

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1013-SB of 2004
Date of Decision: September 09, 2015

Raj Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.S.Rathore, Advocate
for the appellant.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 17.04.2004 and order of sentence dated 19.04.2004 passed by learned Addl. Sessions Judge, Sonapat, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of five 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 six months under Section 376 read with Section 511 IPC and he was further convicted and sentenced to undergo rigorous imprisonment for a period of two years under Section 506 IPC. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that FIR in the

present case has been registered on the complaint of prosecutrix aged about 9 years. As per the prosecution version, report was lodged in the intervening night of 25/26.03.2003 at 12.15 A.M. The prosecutrix alleged that accused has been visiting their house and he was known to the family. On 23.03.2003, he enquired from the prosecutrix about her father and she told him that he is away to the fields. Accused Raj Kumar told the prosecutrix that his wife wanted to see her and took her along towards his house but instead of taking her to his house, he took her to the *gher*. Then accused gave bite marks on her chest and then attempted to commit rape. Thereafter, accused left her after hearing noise of some persons. He took her and left her at her house. On the way accused threatened prosecutrix and asked not to disclose it to any person. When the mother of the prosecutrix was giving the prosecutrix bath, she noticed some marks on her chest and asked her about that. Then the prosecutrix narrated the incident to her mother. Father of the prosecutrix returned in the evening from the fields and the mother narrated the incident to him. The matter was reported to the police on the basis of which FIR was recorded. 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 prosecutrix, who mainly deposed as per the prosecution version and stated that accused has done wrong act and she explained that wrong act. PW-2 Constable Raj Kumar mainly deposed regarding preparing site plan. PW-3 Suresh Chander Bhawala, brought the summoned record and proved the school certificate of the prosecutrix Ex.PC stating date of birth of prosecutrix as 18.02.1993. PW-4 Narender Singh, Statistical Clerk, deposed that as per the record, the date of birth of prosecutrix is 16.08.1993. PW-5 Krishna, mother of the prosecutrix, deposed as per prosecution version. PW-6 Head Constable Ramesh Chander deposed that after medical examination, the doctor handed over him a sealed parcel etc. PW-7 Constable Satyawan and PW-8 Constable Bhagwan Dass, were the formal witnesses, who tendered into evidence their affidavits Ex.PF and Ex.PG respectively. PW-9 Constable Sant Lal deposed that he took accused for medical examination and also deposed that doctor handed over him a sealed parcel etc. PW-10 Inspector Satbir Singh, SHO, deposed regarding preparing of report under Section 173 Cr.P.C. PW-11 Dr.Raj Kumari deposed regarding medico legal examination of the prosecutrix and found the injuries on the chest of the prosecutrix and stated that hymen tear present over posterior surface. The doctor also opined that possible of sexual intercourse cannot be ruled out. PW-12 Dr.B.S.Kadian mainly deposed regarding medico legal examination of the accused. PW-13 Head Constable Raj Kumar deposed regarding recording of the FIR. PW-14 ASI Babu

Ram, Investigating Officer, deposed regarding investigation conducted by him in the present case.

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.

In defence, accused-appellant examined DW-1 Head Master Suresh Kumar, who deposed that as per attendance register, prosecutrix was present in the school on 24th and 25th March, 2003.

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 accused-appellant has been falsely implicated in the present case. No such occurrence had taken place. He further argued that prosecution has failed to prove the guilt of the accused beyond reasonable doubt. 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 case of the prosecution has been duly proved by the statement of the prosecutrix, which is supported and corroborated by medical evidence. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that the prosecutrix has consistently deposed against the accused. At the

time of occurrence, she was aged about 9-10 years. I have gone through the cross-examination of the prosecutrix. There is nothing in the cross-examination of the prosecutrix which may create any doubt in the prosecution version or which may make statement of the prosecutrix unreliable. Otherwise also, there is no motive to falsely implicate the appellant. Furthermore, in such type of cases, no false allegations are levelled as it also involves the honour and dignity of the prosecutrix as well as of the family. The mere fact that the wife of the accused was Sarpanch of the Village, is also no ground to falsely implicate the accused in this case when there is no previous enmity between the parties.

In the FIR, the prosecutrix has stated that an attempt was made to commit rape and in the evidence, she stated that rape has been committed, therefore, learned trial Court took it as material improvement. The prosecutrix has also been confronted with portion 'A to A' in Ex.PA, wherein it is recorded that attempt to rape was made. The prosecutrix also in cross-examination stated that she had made statement that the accused has attempted to commit rape. The prosecutrix also stated in the cross-examination that she told the police that the accused laid upon her. The prosecutrix has consistently deposed regarding prosecution version and her version is duly supported by PW-5 Krishna, mother of the prosecutrix.

The perusal of the evidence on the record shows that there is nothing in the cross-examinations of the material witnesses to make their statements unreliable. No reasonable doubt exists in the

prosecution version. Rather PW-1 prosecutrix and PW-5 Krishna have consistently deposed regarding the prosecution version. The prosecution version is duly supported and corroborated by the medical evidence as the injuries were found on the chest of the prosecutrix. There are also no material contradictions or material discrepancies in the statements of the material witnesses.

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 dated 17.04.2004 and order of sentence dated 19.04.2004 passed by learned Addl. Sessions Judge, Sonapat, 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 Raj Kumar 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