

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1979-SB of 2004
Date of Decision: November 18, 2015

Veena Devi

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.L.Malhotra, Amicus Curiae
for the appellant.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant through Jail against the judgment of conviction and order of sentence dated 28.09.2004 passed by learned Addl. Sessions Judge, Rohtak, whereby she was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of eight years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years under Sections 366 and 372 IPC each. She was further convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 354 read with Section 114 IPC. All the sentences were ordered to run

concurrently. However, accused Mahinder was convicted and sentenced under Section 354 IPC only and remaining accused were acquitted of the charges framed against them.

As the appeal was received through jail, therefore, Amicus Curiae was appointed in this case.

The brief facts of the case are that on 03.06.2004 at about 1.05 P.M., prosecutrix appeared before ASI Raj Singh and got recorded her statement Ex.PN, in which she stated that she is resident of Bhopat Wala Haridwar. Her father is no more alive and she is 9th fail. On 02.06.2004, she was brought from Railway Station Delhi to Railway Station Rohtak by accused Veena on the pretext of helping her in her ailment. At about 6.30 P.M., accused Mahinder, a disabled person came to them, to whom Veena by saying that both of them were hungry and she herself was sick, sought his help, whereupon Mahinder brought them to Medical College, Rohtak in an auto-rickshaw and he served them food. Thereafter, in the night, when they were lying in the park, accused Mahinder put his hand on complainant's breast with ill will. One person namely Rajesh, who was on duty saw him doing it and brought them to the gate of Dental College Building, Rohtak. There, three other accused persons met them, who pushed Mahinder and Veena and those accused took her (prosecutrix) inside the building. Three of them including said Rajesh raped her near staircase and fourth, who was in security uniform, raped her on the first floor. After rape, complainant was brought down and was handed over by those four to Veena and Mahinder. It is

further alleged by the prosecutrix that Veena had her full hands in her said rape. Then, Veena and Mahinder kept her wondering here and there in Rohtak City. It is also alleged that Veena had also got the prosecutrix raped earlier after receiving money at some other places from some unknown persons and further, that those four accused persons, who raped her in the dental building, threatened her not to disclose to anybody, otherwise, she would be killed. On the basis of this application Ex.PN, ruqa was sent to the police station and formal FIR was registered. Prosecutrix was got medico legally examined. Statements of witnesses were recorded. Accused were arrested. After necessary investigation, challan was presented against the appellant and other co-accused.

On presentation of challan against accused-appellant and other co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 363, 366, 354 read with Section 114 IPC and Section 372 IPC. Accused Mahinder was charge-sheeted under section 354 IPC and other four accused were charge-sheeted under Sections 376(2) (g) and 506 IPC. All the accused pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Asha Goyal, Medical Officer, who medico legally examined the prosecutrix aged about 17 years on 03.06.2004 and opined that possibility of sexual intercourse cannot be ruled out. PW-2 Dr.Vimal Sharma, Medical Officer, medico legally examined accused Rajesh s/o

Sunder Singh, Ashok, Rajesh s/o Ishwar Singh and Vinod and they would be able to perform sexual intercourse. PW-3 Constable Sumit Kumar, Draftsman, proved the scaled site plan Ex.PH and Ex.PJ. PW-4 ASI Jagram, PW-5 Constable Satbir Singh and PW-6 Constable Ram Chander, are the formal witnesses, who tendered into evidence their affidavits Ex.PK, Ex.PL and Ex.PM respectively. PW-7 prosecutrix deposed as per prosecution version. She identified Veena in the Court as the lady who brought her to Rohtak and brought her to Medical campus with Mahinder. Prosecutrix pointed towards Rajesh s/o Sunder Singh and Ashok and stated that these were two persons who had rescued her from Veena and Mahinder. PW-8 Sh.Mewa Singh, CJM, Rohtak mainly deposed regarding application filed by the prosecution for test identification parade of accused Rajesh s/o Ishwar Dutt, Vinod, Ashok Kumar and Rajesh s/o Sunder Singh. He further deposed that accused persons vide their joint statement refused to join test identification parade. PW-9 ASI Raj Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant and other co-accused were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

No evidence was led in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant and co-accused

Mahinder as stated above and acquitted other four accused.

At the time of arguments learned counsel for the appellant argued that prosecution has failed to prove its case against the appellant by leading cogent evidence. Mere statement of prosecutrix is not sufficient to prove the allegations against the appellant. He further argued that accused-appellant has been falsely implicated in this case. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, it should be allowed and accused-appellant should be acquitted. Learned counsel for the appellant, in the alternative, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. The prosecutrix has deposed in the Court consistently against the accused regarding her allegations. The other accused have been acquitted only because the prosecutrix failed to identify them. He next argued that there is nothing in the cross-examination of the prosecutrix which may make her statement unreliable. The oral statement has been duly supported by the medical evidence and investigation of the case. 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 prosecutrix has duly supported the prosecution version in the Court against the accused. She has also identified the accused-appellant in the Court. There is nothing on the record which may make the

version of the prosecution improbable. There is also nothing in the statement of the prosecutrix which may make her statement unreliable. Her statement has been duly supported and corroborated by medical evidence and investigation of the case. There is nothing on the record to show as to why the accused-appellant has been falsely implicated. There are no material improvements nor contradictions in the statements of the witnesses. No enmity or motive of the prosecutrix with the accused-appellant has been alleged and proved by the accused-appellant.

As regarding uncorroborated statement of the prosecutrix, I find that it is settled law that in such type of cases, if the statement of prosecutrix is reliable, then the conviction can be held on the sole testimony of the prosecutrix. In the present case, there is nothing on the record which may make the statement of the prosecutrix unreliable.

After going through the record and also impugned judgment, I find that the findings given by the Court below are correct, as per law and do not require any interference from this Court. Therefore, the judgment of conviction dated 28.09.2004 passed by learned Addl. Sessions Judge, Rohtak, is upheld.

As regarding the sentence, I find that the occurrence is of the year 2004 and accused-appellant Veena Devi has suffered a lot from the criminal proceedings during this long period. Furthermore, as per the custody certificate, she has already undergone actual sentence of 6 years and 25 days and further she has earned

remission of 1 year 2 months and 17 days. Therefore, the total custody period of the accused-appellant including remission comes to 7 years 3 months and 12 days.

In view the above period of sentence undergone by the appellant, the sentence imposed upon the appellant is reduced to the sentence already undergone by her. The fine is also reduced to ₹500/- under each Section in which she has been convicted and it is ordered that in default of payment of fine, appellant will undergo rigorous imprisonment for a period of 15 days under each Section. The fine be paid within two months from today, otherwise, the trial Court will take necessary action as per law.

With the above-said modification in the sentence, the present appeal stands partly allowed accordingly.

Since, appellant Veena Devi is on bail, her bail bonds stands discharged.

November 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE