

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 31, 2018
CRM No.35406 of 2013 In
CRA-D-781-DB of 2013

Nishan Singh

.....Appellant

Versus

State of Punjab

....Respondent

CRM No.34198 of 2013 IN
CRA-D-722-DB of 2013

Nishan Singh

.....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. H.S. Bhullar, Advocate for the applicant/complainant.

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI, J

By this common order, all the above noted both the applications for compensation are being disposed of.

2. These two applications arising out of different FIR No.261 dated 24.09.2012, under Sections 452, 307, 363, 366-A, 376, 325, 323, 482, 420, 465, 467, 468, 471, 120-B, 212, 216 read with Section 149 of Indian Penal Code, 1860 (for short 'IPC') and FIR No.166 dated 25.06.2012, under Sections 363, 366-A, 376, 120-B, 384, 328, 506, read with Section 34 IPC, registered at Police Station City Faridkot, have been filed by the victim/complainant- Ashwani Kumar Sachdeva.

3. Since the victims are same in both these matters wherein

compensation has been claimed, it is necessary to pass common order regarding compensation in both these matters, though, separate applications for compensation have been made in separate matters.

4. In all, there are three victims in the present case. They are Ashwani Kumar Sachdeva, the complainant, Seema, wife of the complainant and the prosecutrix 'S'. This Court is convinced that the highest amount of compensation will have to be paid to the prosecutrix and thereafter, the remaining two victims also will have to be compensated by an order of compensation under Section 357 of Code of Criminal Procedure, 1973. This Court has referred to the facts, evidence as well as other aspects while deciding other connected appeals and in particular main appeal, i.e. CRA-D-781-DB of 2013, by common judgment. For the purposes of deciding these two applications for compensation, it would burden the record of the present order and therefore, reference to some facts etc. from the main judgment in main appeal, i.e. CRA-D-781-DB of 2013 may be made. However, for brevity, some of the facts are stated herein as under:-

“On 24.09.2012, at about 9:45 A.M., Nishan Singh along with his some companions, barged their entry into the house of the complainant armed with pistol, *kirches*, *kirpans* and iron rods and tried to forcibly take away the prosecutrix 'S' with them. The complainant, his wife and other daughter Sakshi obstructed them, but they were subjected to beatings. They dragged even the complainant in the courtyard and was assaulted with rods resulting into injuries on his left hand, left elbow and backside of neck. Prosecutrix 'S' was then forcibly taken away by them, though, she was raising the alarm. Despite this, the complainant and his other daughter chased them when one of the companions of Nishan Singh fired from the pistol as a result of which, the complainant

retracted. The complainant went ahead and found that they had bundled prosecutrix 'S' into Ford Ikon car of brown colour having tinted glass and fled away. Navjot Kaur mother of Nishan Singh and others had actively participated in the kidnapping and abduction of the prosecutrix minor girl.

The complainant and his wife were admitted to the Hospital. Police recorded the statement of Ashwani Sachdeva, the complainant, on 24.09.2012 so also the supplementary statement. Since he was perplexed and in disturbed condition, he could not give the names and therefore, he stated again that along with Navjot Kaur, her relative Dimpy Samra had visited their house and threatened them to enter into compromise. He also stated that Ghali was armed with pistol and Dhalla and Poppy were having iron rods and it was Ghali who had fired from the pistol and others had caused injuries to them. Seema Arora, the wife of the complainant Ashwani Kumar, also stated on the same line.....

The Special Investigation Team, after thorough searches, on 21.10.2012, intercepted Nishan Singh in Goa and recovered victim prosecutrix 'S' from his custody. In the rented house that was taken by Nishan Singh in Goa, fake driving licences of Nishan Singh and prosecutrix 'S' were seized.....

On 28.10.2012, prosecutrix 'S' expressed desire for medical examination and a medical board examined her and found that she was carrying intra uterine early pregnancy. After obtaining one Jar sample, pursuant to MTP of prosecutrix for DNA test, the same were sent. After making detailed investigation, the Investigator prepared a challan and filed in the competent Court. Charges were framed against all the accused persons. The prosecution examined as many as 52 witnesses, while the defence examined as many as 25 witnesses. Learned Trial Court, after hearing the evidence, recorded the conviction of all the accused persons as stated above.”

“Now examining the evidence regarding rape as stated

earlier by us, the question of consent is insignificant. Apart from the fact that the prosecutrix, in clear terms, deposed before the Court that despite resistance, the appellant-Nishan Singh had committed rape upon her. No other evidence is required to prove rape when there is a medical evidence on record that the prosecutrix had become pregnant and ultimately, when she was recovered from the custody of Nishan Singh, her MTP was performed and even DNA test was got conducted. The testimony of the prosecutrix on the aspect of the rape must be therefore, accepted as there is voluminous evidence for proof of the offence of rape. Our attention was drawn at the evidence of the prosecutrix to show her conduct namely, that, she was always willing and consenting from the inception till her recovery from Goa. We have also given serious thought to her evidence about her conduct to that effect. We do not want to describe that evidence lest it should occupy innumerable pages. Suffice it to say that the prosecutrix having been kidnapped on the strength of arms from her house with the episode of her family members being injured, the people being scared with firing taking place in the broad day light, and she being in custody of appellant-Nishan Singh throughout, what kind of consent/willingness is being propounded! Can one call this as consent! The minor girl herself was worried about her life. We reject the arguments in toto. That apart, we having held the girl being of the age of 15 years, 5 months, consent would be wholly irrelevant.”

5. The portion quoted by us above throws light on the nature of the beastly actions on the part of the appellant-Nishan Singh and his family members in destroying the personality of minor girl prosecutrix 'S' and also subjecting her to pregnancy. The two incidents as stated in the facts above and the grisly acts committed by the appellant-Nishan Singh, his relative Maninderjit Singh alias Dimpy Samra and his mother Navjot Kaur clearly show

as to what kind mental torture/trauma, social stigma etc. must have been undergone by the prosecutrix 'S' as well as her parents. The pregnancy was required to be terminated by medical termination of pregnancy and this fact became to known one and all in the city of Faridkot and also to the community of the complainant-Ashwani Kumar Sachdeva. Thus, the prosecutrix was completely ravaged because of the repeated beastly acts by the appellant-Nishan Singh, his relative Maninderjit Singh alias Dimpny Samra and his mother Navjot Kaur. We are thus, fully convinced that, though, the victims have claimed compensation for prosecutrix and her parents in Para 5 (of the application, i.e. CRM No.35406 of 2013) to the tune of ₹20 lakhs, there is duty cast in this Court, in terms of decision of the Supreme Court in the case of Ankush Shivaji Gaikwad versus State of Maharashtra, (2013) 6 SCC 770, to award adequate compensation.

6. We think, we need not restrict ourselves to the amount of compensation mentioned by the victims in Para 5 (of the application, i.e. CRM No.35406 of 2013) as it is for us to decide the adequate compensation. We have again recalled and revised the entire evidence which we have discussed in CRA-D-781-DB of 2013. We are aghast to see how a middle-class family of the complainant with two daughters was torn into due to rich rural and urban landholder Nishan Singh's and his mother's rowdy and cruel conduct.

7. In our opinion, in the whole background, the prosecutrix 'S' would be entitled to the total compensation amount of ₹50 lakh. The complainant-Ashwani Kumar Sachdeva and his wife-Seema shall be entitled to compensation in the sum of ₹20 lakhs each, i.e. total ₹40 lakhs from the appellant-Nishan Singh and his mother-Navjot Kaur. Thus, the total amount of

compensation that is required to be recovered from the properties of the accused-Nishan Singh and his mother-Navjot Kaur comes to ₹90 lakhs. It is the case of the accused-Nishan Singh and his mother-Navjot Kaur themselves that they own and possess plenty of agricultural lands and urban properties. Not only that, the said statement has also been made in Para-4 (of the application, i.e. CRM No.35406 of 2013). Obviously, the costs of properties in the State of Punjab is on pretty higher side. The appellant-Nishan Singh and his mother-Navjot Kaur own and possess large chunk of lands valued at far more than the amount of compensation that is being ordered to be paid by this Court. It is not difficult at all for both these accused to make good the compensation from the properties owned and possessed by them. We, therefore, think the total amount of compensation arrived at to be payable to the prosecutrix 'S', the complainant-Ashwani Kumar Sachdeva and his wife-Seema comes to ₹90 lakhs. We thus, dispose of both these applications with following operative order:-

ORDER

- (i) **CRM No.35406 of 2013 In CRA-D-781-DB of 2013 and CRM No.34198 of 2013 IN CRA-D-722-DB of 2013** are disposed of;
- (ii) The appellant-Nishan Singh (in CRA-D-781-DB of 2013) and Navjot Kaur (in CRA-D-803-DB of 2013) shall pay total compensation in the sum of ₹90 lakhs (i.e. ₹50 lakhs to the prosecutrix 'S' and ₹20 lakh each to the complainant-Ashwani Kumar Sachdeva and his wife Seema);
- (iii) The collector of the District Faridkot is directed to attach the agricultural as well as urban properties of both Nishan Singh and his mother Navjot Kaur, forthwith, and proceed to recover from sale proceeds thereof the amount of compensation, i.e. ₹90 lakhs as aforesaid and distribute the same as stated in the present order;
- (iv) The entire procedure of attachment and sale of property of Nishan

