

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

CRA-S-1952-SB of 2007
Date of decision : 13.08.2015

Kuldeep @ Asha Ram

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Gurpal Kaur, Advocate for the appellant.

Mr. Arun Luthra, AAG, Haryana

JITENDRA CHAUHAN, J. (Oral)

The present appeal is directed against the judgment of conviction dated 17.07.2007 and the order of sentence dated 18.07.2007, passed by the Additional Sessions Judge, Faridabad, vide which the accused/appellant Kuldeep, was convicted for the offences punishable under Sections 376(2)(g) and 368/34 of the Indian Penal Code (for short the 'IPC')

Brief facts of the case in hand, as recorded in the opening para of the impugned judgment, are reproduced as under:-

“In brief, case of the prosecution is that Sh. Rakesh, a resident of Prem Nagar, Sector-17, Faridabad has lodged a complaint (Ex.P18) with the police on

13.04.2006 to the effect that he is a labourer and he lives with his wife Smt. Prem and children namely, Sangita 17 ½ years, Amrita 16 years, Ranjita 14 years, son Monu 12 years and younger son-Shiv Kumar 10 years. He has further alleged that his wife and his daughter Ranjita are doing the household work in the houses of Sector 21-C, Faridabad. Yesterday, i.e. on 12.04.2006 his wife Smt. Prem and his daughter Ranjita left their house at 8.30 AM for their work. However, his wife has reached Shiv Shakti Society of Sector 21-C, Faridabad but their daughter Ranjita has not reached there which he came to know when he visited the said Shiv Shakti Society with food for them and as reported by his wife. Then alongwith his wife searched their daughter but to no avail. However, they have not narrated the incident to any one due to insult. However, today i.e. on 13.04.2006 at 8.30 AM Miss Ranjita came to house on her bicycle. When they enquired from her yesterday's incident then Miss Ranjita under fear told them that when she along with her mother reached near Red Light of Old Chowk, on their respective bicycles, their neighbour Raghbar son of Sohan Lal met them. He enticed her away beyond the canal in the house of his friend Kuldeep, a resident of U.P. It was one room house at Bharat Colony Old, Faridabad. He has committed rape upon her on the assurance that he will marry her. Even she has told her that Raghbar is committing rape upon her on the pretext of marriage with her for the last 2/3 years. Even he has committed rape upon her even in their own jhuggi. The complainant alleged that Raghbar has committed rape upon minor daughter by enticing her under the pretext of

a marriage at the room of Kuldeep. The police has registered a case under Sections 376, 363, 342, 366 IPC. However, during the investigation, it has come that accused Kuldeep has closed the door of the room in which rape was committed in his one room house and he stood guard during the occurrence. Even they have not allowed her to return home on 12.04.2006 and she was confined by locking the door from outside. Thus, the police has also added Sections 368 and 120-B IPC with the offence and after arresting both the accused and completion of the investigations report under Section 173 Cr.P.C. was filed under Sections 363, 366, 376, 368, 120-B IPC in the court. However, separate challan has been filed against accused Raghbar being juvenile in the Juvenile Justice Court. Thus, it is the accused Kuldeep who is facing trial in this Court.

2. *On the perusal of record, a prima facie case was found to have been made out against accused Kuldeep alias Asha Ram under Sections 376(2)(g) and under Section 368/34 of the IPC as he along with co-accused Raghbar alias Kallu (Juvenile) committed gang rape upon Miss Ranjeeta. Charge was framed accordingly to which accused Kuldeep pleaded not guilty and claimed trial.*

3. *To prove its case, prosecution relied on the testimony of several witnesses but have examined only Dharm Pal-HC as PW-1, Jai Kishan-HC as PW-2, Manoj Kumar-Draftsman as PW-3, Miss Ranjita as PW-4, Dr. Narender Kumar, Dental Surgeon, B. K. Hospital, Faridabad, as PW-5, Dr. Savita Yadav, Medical Officer, B. K. Hospital, Faridabad as PW-6, Tota Ram-ASI as*

PW-7, Smt. Prem wife of Rakesh and mother of the prosecutrix as PW-8, Sanjay Kumar-Constable as PW-9, Radhey Sham as PW-10, Jai Parkash-SI as PW-11, Zakir Hussain-ASI as PW-12, Rakesh father of the prosecutrix as PW-13 and learned PP given up PWs Harbans, Sharif Ahmad-HC, Dr. Ram Bhagat and Ram Kishan Constable as their evidence relates to juvenile Raghbar and unnecessary in this case.

4. Statement of the accused under Section 313 Cr.P.C. was recorded in which he has denied the correctness of the incriminating evidence produced by the prosecution against him by alleging that the PWs have deposed falsely against him though he is innocent. In defence, accused has not led any evidence.”

On commitment, the accused was charged under Sections 376 (2)(g) and 368/34 IPC, to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 HC Dharm Pal, PW-2 HC Jai Kishan, PW-3 Draftsman Manoj Kumar, PW-4 the prosecutrix (name withheld), PW-5 Dental Surgeon Dr. Narender Kumar, PW-6 Medical Officer Dr. Savita Yadav, PW-7 ASI Tota Ram, PW-8 Prem mother of the prosecutrix, PW-9 Constable Sanjay Kumar, PW-10 Radhey Sham, PW-11 SI Jai Parkash, PW-12 ASI Zakir Hussain, PW-13 Rakesh father of the prosecutrix.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence,

the accused has not led any evidence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved against the judgment of conviction and the order of sentence passed by the Trial Court, the instant appeal was filed by the accused/appellant which was admitted on 01.10.2007.

Custody certificate has been filed in the Court, is taken on record.

Learned counsel for the appellant/accused has contended that the learned trial Court has grossly erred on the facts as well as in law while convicting the appellants/accused and the appellants/accused has been falsely implicated in the present case. She states that it was the Raghbar co-accused, who took away the prosecutrix from the way to Bharat Colony, Faridabad and then took her at the room of the appellant.

On the other hand, the learned State counsel opposed the prayer of appellant/accused and supported the judgment of conviction and order of sentence passed by the trial Court. He further pointed out that the appellant has already undergone the entire period of sentence.

I have heard the arguments of the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case fully proved from the statement of PW4 the prosecutrix (the name withheld) aged about 15 years who stated that co-accused Raghbar locked her in the house of appellant/accused-Kuldeep and

he raped her against her wishes in the presence of the appellant, who was guarding the spot. She was subjected to cross-examination but nothing favourable to the present appellant has been found. Rather in cross examination it has come that the appellant asked her not to go in the night, where he remained at the house upto 12 in the noon. Though there is no allegation of committing the rape by the present appellant but he has actively aided the commission of the offence. It has also come in evidence that the house where the rape was committed by the co-accused, belongs to the appellant. PW10 Radhey Sham proved that the appellant used to reside in a room of the first floor of his house at the rent of Rs.500/- per month. The mere fact that in cross examination PW10 Radhey Sham stated that the appellant remained as tenant in his house from 10.02.2004 to 10.02.2005 approximately is of no consequence especially when the prosecutrix has categorically stated that the rape was committed in the room of the present appellant. No record of rent was produced by the landlord to negate the prosecution version and to prove that on the date of committing the rape he was not in occupation of the room. There are 16 rooms given on rent by PW10 Radhey Sham, he might have maintained the record regarding the tenancy of rooms given to different tenants. There is no motive to falsely implicate the appellant in this case. The sole testimony of the prosecutrix is enough to convict and sentence the accused-appellant in a rape case. There is no strong reason to ignore the testimony of the prosecutrix. The medical evidence corroborates the version of the prosecutrix. PW8 mother of the prosecutrix also putted the prosecution case regarding age of the prosecutrix

and it is proved on record that she was about 15 years at the time of the commission of the offence. From the appraisal of the medical and ocular evidence this court is of the opinion that the learned trial court has correctly convicted and sentenced the accused, no other view is possible. From the custody certificate produced by the State, it is proved that the accused/appellant-Kuldeep was released on 28.11.2013 after expiry of seven years, seven months and fifteen days sentence by giving him the benefit of undertrial period and earned remission. He has also deposited the amount of fine on 26.11.2013. He has thus completed the sentence.

Keeping in view above facts and circumstances, there is no merit in the appeal, which is dismissed.

13.08.2015

ashok

(JITENDRA CHAUHAN)
JUDGE