

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision :14.01.2015

1. CRA-S-904-SB-1999(O&M)

Sat Parkash

.....Appellant

Versus

State of Haryana

..... Respondent

2. CRA-S-880-SB-1999(O&M)

Raghubir and others

.....Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr.R.S.Rai, Sr. Advocate with
Mr.Gautam Dutt, Advocate
for the appellant/s.

Mr.Ashish Yadav, Addl.AG, Haryana.

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This order shall dispose of the aforesaid two appeals. Since both the appeals have arisen out of a common judgment, they are being disposed of by this common order.

CRA-S-904-SB-1999 has been filed against the conviction of

appellant Sat Parkash under Section 376 IPC who was sentenced to undergo rigorous imprisonment for a period of 10 years together with a fine of Rs. 1000/- whereas CRA-S-880-SB-1999 has been filed against the conviction of appellants Raghubir, Lakhi Ram, Balbir and Kartar under Sections 323/323 IPC read with Section 34 IPC who were sentenced to undergo rigorous imprisonment for a period of three years under Section 325 IPC together with a fine of Rs. 500/- and for a period of six months for the commission of offence under Section 323 IPC. It is pertinent to mention here that during the pendency of the appeal, appellant Lakhi Ram has died and appeal stands abated against him.

Appeal filed by appellant Sat Parkash viz. **CRA-S-904-SB-1999** against his conviction under Section 376 IPC is taken up first for discussion.

The allegations are that on the fateful day the prosecutrix had gone out of her house for answering the call of nature when the accused tried to rape her. He could not succeed because in the meantime her father and uncle came on the scene and saved her from the clutches of the appellant. The matter was reported to the police. Initially the case was registered under Sections 354/323 IPC but later on, after the statement of the prosecutrix was recorded under Section 164 Cr.P.C., Section 376 IPC was added.

At the very outset it may be mentioned here that the prosecutrix appeared to give testimony and, for a young girl(12years), withstood the cross examination which was fairly ugly at places, with a great deal of fortitude.

The first argument of learned counsel for the appellant is that admittedly there was a dispute between the parties who were neighbours and it is only because of this dispute that this false case has been foisted upon the appellant. This argument has been rightly rejected by the Court below by noticing that in a dispute over water drain no person is likely to use his 12 years old daughter in such a horrific manner.

The second argument of learned counsel for the appellant is that even the first version propounded by the prosecutrix came about 3½ hours after the occurrence and a perusal of that statement clearly reveals that there was not even an attempt to rape. As per him it is only on the next day when she recorded a supplementary statement that she improved her first version and imputed the allegation of attempt to rape. As per him this subsequent statement clearly shows the falsity of the allegation. Learned Addl.AG has not disputed that there is an improvement between the first statement and the statement made the next day but attributes it to the natural shyness of the young girl who mentioned the ghorry details of what transpired with her on the first occasion. As per him the expression '*usne mujh par haath dala*' is an indication that he tried to rape her and in the statement given on the next day she just specified this.

In my opinion the argument of learned Addl.AG cannot be rejected outrightly though despite this explanation a perusal of both the statements does reveal some improvement in the second statement.

Learned counsel for the appellant has also argued that the prosecutrix has written a letter mark 'X' in which she had clearly mentioned that she was forced to level the false allegations against the appellant only

because of fear of her family. He has further argued that the Principal of the school where the prosecutrix was studying had appeared in evidence and had identified the handwriting on that document to be that of the prosecutrix. Per contra learned Addl.AG has argued that firstly there is no explanation why and in what circumstances this letter was given to the appellant by the prosecutrix. Secondly, he has argued that the handwriting was sent for comparison but the report of the handwriting expert suggested that the examination could not be done due to the quality of the paper. As per learned Addl.AG, in the absence of any expert evidence court could rely on that document only if it was sure that it was written by the prosecutrix but even a comparison with the admitted handwriting of the prosecutrix does not lead to the inevitable conclusion that it was written by her. Even this argument of learned Addl.AG cannot be rejected.

The next argument raised by learned counsel for the appellant is that at the best the present is a case of outraging the modesty of the prosecutrix. The appellant has already lost his job, has suffered imprisonment for 3 years, his daughter is to be married in the next three months and, therefore, the Court should reduce his sentence to that already undergone.

Learned Addl.AG on the other hand has vehemently argued that there is a catena of authorities which lay down that penetration is not a sine qua non for rape and keeping in mind the fact that the prosecutrix was a young girl of 12 years of age, no reduction in sentence is called for.

In my opinion the arguments addressed by both the learned counsel are too extreme. After going through all the facts, the medical

record as well as the testimony of PW7-Dr.Vandana Narula, I have reached the conclusion that the present can be classified as a case of attempt to rape and consequently I alter the conviction of the appellant from rape to that of attempt to rape. As regards sentence, after keeping in mind the arguments of learned counsel for the appellant I deem it appropriate to reduce the sentence of the appellant to 5 years rigorous imprisonment. However, keeping in mind the fact that his daughter is to be married in three months, his sentence is suspended up to 30.04.2015 and he is directed to surrender to the jail authorities on 01.05.2015. In default of surrender the prayer for reduction of sentence would be deemed to have been declined.

CRA-S-904-SB-1999 stands disposed of.

Now coming to the appeal filed by appellants Raghubir etc. viz. **CRA-S-880-SB-1999**. The allegation against the appellants is that when the father and uncle of the prosecutrix were beating up the rape accused i.e. Sat Parkash, they rescued him by inflicting injuries on the father and uncle of the prosecutrix.

Learned counsel for the appellants has argued that the present appellants have been convicted only because the trial Court was convinced that the rape accused was guilty. He has not at all discussed the medical evidence nor even given any reason for coming to the conclusion that Section 325 IPC is attracted. As per him even if the previous enmity may not have lead the prosecutrix to make a false admission, yet it would definitely be a good ground for falsely implicating the present appellants in a case of hurt. He has also pointed out that the prosecution has not explained the serious injuries on the person of appellant Raghubir nor has

the trial Judge even referred to them. A perusal of the record reveals that the incident of the rape accused having been manhandled by the family members of the prosecutrix and the involvement of his family members is not disputed. Injuries have been caused to both sides in that incident but the prosecution has neither explained those injuries nor has the trial Court even considered these facts. The conclusion is, therefore, irresistible that these injuries on both sides were as a result of sudden fight when blows were freely exchanged. The injury to the father of the prosecutrix is also on the little finger which could well have been caused by a friendly hand. In the circumstances the offence against these appellants, in my considered opinion, has not been proved beyond reasonable doubt and consequently granting them benefit of doubt, their conviction is set aside. They are acquitted of the charges levelled against them. CRA-S-880-SB-199i9 also stands disposed of.

**(AJAY TEWARI)
JUDGE**

**January 14, 2015
sunita**