

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 09.12.2015
CRA-D-284-DB-2011 (O&M)

Karamjit Singh and others Appellants

Vs.

State of Punjab Respondent

CRA-D-342-DB-2011 (O&M)

Tarsem Singh @ Seema Appellant

Vs.

State of Punjab Respondent

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?

Argued by: Ms. G.K.Mann, Advocate
for the appellants (in **CRA-D-284-DB-2011**)

Mr. T.S.Sangha, Sr. Advocate with
Mr. H.S.Sangha, Advocate
for the appellant (in **CRA-D-342-DB-2011**)

Ms. Manjari Nehru Kaul, Addl. Advocate General, Punjab.

RAJ RAHUL GARG.J.

The above mentioned two appeals have been directed
against the judgment dated 15.02.2011 rendered by learned Additional
sessions Judge, Barnala, whereby all the five accused were held guilty

for committing offence punishable under Section 376(2)(g) IPC, 459 IPC, 326,324, 323/149 IPC. Vide order of sentence of even date, each one of them was sentenced to undergo imprisonment for life and to pay a fine of ₹20,000/- with default clause for committing offence punishable under Section 376 (2)(g)/149 IPC; for offence under Section 459 IPC to undergo rigorous imprisonment for 7 years and to pay a fine of ₹2,000/- with default clause; for offence under Section 326/149 IPC to undergo RI for three years and to pay a fine of ₹1,000/- with default clause; for offence under Section 324/149 to undergo RI for 2 years and to pay a fine of ₹500/- with default clause and for offence under Section 323/149 to undergo RI for 6 months and to pay a fine of ₹500/- with default clause.

Briefly, prosecution case is like this; that on receipt of wireless message from SHO, Police Station, Bhadaur on 17.10.2008, regarding admission of prosecutrix in the Civil Hospital, Bhadaur, SI Karamjit Singh, along with police officials reached Police Station Bhadaur. After obtaining *ruqa* of the doctor, they went to Civil Hospital, Bhadaur and obtained the opinion of the doctor regarding fitness of the prosecutrix to make statement. She was declared fit to make the statement by the doctor, thereafter, statement of prosecutrix was recorded as Ex.PA. In her statement, prosecutrix gave her age as 15 years. She stated that during the intervening night of 16/17-10-2008, on account of pain in her abdomen, she woke up and gone for answering the call of nature. When she was washing her hands from the

hand-pump, installed in the courtyard of their house, she saw Monu, Jiwan armed with *kirpans*, Sema, Seepu @ Sukhdeep and Pita, residents of Sehna coming in the courtyard of their house from the roof by stairs. Pita put his hand on her mouth, Jiwan caught hold of her by her arms and Sema and Monu caught hold of her by both the legs and forcibly took her in the '*Deodi*' and then made her to lay on the cot. After removing her *salwar*, Seepu started committing sexual intercourse with her and asked Monu to close the door from outside where her father was sleeping. Monu, accordingly, closed the door. Thereafter, Seepu and Monu committed sexual intercourse with her and when she objected, Monu and Jiwan gave injuries with their *kirpans* respectively on her legs. Jiwan gave *kirpan* blow on her left leg, then front portion of leg. Thereafter, Jiwan gave another blow and when she raised her arms to save herself it hit on her right hand. Another blow was given by Jiwan on the left leg on the lower side. Another blow was given by Jiwan on the left ankle. Another *kirpan* blow, by using its blunt side, was given by Jiwan on her left leg and left hand due to which the blood started oozing out of her legs. She raised alarm which attracted her father, who started knocking at the door to open it and, thereafter, all the aforesaid persons had run away from the spot. The prosecutrix opened the door and was admitted in Civil Hospital, Bhadaur, after making arrangement of the private vehicle. On this statement, endorsement Ex.PA/1 was made and the same was sent to Police Station through SPO Harmesh Singh for registration of FIR,

whereupon, formal FIR Ex.PA/2 was recorded. Rough site plan of the place of occurrence was prepared.

On 26.10.2009, accused Gurpreet Singh @ Peeta, Jiwan and Motu @ Karamjit were arrested. They were got medico-legally examined. The prosecutrix was also got medico-legally examined. Statements of witnesses were recorded. After completion of necessary investigations and receipt of the report of Chemical Examiner, the challan was presented in the Court against accused Karamjit Singh, Jiwan and Gurpreet Singh @ Peeta whereas accused Tarsem Singh was kept in column No.2 and Sukhdeep Singh @ Seepu was declared as proclaimed offender. On 09.04.2009, supplementary challan was presented against Sukhdeep Singh accused.

Accused were charge-sheeted for committing offence punishable under Sections 376(2)(g), 323, 324, 326 and 459 read with Section 149 IPC. Accused Tarsem Singh was summoned as an additional accused invoking the provisions of Section 319 Cr.P.C., as such, he faced trial. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded, wherein, they denied each prosecution allegation and pleaded their false implication. Accused Sukhdeep Singh took the defence that he never went to the house of the prosecutrix. Prosecutrix used to mix tablet of diazepam in the meal of her father who used to sleep and, thereafter, prosecutrix used to leave the house of her father at night and have sexual intercourse daily. He also stated that during the intervening

night of 16/17-10-2008, when her father was sleeping, the prosecutrix had sexual intercourse with someone else and when her father got up and started searching her daughter, she was given injuries by her own father. He stated that he never committed any sexual intercourse with the prosecutrix. In defence, accused examined Baldev Singh as DW1, Gurmail Singh as DW2 and DSP Satwant Singh as DW3.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the judgment of conviction dated 15.02.2011 and passed the order of sentence of even date, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence on record.

First of all, learned counsel for the appellants-accused tried to create doubt in the prosecution story contending that the statement of prosecutrix recorded as PW1 is not consistent with the prosecution story. She has materially improved her version. On the point of improvement, she has been duly confronted with her statement Ex.PA. As such for this reason alone, the appellants-accused are entitled to benefit of doubt. Referring the cross-examination of PW1, it was contended that in her statement Ex.PA, the prosecutrix did not name Seepu as the one who removed her *salwar* and also that of his pant. In fact, if we go through the statement of prosecutrix, which is Ex.PA, it would become clear that she has categorically attributed part played by

each accused while lifting her from the courtyard and making her lay on the cot. She has stated in her statement that after removing her *salwar*, Seepu started committing sexual intercourse with her. Thus, no way this statement of prosecutrix can be said to be contradictory to her statement made in the Court, when she states that Seepu removed her *salwar* and also his pant. In FIR, minute details are not required to be given. Likewise, if the prosecutrix deposed in her statement in the Court that accused escaped through the same stairs from where they entered her house, cannot be said to be contradictory to her statement Ex.PA, where she simply stated that when she raised alarm which attracted her father who started knocking at the door to open it and then all the accused had run away from the spot. Infact, minutes details cannot be given in the FIR. After the occurrence, what transpired between the prosecutrix, her father and other family members, each and every details regarding that if not given in the FIR, no way affects the genuineness of the prosecution case and if during the course of her statement or during the course of her cross-examination, those minute details have been explained, those cannot be termed as improvement or contradictions appearing in the statement of prosecutrix.

It was next argued by learned counsel for the appellants-accused that as per statement of prosecutrix (PW1), firstly rape was committed on her person and then injuries were caused to her by the accused. It is not plausible. When rape itself was committed, there was no point for the accused to cause injuries to the prosecutrix. This

argument of course appears to be attractive yet under the facts and circumstances of the case, it is devoid of any force. Prosecutrix deposed as PW1 that accused entered into her house from the roof side through the stairs. Peeta accused had covered her mouth with his hands, Jiwan had caught hold of both her arms, Motu and Sema have caught hold of both her legs and after lifting her, they had taken her to the outer *Deodi* of her house. The cot which was lying there was spread by the accused. Seepu had opened her *salwar* and also removed his pant and then he committed intercourse with her. Then Seepu had told Motu to bolt the outer door of the room where her father was sleeping. Motu, then, bolted the door from the outside then Motu also committed rape upon her. At this juncture, she further deposed that when she was resisted, Motu and Jiwan had given *kirpan* blows on her legs. Even in her cross-examination, she deposed that she opposed to Motu for sexual intercourse when they caused injuries to her. Jiwan had given *kirpan* blow on the left knee and front portion of lower leg. He had also given *kirpan* blow on her right ankle, below her right knee and had also given blows with the handle of *kirpan* on her left side of waist. When she was warding of the blows, she also sustained injuries on her right hand, as a result of aforesaid injuries, blood started oozing out from her legs. Under these circumstances, when the accused were five in number and they all were actively participation in the commission of the crime, Seepu and Motu had already committed rape upon her, obviously, the others must have also been desiring to act in the same manner. As such,

when prosecutrix resisted, Motu and Jiwan accused inflicted injuries with *kirpan* on the person of the prosecutrix. Under these circumstances, what to speak of plausibility of act of infliction of injuries by the accused, but their act is heinous one.

It was next argued by learned counsel for the appellants-accused that in fact prosecutrix was a lady of easy virtue. She used to mix diazepam tablet in the meal of her father daily. After eating the meal, her father used to sleep and, thereafter, the prosecutrix used to leave the house during night time. She used to have sexual intercourse daily after going out of her house at night. On the intervening night of 16/17-10-2008 as well she had gone out of her house when her father was asleep and had intercourse with someone. When her father got up, he started searching for her and after searching the prosecutrix, her father caused injuries to her whereas accused are innocent, they did not go to her house nor committed any rape nor caused any injury to the prosecutrix. This contention is also not sustainable as there is no material available on the file to show that the defence version is in any way probable. Therefore, the prosecution case cannot be said to be doubtful in any manner.

The next argument raised is regarding delay of 15 hours in lodging the FIR of this case. This delay has given sufficient time to the prosecutrix and her father to concoct a false story against the accused. The occurrence allegedly took place on the intervening night of 16/17-10-2008. The statement of the prosecutrix was recorded on 17.10.2008

at 3:50 P.M. This shows that there was about 15 hours delay in lodging the FIR. The prosecutrix stated that during the entire night, due to fear, she along with her father remained confined in the room. Only in the morning, when her grand-father came to their house, the entire occurrence was narrated to him, whereupon, her grand-father had tried to prevail upon them suggesting not to lodge the report with the police as otherwise they will earn enmity with the accused. However, the prosecutrix was taken to the hospital and then the matter was reported to the police. This explanation is not sufficient to explain the delay in lodging the FIR. In fact, injuries were inflicted on the person of prosecutrix by her own father. As such, they were having a mind not to lodge the report with the police. Case being false against the accused, they are entitled to acquittal. This argument is again not sustainable as in rape cases, the initial reaction of the parents as to suppress the occurrence as they do not intend to get a stigma attached to the victim. This generally results into the delay in lodging the FIR. In this case as well, PW1 and PW2 stated that in the morning they narrated the entire occurrence to the grand-father of the prosecutrix who had tried to prevail upon them not to lodge the report with the police. Staying at home during night time by the prosecutrix and her father is not unnatural rather a wise act. It is never known that the culprits of this crime who were five in number, may strike again, finding them alone, in order to deter them from going to the police for lodging the report. It is also quite natural for the father of the prosecutrix to consult his own

father on the issue. As such, after disclosing the facts to grand-father of the prosecutrix, she was taken to the hospital. The prosecutrix had suffered fracture of right tibia. As such, she was to be taken to the hospital and consequently FIR of this case was registered. Even otherwise delay in lodging the FIR in sexual assault cases cannot be equated with the cases involving other offences. Before lodging the FIR, several factors weigh the mind of the prosecutrix and her family. As such, simple delay in lodging the FIR, cannot be made a ground to throw away the prosecution case. So has been held in **Himachal Pradesh Vs. Prem Singh 2009 (5) RCR 720, (SC).**

The present case is the one of gang rape case. Five accused entered into the house of the prosecutrix during night time. They picked her up while she was in the courtyard of her house and made her lay on a cot lying in the '*Deodi*' of her house and then violated her person. When she resisted to the act of other accused, injuries with *kirpan* were inflicted on her person. The prosecutrix was of the age of 15 years. The entire life is ahead of her. In such like circumstances, every parent would think thousand times before lodging the report with the police as lodging of report will certainly have effect on the honour of the family and particularly on the life of the prosecutrix. Under compelling circumstances, one thinks of lodging such like report. The manner in which such offence is committed could also be a reason for the prosecutrix to lodge the report with the police. There is in fact not even an iota of evidence on the file to show as to why the prosecutrix

would implicate the appellants-accused falsely in this case. What enmity prosecutrix or her father was having with any of the accused?.

Mr. T.S.Sangha, Sr. Advocate for the accused Tarsem Singh @ Sema, contended that in this case no time of occurrence has been given by the prosecutrix. She simply stated that after taking meal, she and her father had gone to sleep. This means that the alleged occurrence must have taken place during first half of the night. As such, the entire prosecution case becomes doubtful. Infact, this argument of learned counsel for the appellant-accused has no legs to stand. Even if no time of occurrence is given in the FIR, it hardly makes any difference and prosecutrix has stated that during the intervening night of 16/17-10-2008, by no stretch of imagination, it can be concluded that the occurrence had taken place during first half of the night. No cross-examination of PW1 and PW2 have been done on this point as well.

The next point of argument of Mr. Sangha is this; that infact appellant Tarsem Singh @ Sema has been falsely implicated in this case. DSP Satwant Singh (DW3), in Ex.DW3/B found Tarsem Singh as innocent. He has also proved the statement of prosecutrix Ex.DA recorded by him. It was contended that prosecutrix did not name Tarsem Singh in the FIR. The prosecution has failed to prove identity of accused Tarsem Singh. In the FIR, it was simply mentioned that 'Sema' was also present. Thus, when the name 'Tarsem Singh' has not been given, the identity of accused Tarsem Singh, cannot be said to

be proved. This argument is devoid of any force as in the statement Ex.PA, the prosecutrix specifically named Monu, Jiwan armed with *kirpans*, Sema who is '*dohta*' of Hakam Singh, resident of Sehna, Seepu @ Sukhdeep, son of Bhura Singh, Peeta, residents of Sehan, entered her house from the roof by stairs. This statement shows that prosecutrix has given the identity of Sema as '*dohta*' of Hakam Singh, resident of Sehna. In her statement as PW1 also prosecutrix reiterated the name 'Sema' with the identification of grand son ('*dohta*' of Hakam Singh). Even PW2 Kuljit Singh also given the same identity of accused. As such, there remains no doubt regarding identity of accused Tarsem Singh @ Sema.

It was next argued by Mr. Sangha that in this case initially FIR was registered under Sections 323/458/148/149 IPC. Offence under Section 376 IPC was added after receipt of report FSL. This also goes to show that infact offence of rape was never committed by the accused and it was a simple case of injury which was later on converted into the rape case. This argument is again not sustainable. Firstly, for the reason that in case there is any defect in conduct of investigations or any fault is there on the part of Investigating Officer, no benefit can be given to the accused on that account, particularly when there is overwhelming evidence available on the record against the accused. Clear-cut allegations of rape were made in the FIR, in spite of that if the Investigating Officer has added the offence of rape after report of FSL, it speaks volumes about the functioning of the Investigating

Officer.

Referring injury No.7 on the person of prosecutrix, it was contended by learned counsel for the accused that PW4 Dr. Satwant Singh, who medico-legally examined prosecutrix, reported slight bleeding was present in injury No.7. Injury No.7 is as follows:-

“Three incised wounds muscle deep, present on middle of right tibia region and were muscle deep and slight bleeding was present and X-ray was advised.”

From this statement of the doctor, the learned counsel for the appellant-accused contended that this injury cannot be attributed to the accused. Had accused caused this injury on the person of prosecutrix during the intervening night of 16/17-10-2008, the blood must have been clotted by the time she was medico-legally examined by the doctor and the factum of bleeding noticed by the doctor at that time shows that injury was fresh. This argument is again not sustainable as probable during of injuries on the person of prosecutrix has been categorically mentioned by the doctor as within 24 hours. Injury No.7 shows that there was 3 incised wound which were muscle deep. Even if slight bleeding was present, mentioned by the doctor, that would not conclude that the aforesaid injury cannot be caused at the time of occurrence.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 15.02.2011 and

order of sentence of even date, the appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

09.12.2015

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