear, she could not raise hue and cry. Major Singh *alias* Maiji and Charan Singh forcibly threw her on a cot. Kuldip Singh @ Rana appellant untied the string of her *salwar* and forcibly removed her *salwar* and shirt. First of all Kuldip Singh @ Rana committed sexual intercourse with her against her will and consent and thereafter the

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other three appellants. i.e. Charan Singh, Major Singh @Maiji and Jaswant Singh had also committed rape on her in that order. Thereafter they allowed her to go. The appellants also threatened and warned her not to disclose the occurrence to her parents, otherwise she would be shot dead. After returning home, she narrated the occurrence to her parents.

(7) On the following day, Surjit Kaur mother of the prosecutrix informed Gurdev Singh Sarpanch and Gajjan Singh Lamberdar. She then went to police station Raikot to inform the police, but the concerned police did not take any action into the matter. Thereafter Surjit Kaur filed a written complaint (Ex. DA) on 5th July, 1989 before the Senior Superintendent of Police, Ludhiana, which was marked to Deputy Superintendent of Police, Jagraon. Upon this, DSP Jagraon visited village Talwandi Rai on 8th July, 1989 and recorded the statement (Ex. PD) of the prosecutrix, on the basis of which formal FIR (Ex. PD/1) was recorded on the same day.

(8) . The prosecutrix was medico legally examined by Dr. Renu Baweja (PW1) on 8th July, 1989. The matter was thereafter investigated by Inspector Piara Sing (PW8), who took into possession the blood stained salwar and shirt of the prosecutrix. He formally arrested all the appellants on 9th July, 1989. They were medico legally examined by Dr. Rajiv Bhalla (PW11) on 10th July, 1989 and were declared fit to perform sexual intercourse.

(9) It is worth mentioning here that on 17th July, 1989 DSP Joginder Singh recorded another statement (Ex. DB) of the prosecutrix, in which she had retracted from her earlier statement (Ex. PD). The grouse of the prosecutrix is that on 17th July, 1989, she was beaten by the police and her thumb-impressions on the subsequent statement (Ex. DB) was obtained under coercion. She made another complaint (Ex. PH) to the Senior Superintendent of Police, Ludhiana on 20th July, 1989. She had got herself medically examined on 19th July, 1989 by Dr. G.S. Grewal (PW10) for the alleged injuries given by the police.

(10) After completion of investigation, the present appellants were challaned. After committal proceedings, charge under Sections 366 and 376 of the Indian Penal Code was framed against them.

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(11) In order to substantiate its case against the appellants, the prosecution examined as many as ten witnesses.

(12) Dr. Renu Baweja (PW1) had medico legally examined the prosecutrix on 8th July, 1989 and found that there was no mark of injury on her body. Her hymen was completely torn. The edges were healed. The vagina was admitting one finger. She opined that the prosecutrix was not habitual to sexual intercourse. However, this witness could not tell the approximate time which had elapsed between the first intercourse to which the prosecutrix had been subjected and her medical examination. According to this witness, it takes about 6 to 10 days for the hymen to completely heal after being torn. Since the hymen of the prosecutrix was found completely healed, therefore, in the opinion of this doctor, the first sexual intercourse must have been committed more than 6 to 10 days before her medical examination.

(13) The prosecutrix (PW2) has deposed that after her adoption, she studied in village Talwandi Rai and passed her matriculation in the year 1989. She has further deposed that on the night of 25th June, 1989. She alongwith her parents was sleeping in the house : that at about 11.00 P.M. she got up to pass urine and reached in the court yard, where there was no outer gate : that when she had passed the urine, the four appellants came there, forcibly lifted her by gagging her mouth ; that Kuldip Singh alias Rana appellant was armed with a pistol and she was threatened that in case she cried, she would be shot dead, as such she got frightened and could not utter a word : that she was physically carried to the house of Jaswant Singh, appellant, where she was thrown on a cot ; that thereafter Kuldip Singh *alias* Rana appellant undressed her and committed rape, whereafter the remaining three appellants also committed rape upon her ; that when she was released, she narrated whole of the occurrence to her parents ; that on the next day they went to the police station after informing the Sarpanch and Lamberdar, but the police did not take any action in the matter. She then talks about filing a complaint to the Senior Superintendent of Police, Ludhiana and thereafter the matter was enquired into by D.S.P., Jagraon. She has proved her statement Ex. PD.

(14) Nachhattar Singh (PW3) is Draftsman, who had prepared the scaled plan (Ex. PG) of the place of occurrence.

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(15) Smt. Surjit Kaur (PW4) is mother of the prosecutrix, who has corroborated the statement of her daughter.

(16) S.I. Harbhajan Singh (PW 5) has partly investigated this case. His statemnt is to the effect that after receipt of the statement (Ex. PD) of Sarabjit Kaur from D.S.P. Jagraon, he recorded the formal F.I.R. (Ex.PD/1) and thereafter he took the prosecutrix to the lady doctor for medico legal examination. He also sent the vaginal swabs of the prosecutrix to the Chemical Examiner.

(17) Darshan Singh Headmaster, Government High School, Talwandi Rai (PW6) has proved the entry made by Joginder Singh teacher, according to which the prosecutrix was born on 3rd February, 1973. He has also proved the character certificate (Ex. P.C.), in which her date of birth is same i.e. 3rd February, 1973.

(18) Amar Singh (PW7), the natural father of the prosecutrix, who has stated that she was born on 18th November, 1973 in Military Hospital, Jabalpur. He has produced the original certificate (Ex. PF/1) regarding her birth. He also talks about adoption of the prosecutrix by his sister Surjit Kaur and has proved his affidavit (Ex. PH) to this effect.

(19) Inspector Piara Singh (PW8) is the Investigating Officer of this case.

(20) H.C. Manjit Singh (PW9) has proved the complaint (Ex.PH) made by the prosecutrix.

(21) Dr. G.S. Grewal (PW10) had medically examined the prosecutrix on 19th July, 1989 at 5.15 P.M. and found the following injuries on their person :

- (1) Red Scabbed abrasion 3/4" x 4" in lateral aspect of right elbow joint.
- (2) Brown contusion 3.1/2" x 1/4" on the middle and lateral aspect of right upper arm. Advised X-Ray.
- (3) Raddish brown contusion 2.1/2" x 1/2" on the lateral aspect and upper third of right thigh.
- (4) Complained of pain in the back side of left side of the neck.

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(22) The plea taken by the appellants emerging from their statements under section 313 of the Code of Criminal Procedure is of false implication. Kuldip Singh *alias* Rana appellant has taken the plea that the prosecutrix used to come to meet him in his fields, which are on the opposite side of her house and that he had done intercourse with her with her consent as she was above 16 years of age, but this was done much prior to 25th June, 1989.

(23) Charan Singh appellant has pleaded that his uncle and Jaswant Singh appellant had a dispute over a wall with Surjit Kaur PW and her husband and that he being a cousin of Kuldip Singh appellant has been falsely implicated in this case.

(24) Jaswant Singh appellant, has also pleaded false implication on the ground that he had a dispute over a wall with Surjit Kaur and also that Kuldip Singh appellant is his cousin.

(25) Major Singh *alias* Maiji has pleaded that he has been falsely implicated at the instance of D.S.P. Joginder Singh. According to him the document Ex. D.A. is clear on this point where his name is not mentioned.

(26) In their defence, the appellants have produced Gurdev Singh (DWI), who has stated that the prosecutrix had initially told the police that she had gone in the fields of Kuldip Singh *alias* Rana of her own and that she had given the names of the other three appellants wrongly in order to save Kuldip Singh and that except Kuldip Singh the remaining three appellants had not committed any intercourse with her.

(27) D.S.P. Joginder Singh has stated that Ex. DB was recorded on the statement of the prosecutrix in his presence and he had written a discharge report of Jaswant Singh, Major Singh *alias* Maiji and Charan Singh appellants as the prosecutrix has stated that she had gone to the fields of Kuldip Singh *alias* Rana of her own and remained there for 2-3 hours and he performed sexual inter course with him with her consent and that the other three appellants had not lifted her forcibly.

(28) On a consideration of the evidence on record, the learned trial Court has convicted and sentenced the appellants as stated above. Hence these appeals.

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(29) I have heard Mr. T.P.S. Mann, learned counsel for appellants Jaswant Singh and Major Singh alias Maiji and Mr. M.L. Sharma, learned counsel for appellants Kuldip Singh alias Rana and Charan Singh. Mr. H.P. Singh Raja, learned Assistant Advocate General represented the State of Punjab. With their assistance, I have gone through the whole record very carefully.

(30) Opening his arguments, Mr. Mann has submitted that the identity of Major Singh *alias* Maiji appellant as one of the persons who allegedly committed rape upon the prosecutrix, is not proved. He contended that the complaint Ex. DA, which was made to Senior Superintendent of Police, Ludhiana on 5th July, 1989 does not indicate the name as "Major Singh son of Jagir Singh, resident of Talwandi Rai" but the name given therein is "Maija Singh son of Jagir Singh, resident of village Mansooran". Mr. Mann then submits that in her statement Ex. PD, the prosecutrix describes the name of Major Singh as "Major Singh *alias* Maiji son of Jagir Singh Mansooranwala, resident of Talwandi Rai" and this major discrepancy creates a doubt about the identity of Major Singh *alias* Maiji appellant.

(31) The next argument advanced by Mr. Mann is *qua* Jaswant Singh appellant, who is uncle of Kuldip Singh *alias* Rana appellant. according to Mr. Mann, the age of Jaswant Singh a ppellant at the time of alleged commission of crime was 43 years and it is not possible that he would join hands with the other three appellants, who were of the age of less than 20 years in this nefarious activity in so much so that he would take a girl of about 16 years to his house, which is adjoining the house of the complainant and would then commit rape upon her and would also allow the other three co-accused to go in for the same Act. Mr. Mann further contends that the investigation conducted by DSP Joginder Singh (DW2) initially was in fact in the right direction and that the Panchayat Nama Ex. DB collected by him shows that the prosecutrix has falsely implicated Jaswant Singh in this case.

(32) The other limb of argument advanced by both the sets of appellants is that the evidence adduced by the prosecution regarding the age of the prosecutrix is not conclusive and that the Character Certificate (Ex. PC) showing her date of birth as 3rd February, 1973 is in fact not a conclusive proof of her age. It is then contended that



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she was certainly more than 16 years of age on the date of alleged occurrence and the trial Court has also so observed in para 22 of the impugned judgment. She was a consenting party and had gone to the place of Kuldip Singh alias Rana of her own. Learned counsel have relied upon the Panchayat-Nama prepared on 17th July, 1989 when DSP Joginder Singh (DW2) was investigating the case. In the same breath, it has also been argued that the story as projected by the prosecution is most improbable on the face of it.

(33) Both the counsel have also canvassed a lot of criticism on delay and contended that the offence was allegedly committed on the night intervening 25th/26th June, 1989, but the formal FIR (Ex. PD/1) was recorded on 8th July, 1989 and as such there has been delay of 12 days in lodging the FIR. This unexplained delay is fatal to the prosecution for throwing its case in its entirety, it has been so contended.

(34) Lastly, it has been submitted that in the event of conviction being maintained, the appellants deserve concession in reduction of sentence as the occurrence relates to the year 1989 and the appellants have already suffered the ordeal of protracted trial of about 14 years.

(35) On the other hand, Mr. Raja, learned Assistant Advocate General, Punjab has vehemently argued that the appellants do not deserve any concession on any count as they have committed forcible intercourse with a young girl of hardly 16 years, after physically lifting her from her house when her parents were fast asleep. He has further contended that it is humanly not possible that the prosecutrix would be a consenting party to all the four appellants and that even if certain discrepancies have crept in the statement of the prosecutrix, those could not be considered to be fatal so as to throw the case of the prosecution. He then contended that the delay in this case is well explained.

(36) After hearing the rival contentions of both the sides, I am of the view that the prosecution has been able to bring home the guilt to all the four appellants in this case. My detailed discussion follows as under :

(37) So far as identification of Major Singh appellant is concerned, there is no dispute about it. The prosecutrix when stepped

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into the witness box as PW2 has rightly identified Major Singh appellant as one of the four assailants, who had abducted/kidnapped her from her court-yard and committed rape upon her. No doubt, there is some discrepancy in documents Exhibits DA and PD, so far as identity of this appellant is concerned. In the statement Ex. DA, Major Singh has been described as "Maija son of Jagir Singh of village Mansooran", whereas in Ex. PD, he has been described as Major Singh @ Maiji son of Jagir Singh Mansooranwala, resident of Talwandi Rai. In the rural society, it is very common that every body has a nick name or a pet name. Therefore, in my view there is nothing unusual if Major Singh appellant is also described by his nick name as Maija. His description as Maija Singh son of Jagir Singh of Mansooran in Ex. DA again appears to be a very minor discrepancy. He must be having some ancestral links with village Mansooran due to which he has been described as Mansooranwala, whereas at the time of occurrence, he was residing in village Talwandi Rai. Subsequently in Ex. PD, his complete address was disclosed. Once Major Singh has been rightly identified in Court by the prosecutrix as one of the culprits in this case, there remains no doubt about his identity. The contention of the learned counsel for the appellant on this count is, thus, repelled.

(38) The other limb of argument raised by Mr. Mann on behalf of Jaswant Singh appellant is also of no avail. No doubt, Jaswant Singh appellant was of the age of more than 40 years at the time of occurrence, as is clear from the records, but at the same time, there is no reason to disbelieve the categorical statement of the prosecutrix to the effect that Jaswant Singh alongwith his three companions (co-accused) came to the court-yard of her house and actively participated in physically lifting her to his house and committed forcible sexual intercourse with her besides allowing his three companions to satisfy their sexual lust. The cross-examination of the prosecutrix conducted by defence counsel reveals that on the night of alleged occurrence, the family members of Jaswant Singh were not there in the house. The house of Jaswant Singh adjoins the house of the complainant. Thus, taking her to his house that night was a very comfortable move for Jaswant Singh.

(39) I cannot restrain myself from commenting that the record indicates that the personnel of Police Station, Raikot and even DSP

Joginder Singh were favouring the appellants from the very beginning. The appellants have relied upon the so-called Panchayat Nama (Ex. DB) prepared on 17th July, 1989. Gurdev Singh Sarpanch (DW1) has stated that this Panchayat Nama was scribed in his presence and the prosecutrix had signed it and her mother Surjit Kaur had thumb-marked it in token of its correctness. Gurdev Singh had also attested it. DSP Joginder Singh has also been examined as a defence witness by the appellants. Before commenting further on this Panchayat Nama, the recitals thereof are rendered in English as under :—

“In the presence of the village Panchayat and respectables (name of the prosecutrix) adopted daughter of Jagir Singh, Jat, resident of Talwandi Rai stated that on the night of 26th June, 1989 of her own free will she had gone to the “Chari” field of Rana *alias* Kuldip Singh accused, son of Shri Harbans Singh Jat, resident of Talwandi Rai at about 10 P.M. That field was nearer her house. There she stayed with him for about 2 or 3 hours. When she returned home, she found her father and mother awake. In order to save Rana accused from them, she falsely named Jaswant Singh, Charan Singh and Major Singh that they had forcibly kidnapped her. In fact they had not kidnapped her. The statement which she had made for the registration of the case was false dated 17th July, 1989”.

| Impression   | (Sd.)                        |   |
|--|------------------------------|---|
| RTI Surjit Kaur,<br>W/o Jagir Singh<br>Jat, R/o Talwandi<br>Rai. | (Name of the<br>prosecutrix) | Thumb Impression of<br>Jagir Singh s/o Lava<br>Singh r/o Talwandi Rai |
| (Sd.) . . . ,  | (Sd.) . . . ,                | (Sd.) . . . ,   |
| Surjit Singh<br>S/o Balwant Singh,<br>R/o Talwandi Rai.          | Gurdev Singh,<br>Sarpanch.   | Bhag Singh,<br>Lamberdar.   |

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(Sd.) . . . ,

Bhajan Singh, son of  
Lachhman Singh, Jat,  
R/o Talwandi Rai.

(Sd.) . . . ,

Bhag Singh,  
S/o Santa Singh, Jat  
R/o Talwandi.

Thumb Impression  
of Teja Singh,  
S/o Banta Singh,  
R/o Talwandi  
Rai.”

(40) It is surprising how DSP Joginder Singh went to the extent of recording a compromise in a non-compoundable offence of such a heinous nature of gang rape and that too just within 9 days after recording of the First Information Report under sections 366/376 IPC, which was registered by none else but by himself on the basis of the statement of the prosecutrix. One fails to understand as to what had happened in between 8th July, 1989 and 17th July, 1989, which prompted DSP Joginder Singh to get recorded this Panchayat Nama (Ex. DB) to put the case to a halt. The reason appears to be very obvious.

(41) The matter does not rest here. Another fact which cannot escape notice of this Court is that immediately after 17th July, 1989, the prosecutrix and her mother filed a complaint (Ex. PHH) before the Senior Superintendent of Police, Ludhiana on 22nd July, 1989, alleging therein that the signatures of the prosecutrix were obtained on certain blank papers and similarly some thumb impressions of her mother were also obtained. It was further alleged therein that DSP Joginder Singh had threatened them to face serious consequences if they do not give statement in favour of the culprits. In so much so that certain constables also maltreated the prosecutrix and caused her injuries. The said complaint dated 22nd July, 1989 is reproduced as under :—

“The complainant submits as under :

That the complainant filed a complaint before your Honour on 4th July, 1989 for registration of the case under Sections 376/452 IPC for committing rape and for enquiry against the SHO, Police Station, Raikot, who

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refused to register the case against the culprits namely Rana s/o Harbans Singh, Charan Singh s/o Bir Singh, Jaswant Singh s/o Kartar Singh and Maija Singh son of Jagir Singh all residents of village Talwandi, Tehsil and District Ludhiana.

That your honour appointed DSP Jagraon namely Shri Joginder Singh for the enquiry of the above said case. The DSP has now been approached by the culprits and openly said that he could not do anything regarding this matter, because of the intervention of the wife of Shri Jagdev Singh Talwandi. One of the culprits namely Charan Singh is the son of Beer Singh, who used to work as a labourer in the house of the wife of Shri Jagdev Singh Talwandi, who has started to intervene into the above said matter. DSP Joginder Singh has been approached by her and as such he has started to compel the complainant and her daughter (name of the prosecutrix) to give statement in favour of the culprits. When the complainant and her daughter objected to the same, the DSP has threatened them to face serious consequences. He has succeeded to get (sic) the signatures on the blank paper of (name of the prosecutrix) and thumb impression of the complainant. The Constable also mal-treated (name of the prosecutrix). The injuries on the right arm of (the prosecutrix) and on other places is the clear proof of the same.

It is, therefore, prayed that DSP Jagraon namely Joginder Singh may kindly be directed to provide justice to the complainant and her daughter and the rape case may also be ordered to be registered against all the culprits.”

(42) The prosecutrix was medico legally examined in 19th July, 1989 by Dr. G.S. Grewal (PW10), who found as many as four injuries on her person and opined that the probable duration of the injuries was about three days. One could doubt the complaint (Ex. PHH), but if seen coupled with the medico legal report aforesaid, it becomes crystal clear that this complaint is not without any basis. In

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her subsequent statement the prosecutrix has categorically deposed as under :—

“ \_\_\_\_\_ No panchayat assembled on 17th July, 1989. I did not see any panchayat Nama at Jagraon on 17th July, 1989. Exhibit DB bears my signatures. But these signatures were obtained from me on 17th July, 1989 after beating me with leather pattas. My signatures had been obtained by the police on 17th July, 1989 after beating me with leather pattas.”

(43) This all throws light on the arm twisting manner adopted by the uniformed people, who behaved like villains to force the prosecutrix and her mother to sign/thumb-mark certain documents at the behest of certain powerful elements, which were working behind the scene. I am of the view that the Panchayat Nama (Ex. DB) on which Mr. Mann is resting heavily, spoils the defence instead of helping the appellants.

(44) The other limb of argument advanced by both the learned counsel that the prosecutrix was more than 16 years of age on the day of alledged occurrence, is also without substance. They have pointed out that the trial Court has also considered her age to be above 16 years in para 22 of the impugned judgment. I may make it clear here that there is no such categorical finding of the trial Court. In para 22 of the judgment, the trial Court has considered her date of birth as 3rd February, 1973 by implication on the basis of the submission made by the defence and observed that even if the date of birth is taken as 3rd February, 1973, it lends no support to the defence in the light of the facts of the case, where the offence of rape is proved. Otherwise, the observation made in para 21 of the impugned judgment is that it is conclusively proved that the date of birth of the prosecutrix was 18th November, 1973 and taking into consideration the date of occurrence as 25th June, 1989, the age comes below 16 years. Even on the basis of the documentary evidence, I am also of the view that the age of the prosecutrix on the date of occurrence falls below 16 years. Amar Singh, the natural father of the prosecutrix stepped in to the witness-box as PW7 and has categorically deposed that she had born in Military Hospital, Jabalpur on 18th November, 1973 and the original certificate issued by the said hospital authorities

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is Ex. PF/1. This document connects the prosecutrix. No doubt Darshan Singh Head Master, Government High School, Talwandi Rai (PW6) has proved the entry of the prosecutrix, showing her date of birth as 3rd February, 1973. The Character Certificate (Ex. PC) also shows her date of birth as 3rd February, 1973. It is common practice that when the child is admitted in the school at the initial stage, the tendency of the parents is to show lesser age so as to take some advantage in the future. However, in the instant case it is otherwise and the age is shown on higher side. Thus, it can be safely concluded on the basis of the cogent documentary evidence i.e. Ex. PF/1 that the date of birth of the prosecutrix was in fact 18th November, 1973. She was certainly less than 16 years of age on the date of occurrence.

(45) A lot of criticism has been canvassed on the point of delay in lodging the FIR. No doubt the FIR was lodged on 8th July, 1989, but the delay has been properly explained. Surjit Kaur (PW4), mother of the prosecutrix has stated that when her daughter returned home, after being robbed of her chastity, the matter was informed to Gurdev Singh Sarpanch and Gajjan Singh Lamberdar. She then went to inform the police at police station Raikot and the police obtained her thumb-impressions but they did not take any pains for about 4-5 days. The exact words from her subsequent statement are as under :—

“The police recorded my Itlah and obtained my thumb-impressions but they did not do any Karvai for 4-5 days. When the police did not take any action, I and (name of the prosecutrix) came to Ludhiana to Senior Superintendent of Police and filed complaint (Ex. DA) before the SSP, which is thumb-marked by me and is correct.

(46) The complaint (Ex. DA) has been lodged before SSP, Ludhiana on 5th July, 1989. Thus, in my view the prosecution had to explain the delay only up to 5th July, 1989. The document Ex. DA has in fact been relied upon by the defence. The recitals of Ex. DA clearly show the helplessness of the mother of the prosecutrix. Some Part of it is reproduced as under :

“That the S.H.O. demanded Rs. 1,200 for registration of the case. The accused were called to the police station after

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3/4 days but they approached to S.H.O. and the S.H.O. is favouring them. The complainant was called by the S.H.O., P.S. Raikot yesterday in P.S. Raikot and the S.H.O. demanded Rs. 1,500 more and also asked the complainant to thumb mark on the blank papers for the compromise. The complainant insisted to (sic) registered the case and take legal appropriate action against the accused but the S.H.O. is not doing his lawful duties and the accused are openly saying that they had purchased the S.H.O. with money so no action is likely to be taken against them.”

(47) As stated above, the police was helping the appellants from the very beginning. I am of the view that the complainant side had been just waiting and watching the outcome of the investigation from 26th June, 1989 to 5th July, 1989. No doubt in this case no information was reduced in writing on 26th June, 1989 at police station Raikot. It appears that the old woman was made to understand on 26th June, 1989 that her information (Itlah) has been recorded in the police station. The police appears to have obtained some thumb-impression of the mother of the prosecutrix or even the signatures of the prosecutrix on that day. Keeping in view the inaction on the part of the police machinery, the delay is deemed to have been well explained and it cannot be taken as a ground to throw the prosecution case in its entirety.

(48) The argument of the learned counsel that the prosecutrix was having some illicit relationship with Kuldip Singh *alias* Rana appellant and that she had gone to him on 25th June, 1989 of her own free will and had subsequently concocted this false version because the complainant side was having enmity with the appellants over the raising of some wall, is neither here nor there. It has to be rejected after being tested on the touch-stone of human probabilities. No woman of honour would accuse another of rape since she sacrifices there what is dearest to her. The alleged dispute of common wall was not of such a grave nature that the entire family of the prosecutrix would go to the extent of putting at stake the reputation and fair-name of their young daughter to settle the scores with the appellants. The defence as projected by the appellants has no nexus with the reality. The evidence of the prosecution in the present case does not



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suffer from any basic infirmity or improbability, which may render it unworthy of credence. The prosecution version is highly probable. The present four appellants abruptly trespassed into the courtyard of the prosecutrix. It was not at all difficult for them to do so because there was no outer gate to her house. One of the appellants brandished pistol at her and threatened to kill her if she cried. It was but natural for the poor young girl to become speechless and ultimately she has fallen prey at the hands of the four appellants. At the risk of repetition, it may be stated that having regard to the totality of the circumstances of this case, there appears to be nothing improbable in the prosecution version and the involvement of all the four appellants is amply proved in this case.

(49) No other point has been raised before me.

(50) Consequently, the conviction as recorded by the learned trial Court is hereby affirmed.

(51) So far as sentence part is concerned, the mandatory minimum rigorous imprisonment to be awarded in such type of cases is not less than ten years. However, it can be reduced on account of special reasons. The present case does not call for any special reason in favour of the appellants for the purpose of reducing the sentence from the minimum provided by the Statute. Consequently the sentence part of the impugned judgment is also affirmed.

(52) Resultantly, all the three appeals fail and are hereby dismissed being devoid of any merit.

(53) All the four appellants shall be taken into custody forthwith to serve out their unexpired part of the substantive sentence.

(54) Let intimation of this judgment be sent to the concerned trial Court, Chief Judicial Magistrate, Ludhiana and the Jail Authorities at once.

(55) Before parting with the judgment, I may observe that the role played by DSP Joginder Singh (DW-2) in this case is unbecoming of a Police Officer, who instead of investigating the case in the right direction, made an attempt to frustrate the same in order to help some of the appellants for certain ulterior considerations, which is strongly condemnable.