

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2300-SB of 2003
Date of Decision: September 09, 2015

Ram Kishan

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.C.Chhabra, Advocate
for the appellant.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 13.11.2003 passed by learned Addl. Sessions Judge, Fast Track Court, Ferozepur, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 376 IPC and he was further convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 506 IPC. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that prosecutrix aged about 12-13 years daughter of deceased Avinash Chander was residing along with her natural mother Neelam and step-father Ram Kishan accused. She was studying in 8th class. After the death of her natural father, she along with her mother started residing in the house of her maternal grand parents in Abohar. About four years earlier to the occurrence, Neelam solemnized kareva marriage with the accused Ram Kishan. The prosecutrix started considering accused as her father. The first wife of accused Ram Kishan had already died and he was having two sons namely Arun and Gagan from the first marriage. They were also residing with Ram Kishan in a rented house along with the prosecutrix and her mother Neelam. 10 days earlier to the Rakhi festival in the month of August 2001, the prosecutrix, her mother Neelam, accused Ram Kishan and his son Arun were present in the house and Gagan was already out of the house. At about 5.00 P.M., accused Ram Kishan sent Arun to bring money from the sweet vendor and sent Neelam to bring vegetable from the bazar. Finding the prosecutrix alone in the house, accused took her inside the room of his house and threw her on the bed and raped her against her wishes. The prosecutrix tried to raise alarm but accused threatened her that in case she do so, he would kill her and due to this threat, prosecutrix did not disclose the occurrence to anyone. On observing her condition, Neelam wanted to know the reason from her but due to threat of the accused, she did not disclose anything. When the prosecutrix failed to have menses, then she disclosed the occurrence

to her mother Neelam. Then Neelam called her brother Raj Kumar and disclosed him the entire occurrence. Raj Kumar suggested for taking legal action against the accused. On 31.08.2001, prosecutrix along with her mother Neelam and uncle Raj Kumar, got recorded the statement to SI Gurmit Singh. On the basis of the statement of the prosecutrix, ruqa was sent to the police station, on the basis of which FIR was registered. Site plan was prepared. Accused was arrested. After necessary investigation, the challan was presented against accused-appellant.

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 376 and 506 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Poonam, who deposed that on 31.08.2011, she medico legally examined prosecutrix aged about 12 years. She stated that hymen was absent. She also opined that prosecutrix was carrying pregnancy of about 9 weeks. PW-2 Dr.Neerja Gupta, deposed regarding conducting of ultrasound examination of the prosecutrix on 03.09.2001 and observed that foetus was seen in uterine cavity and the pregnancy was of nine weeks. PW-3 prosecutrix, deposed as per prosecution version. PW-4 Neelam Rani also deposed as per prosecution version. PW-5 Subhash Chander mainly deposed regarding school leaving certificate showing the date of birth of the

prosecutrix as 21.05.1988. PW-6 Shivraj Bhushan mainly deposed regarding recording of the FIR. PW-7 Retired SI Gurmit Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-8 Dr.M.L.Madan deposed regarding medico legally examination of the accused. PW-9 Constable Mukhtiar Singh and PW-10 MHC Rang Dev were the formal witnesses. PW-11 SI Baj Singh, PW 12 Dr.P.S. Sethi, PW-13 ASI Iqbal Singh and PW-16 Dr.Satwant Kaur Grover were the witnesses of DNA test to complete the link. PW-14 Head Constable Baljit Singh and PW-15 Constable Sukhmander Singh, were also the formal witnesses, who proved their affidavits Ex.P13 and Ex.P14 respectively. PW-17 Head Constable Sudarshan Kumar, also proved his affidavit Ex.P17. PW-18 SI Darshan Singh deposed regarding arresting of accused.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He admitted that kareva marriage was performed and Neelam was residing with him as his wife along with the prosecutrix. As per the case of accused, Neelam Rani was attached to her sister's husband Jagdish Midda and she was living with him at Sri Ganganagar before her kareva marriage. Neelam used to visit Ganganagar with the prosecutrix frequently in the house of Jagdish Midda despite his protest. Neelam has already arranged one god-brother namely Subhash Bajaj, who was also not of good character. It is further the case of the accused that after coming to know the illicit relations of

Neelam with Jagdish Midda, he rebuked her many times but Neelam continued her affair with Jgdish Midda and kept on visiting him. Accused also deposed that relations between him and Neelam became strained. The prosecutrix used to play into the hands of her mother ignoring his advice. When accused came to know about the present case, he immediately moved to this Court (High Court) for DNA test of the foetus but on coming to know this fact, the prosecutrix and Neelam moved for abortion to frustrate his plea that the foetus was not from his loins.

In defence, accused-appellant examined DW-1 Satbir, who deposed Neelam used to remain absent from the house and accused used to quarrel with her.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that firstly there is delay in recording the FIR. He further argued that prosecution version is false as the accused used to stop his wife Neelam Rani along with prosecutrix from remaining absent from the house. He next argued that prosecution version is improbable as no injury was found on the person of the prosecutrix and DNA test has failed and there is nothing to connect the foetus with the accused-appellant. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that the

prosecution has duly proved its case by leading cogent evidence. The prosecutrix and her mother Neelam Rani have consistently deposed regarding prosecution version. There are no material contradictions or material improvements in their statements. The oral statements have been duly supported by the medical evidence. He next argued that the DNA test has failed due to negligence of the official. He next argued that delay is not fatal in such type of cases. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely.

From the record, I find that FIR was registered on 31.08.2001 and the occurrence was of some days earlier to Rakhi festival. So, there is no unnecessary delay in the present case. Furthermore, there was threat to the prosecutrix given by the accused to kill her and her mother. Keeping in view the fact that accused-appellant is step-father of the prosecutrix and the prosecutrix is residing with the accused, the delay of about one month in recording the FIR, in no way, can be held fatal to the prosecution case.

Further, from the evidence on record, I find that prosecutrix has consistently deposed regarding prosecution version. There is no enmity or motive of the prosecutrix to falsely implicate his step-father with whom she was residing along with her mother. The prosecutrix is about 12-13 years of age at the time of occurrence. She has been cross-examined minutely. There is nothing in her cross-examination

which may make her statement unreliable or tutored one. Even if it is taken that the prosecution has failed to connect foetus with the accused by DNA test, which was due to some technical reasons and some negligence of the official, even then, there is nothing on the record to show that the prosecution failed to prove the allegations against the accused. The oral statements of the PWs have been duly supported by medical evidence and also by the statement of the mother of the prosecutrix. The mere fact that there was no injury on the person of the prosecutrix, is no ground to disbelieve the whole prosecution version.

The perusal of the evidence nowhere shows any material contradictions or discrepancies in the statements of the PWs, which may go to the root of the case. There is also nothing in the cross-examination of the PWs, which may make their statements unreliable or to make the prosecution version improbable. The defence version of the accused levelling allegations against mother of the prosecutrix and prosecutrix, is not supported and corroborated by any cogent evidence and cannot be believed. The defence version of the accused that mother of the prosecutrix used to remain absent and there was dispute between the accused and mother of the prosecutrix, is not proved by leading cogent evidence. There is nothing on the record to show that there was any earlier dispute between them before registration of the FIR. If the version of the accused is believed, then no husband would keep his wife with him on whose character the husband is doubting. But as per prosecution

version, the mother of the prosecutrix was residing along with the prosecutrix with the accused. There is no document on record to show any type of dispute between accused-appellant and Neelam Rani. This defence version looks an afterthought. Otherwise also, as per the prosecution version, the occurrence took place about some days earlier to Rakhi, which as per learned counsel for the appellant, may be in the month of July, which means that the occurrence took place 7-8 weeks prior to the registration of the FIR. There is also nothing to show that a child of about 12-13 years of age would level false allegations against her step-father.

From the record, I find that the prosecution has duly proved its case against the accused-appellant by leading cogent evidence beyond reasonable doubt. The judgment of conviction and order of sentence dated 13.11.2003 passed by learned Addl. Sessions Judge, Fast Track Court, Ferozepur, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellant Ram Kishan is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

September 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE