

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: September 02, 2015

CRA-D-322-DB-2010 (O&M)

Harvinder Singh @ Ravi

..... Appellant

Vs.

State of Punjab

..... Respondent

Argued by: Mr. Deepak Sabherwal, Advocate
for the appellant.

Mrs. Manjari Nehru Kaul, Additional Advocate General, Punjab

CRA-D-353-DB-2010 (O&M)

Gurjeet Singh @ Jeeta

..... Appellant

Vs.

State of Punjab

..... Respondent

Argued by: None for the appellant.

Mrs. Manjari Nehru Kaul, Additional Advocate General, Punjab

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAJ RAHUL GARG.J.

The above mentioned two appeals arise out of judgment dated 02.02.2010 rendered by the then learned Additional Sessions Judge, Jalandhar, whereby accused-appellants Harvinder Singh @ Ravi and Gurjeet Singh @ Jeeta were convicted for committing offence punishable

under Sections 366, 376 (g) and 323 of Indian Penal Code (for short 'IPC'). They were also sentenced vide order of sentence of even date. Each one of them was sentenced to undergo RI for 10 years alongwith fine of ₹2,000/- with default clause for committing offence punishable under Section 366 IPC; to undergo RI for 14 years alongwith fine of ₹2,000/- with default clause for committing offence punishable under Section 376 (g) IPC and to undergo RI for 6 months for committing offence punishable under Section 323 IPC. Co-accused Harpreet Singh @ Happy had died during the pendency of the trial.

Brief facts of the prosecution case is like this; that on 19.07.2007, Gurdev Singh, father of the prosecutrix got recorded FIR of this case to the effect that his eldest daughter Sandeep Kaur is married whereas his younger daughter aged about 17 years (prosecutrix), studying in 10th Class at Government School, Mustafapur, did not return from the school on 18.07.2007. The prosecutrix has gone to school that day at about 7:30 A.M. She used to come back from school at 3:00 P.M. but she did not return. On this, complainant started making search for prosecutrix. He inquired about whereabouts of the prosecutrix from her friends, whereupon, he came to know that his daughter did not attend the school that day. Complainant also rang-up his relatives but could not find any clue about her. Complainant also reported the matter to the police that 1-½ months ago while prosecutrix was going to school, Jeeta and Happy, residents of village Buttar, had eve-teased her. They had been following her on the motorcycle and had also been harassing her. He and his relative Sucha Singh, reasoned out with them by telling them not to harass the prosecutrix. He suspected that his minor daughter may have been abducted by aforesaid Jeeta and

Happy. He gave the date of birth of the prosecutrix as 02.12.1990. FIR under Sections 363/366 IPC was registered. Search for the accused was made.

On the next day i.e. on 20.07.2007, the prosecutrix was recovered from Bus Stand, Nau Gaja, where she was found weeping. Statement of prosecutrix was also recorded by the police wherein she disclosed that on 18.07.2007 at about 8:30 A.M., while she was going to school, situated at Mustafapur, two persons in the name of Happy and Jeeta, were seen by her, riding a motorcycle. They used to eve-tease her in the past. When she was near to them, Happy got down from the motorcycle and after picking her up, placed her on the pillion of the motorcycle between them and, thereafter, they drove her away. As per prosecutrix, motorcycle was being driven by Gurjeet Singh @ Jeeta. When she tried to raise 'RAULA', her mouth was shut with her 'CHUNNI'. They took her to an uninhabited DERA (a HAVELI belonging to Jeeta). Another accused namely Ravi was already waiting in the *Haveli*. Soon, thereafter, Sonu s/o Gurmel Singh, her neighbour, also reached there. All the four accused made her drink a cold-drink. Resultantly, she fell unconscious. When she regained consciousness, she found herself nude and sexual intercourse had been conducted with her. She felt pain in her entire body. By that time, darkness had dawn. When she tried to raise 'RAULA', all the accused thrashed her with their belts and caused her injuries. Thereafter, all of them raped her turn by turn. In the morning, she was again offered cold-drink. After consuming the same, she again became unconscious and, thereafter, all of them again had committed sexual intercourse with her. On the following morning, accused Jeeta and Happy with an intention to change

place have been carrying her by their motorcycle. After reaching at Bus Stand, Nau Gaja, when she raised a noise, they threw her from their motorcycle and had run away. Since the accused were named by the prosecutrix, therefore, the house of the aforesaid accused were raided. Supplementary statement of complainant Gurdev Singh was recorded. Statement of prosecutrix was recorded under Section 164 Cr.P.C. During the course of investigation, accused Gurjeet Singh @ Jeeta, Harpreet Singh @ Happy and Harvinder Singh @ Ravi were arrested. Accused Sonu was got declared proclaimed offender as he avoided his arrest by absconding.

On the statement of Gurdev Singh, ASI Barjinder Singh, made his endorsement Ex.PW7/A and sent the same through PHG Baldev Singh to the police station, Kartarpur, for recording of formal FIR, whereupon, formal FIR Ex.PW7/B was registered. On 20.07.2007, when he and complainant, in search of prosecutrix, had reached Bus Stand of village Nau Gaja, they found that one girl was weeping who was identified by Gurdev Singh as his daughter. Her statement was recorded by the police. She was taken to Civil Hospital, Kartarpur for her medical examination from where she was referred to Civil Hospital, Jalandhar. She was medico-legally examined over there. From medico legal examination of injuries, on the asking of the concerned Medical Officer, Civil Hospital, Jalandhar, the prosecutrix was taken to Civil Hospital, Kartarpur, where she was examined and admitted for treatment. On 21.07.2007, she was produced before the Illaqa Magistrate for getting her statement recorded under Section 164 Cr.P.C. However, the Court ordered the police to produce her on 23.07.2007. On 23.07.2007, the Court told the police that it was proceeding on leave and as such the police was directed to produce the prosecutrix on

26.07.2007. The Court recorded the statement of prosecutrix and, thereafter, the prosecutrix was handed over to her parents.

On the basis of secret information, accused-Harpreet Singh was arrested on 25.07.2007. Rough site plan of the spot Ex. PW7/D was prepared. On application Ex.PW7/E to the doctor, on 28.07.2007 the doctor of the Civil Hospital, Kartarpur, conducted the medical examination of accused. Remaining accused were got medico-legally examined by moving applications Ex.PW7/F and Ex.PW7/G. Report FSL was obtained and, thereafter, offence under Section 376 IPC was added. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused, they were charge-sheeted for committing offence punishable under Sections 363,366, 376 (g) and 323 IPC, to which they did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence. Accused Gurjeet Singh @ Jeeta took the defence that he did not commit any such offence. Ajit Singh, resident of village Buttar, is the husband of the sister of Gurdev Singh-complainant, who is inimical towards him and his family. His name has been introduced in the FIR at the instance of Ajit Singh by Gurdev Singh. Later on, the prosecutrix was maltreated, tortured and beaten up by Ajit Singh and Gurdev Singh who compelled her to name him in the above-said alleged incident. He neither committed rape nor teased nor abducted the prosecutrix. In fact, the prosecutrix eloped with Sonu. Sonu was very much available in the village Rajab but he has not been got arrested

intentionally by the complainant.

Accused Harvinder Singh @ Ravi, pleaded by way of defence that he has been falsely implicated by the police due to some misguided suspicion. He has never visited the village of prosecutrix nor the alleged place of occurrence.

In defence, accused examined Balbir Singh as DW1 whereas Pal Singh, Sarpanch of village, Buttar, as DW2.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court, rendered the impugned judgment of conviction and order of sentence, already mentioned in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on record.

Learned counsel for the appellant argued that as per the case of the prosecution and the statement of prosecutrix, she was unconscious when rape was committed on her. She deposed that when she regained consciousness, she found that rape was committed on her by the accused. If the prosecutrix was unconscious at the time of commission of rape, it is not understandable as to how she would be able to know the real culprits as who had committed rape and who not. It was also argued by learned counsel for the appellant-accused that prosecutrix herself stated as PW6 that accused Harvinder Singh, had not eve-teased her and further that she was not aware about his name. Thus, when accused Harvinder Singh, was not known to the prosecutrix, the involvement of Harvinder Singh, accused in this case, becomes doubtful.

The above argument of learned counsel for the appellant has no legs to stand in view of the statement of prosecutrix (PW6) and that of her father Gurdev Singh (PW4), who is the complainant of this case. In this case, the FIR is prompt. Gurdev Singh (PW4) categorically stated that prosecutrix had gone to school at about 7:30 A.M. on 18.07.2007. She was to return at 3:00 P.M. But when she did not return, he started looking for the prosecutrix. He made inquiries from her friends, whereupon, he came to know that prosecutrix did not attend the school that day and thus he reported the matter to the police, clearly giving the names of Happy and Jeeta as her abductors. He categorically stated that he had suspicion on them as 1-½ months prior to this incident, accused Happy and Jeeta, had been eve-teasing his daughter. When prosecutrix was recovered i.e. on 20.07.2007, she also named the above two persons as one who had picked her up on her way to school by a motorcycle. She specifically stated that when she was near them, accused Happy picked her up and made her sit in between and then took her away to DERA (a HAVELI belonging to Jeeta). She also deposed that Gurjeet Singh @ Jeeta was driving the motorcycle at that time. She further categorically stated that accused Harvinder Singh @ Ravi was also waiting at the Haveli and soon, thereafter, Sonu accused, her neighbour, also reached there. Thus, right from the very beginning, the prosecutrix had been naming the four accused. It hardly matters if accused Harvinder Singh @ Ravi, earlier eve-teased the prosecutrix or not, the fact remains is this that he was present in the Haveli and was waiting there, when accused Happy and Jeeta took away the prosecutrix to the Haveli. Since the 4th accused Sonu also reached there, soon after taking of the prosecutrix in the Haveli, it shows that all the four accused had conspired

together, there was prior meeting of minds and in pursuance with that only, all the four accused were present at the aforesaid Haveli i.e. the scene of crime.

The argument raised by counsel for the appellant-accused that since the prosecutrix was unconscious at the time of alleged rape, therefore, she could not be in a position to see as to who had committed rape on her; is also not tenable. It is not the case where the accused committed rape while the prosecutrix was unconscious and, thereafter, they had run away after leaving her in an unconscious state of mind. It is a case where the prosecutrix has categorically stated that she was abducted by Happy and Jeeta while she was on her way to school. She further deposed that when she was brought to an uninhabited (Haveli), accused Ravi was also waiting there and soon, thereafter, Sonu, her neighbour, also reached there. Thus, she was knowing about the presence of all the four accused before the commission of offence of rape upon her. Not only this, she further categorically stated that she was made to take a cold-drink and, thereafter, she fell unconscious and when she regained consciousness, she found that all her clothes have been removed and sexual intercourse had been conducted with her and she also felt pain in her entire body. All these facts clearly show that she was raped by the accused. Not only this, the accused did not leave that place. They remained there. They also gave beatings to her when she had tried to raise 'RAULA'. She was again raped by all the aforesaid accused turn by turn. In the following morning as well she again made to consume a cold-drink and when she fell unconscious, the accused again had committed sexual intercourse with her. Thus the prosecutrix remained with the accused for 2 days. During the aforesaid period, none of

the accused left the place of occurrence. It is not the case of the prosecution that for the aforesaid 2 days, the prosecutrix remained unconscious for the whole period. As such, with the statements of Gurdev Singh (PW4) complainant and prosecutrix (PW6), identity of the accused of this crime stands established beyond doubt.

It was next argued by learned counsel for the appellant-accused that in this case, there are two MLRs of the prosecutrix. She was firstly medico-legally examined on 20.07.2007 by doctor Manjit Kaur Bawa (PW3) vide MLR, copy of which is Ex.PC. At that time, the doctor detected few abrasions on her legs and ankle. On the same day, in the evening, she was taken to Dr. Mohinderjit Singh (PW1), who also medico-legally examined the prosecutrix regarding injuries on her person and found 9 injuries on her person. Dr. Manjit Kaur Bawa, did not find the aforesaid 9 injuries on the person of prosecutrix. Dr. Manjit Kaur Bawa, medico-legally examined prosecutrix in the first instance. This fact shows that, in fact, accused did not cause these injuries to prosecutrix but the same were caused by the father of the prosecutrix as she had a sex with Sonu. Sonu is her neighbour. The prosecutrix eloped with Sonu, and, thereafter, on account of enmity of Gurjeet Singh with Ajit-husband of the sister of the complainant, he has been named in this case and accused Harvinder has also been falsely implicated in this case.

The above contention of learned counsel for the appellant-accused is again not sustainable, in view of statement of ASI Barjinder Singh, Investigating Officer of this case, who has appeared as PW7. He has explained the circumstances under which 2 MLRs of the prosecutrix were conducted. He categorically stated that on recovery of prosecutrix, they had

taken her to Civil Hospital, Kartarpur for her medical examination. From there, she was referred to Civil Hospital, Jalandhar, where the prosecutrix was medico-legally examined by Medical Officer. For medico-legal examination of injuries, on the asking of the concerned Medical Officer, Civil Hospital, Jalandhar, the prosecutrix was taken to Civil Hospital, Kartarpur, where she was examined and was admitted for treatment. Dr. Manjit Kaur Bawa (PW3), categorically stated that she medico-legally examined the prosecutrix only for the purposes of commission of rape. Under these circumstances, it becomes evident that since the prosecutrix was to be medico-legally examined for the purposes of rape by a lady Medical Officer, therefore, she was referred to Civil Hospital, Jalandhar. Accordingly, for that limited purpose, Dr. Manjit Kaur Bawa, medico-legally examined prosecutrix. Investigating Officer, PW7, categorically stated that for the injuries on her person, the prosecutrix was medico-legally examined by Dr. Mohinderjit Singh (PW1). Of course, such conduct of doctor is not appreciable as when the prosecutrix was medico-legally examined by a lady Medical Officer, she should have examined her medico-legally for the purposes of rape as well for the purposes of injuries on her person. The contention of learned counsel for the appellant-accused that in fact, the injuries were inflicted by Gurdev Singh-complainant i.e. father of the prosecutrix, on her person, when he came to know about the fact that she eloped with Sonu and had sex with him; is devoid of any force. Dr. Mohinderjit Singh (PW1), gave his opinion that all the injuries on the person of prosecutrix were found simple having been caused to her within 2 to 3 days. Doctor did not opine that the injuries are fresh. On 20.07.2007, the prosecutrix was recovered. She was medico-legally examined by doctor

at Civil Hospital, Jalandhar as well by doctor at CHC, Kartarpur. Under these circumstances, even there was no occasion for complainant Gurdev Singh, to cause injuries to prosecutrix and then to get her medico-legally examined. Even otherwise, had Gurdev Singh inflicted injuries on the person of the prosecutrix, the doctor would have reported the same as recent or fresh injuries, which is not the case. On the police request, prosecutrix was got medico-legally examined by the aforesaid 2 doctors. Under these circumstances, argument of learned counsel for the appellant-accused that at the time of medico-legal examination of prosecutrix, it finds mention on the MLR, copy of which is Ex.PA, that prosecutrix was not medically examined by any Medical Officer before that examination; is of no avail, as Dr. Mohinderjit Singh (PW1), categorically stated during the course of his cross-examination that as per his record, the prosecutrix was also examined by a Gynecologist vide Civil Hospital slip No. 07000509 dated: 20.07.2007. This endorsement is on the copy of MLR Ex.PA of the prosecutrix. The aforesaid endorsement that the prosecutrix was not medico-legally examined by any Medical Officer before that examination, Mark 'A' was made by doctor at the instance of the parents of the prosecutrix but the doctor further deposed that the signatures of the parents are not there on that endorsement. As such, endorsement, Mark 'A' is of no avail. In the presence of endorsement Mark 'B', that prosecutrix was also examined by a Gynecologist vide slip No. 07000509 dated: 20.07.2007, carries weight and further proves the case of the prosecution beyond reasonable doubt, even on the point of conducting of 2 medico-legal examinations of the prosecutrix.

It was next argued by learned counsel for the appellant that

Investigating Officer did not conduct the investigations on the point of eve-teasing by accused Happy and Gurjeet Singh @ Jeeta. Investigating Officer did not make inquiries from the friends of the prosecutrix who could well depose as to if the prosecutrix were ever eve-teased by accused Happy and Gurjeet Singh @ Jeeta, or not. None of the friends of the prosecutrix was kept as a witness in this case. It is categorically admitted by complainant Gurdev Singh as well the prosecutrix that 6 girls from the village of prosecutrix including the prosecutrix used to go to school together.

The above argument of learned counsel for the appellant is not of much avail as it is nowhere the case of the prosecution that prosecutrix had always been going to school in the company of other girls and not alone at all. It is also not the case of the prosecution that accused Happy and Gurjeet Singh @ Jeeta had been eve-teasing the prosecutrix in the presence of school-mates of prosecutrix rather the complainant deposed that 1 ½ months prior to the present occurrence, accused Happy and Gurjeet Singh @ Jeeta, eve-teased the prosecutrix. He did not state that they had been continuously eve-teasing her. Even the prosecutrix as PW6 narrated the facts in this regard. She deposed that 2/3 girls of her village used to come to school. Their names are Kajal, Kamal and Simmi. They were studying in 10th standard. All of them go to school on foot. Sometimes, they are joined by some other girls on the way. Sometimes one or two girls meet them. She starts from her house at 7:30 A.M. and joined above-mentioned girls near cremation ground of their village. Sometimes, they are followed by some other girls going to the aforesaid school and sometimes few girls going to school ahead of them. She further deposed that on the day of occurrence, there was nobody else. Under these circumstances, if the Investigating

Officer, did not keep any of the girl student of the school of the prosecutrix as a witness, it is not fatal for the prosecution case.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 02.02.2010 and order of sentence of even date, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 02,2015
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