

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-1337-DB of 2013

Date of Decision: 10.09.2015

Gayanti

...Appellant

Versus

Anupam & Another

...Respondents

**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? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. Ram Darshan Yadav, Advocate for the Appellant.

Mr. Vivek Saini, Assistant Advocate General, Haryana.

Raj Rahul Garg, J.

This is an appeal against acquittal of accused Anupam son of Ramesh Saini. Prosecutrix assailed the impugned judgment dated 25.03.2013 rendered by learned Additional Sessions Judge, Rewari.

On 18.05.2012, prosecutrix gave statement Ex. PA to the effect that she was of the age of 19 years. On 01.01.2012, she was all alone at her house. Her sister and father had gone to the village whereas her mother had gone to somebody's house for collecting gas booklet. At about 2.30 PM,

accused-Anupam entered into her house. He caught hold of her by her hand and took her inside the room. She made her fall on the ground and after breaking the string of her *Salwar*, committed rape on her without her consent. She had tried to raise alarm but her mouth was tied with her *Chunni (dupatta)*. After sometime, her mother namely Lalita came there. Thereafter, giving threat to her life and to the life of her mother, accused had run away. The threat was to the effect that in case they disclose this fact to anybody then he would eliminate their entire family. Prosecutrix further deposed that she was under great shock and also had stomach-ache. On that very day, her father and sister namely Ambe came back from the village. Her mother narrated the entire story to them. Many people from village Dharuhera had been putting pressure, on the pretext of compromise, as such she did not lodge the matter with the police whereas only on 18.05.2012 she along with her parents came to the police station and lodged report against the accused. This statement is Ex. PA. After making endorsement Ex. P1/1 on this statement, formal FIR, Ex. P1, was recorded. Rough site plan of the spot was prepared. On 19.05.2012, prosecutrix was medico-legally examined from GH, Rewari. On the same day, statement of prosecutrix, under Section 164 Cr.P.C., was also got recorded. On 21.05.2012, Darshan Ram, father of the prosecutrix, produced photocopy of Scheduled Caste Certificate Mark 'A' before the police which was taken into police possession, vide memo Ex. PK. Supplementary statement of Darshan Ram was recorded under Section 161 Cr.P.C. to the effect that the prosecutrix belongs to SC category. Thereafter, further investigations in this case were conducted by DSP Rajpal.

On 12.10.2012, accused-Anupam surrendered in the court of Chief Judicial Magistrate, Rewari. He was joined in the investigations of this case and was arrested. He gave demarcation of the place of occurrence, vide memo Ex. PD. In pursuance of this disclosure statement, Ex. PC, accused was also got medico-legally examined from GH, Rewari. Underwear of the accused in a sealed parcel, sealed with the impression 'LS', was given by doctor to the police which was taken into police possession vide recovery memo Ex. PF. After completion of necessary investigations, the accused was challaned in this case.

Finding a prima-facie case against accused, he was charge-sheeted for committing offence punishable under Sections 452/376/506 of IPC and under Section 3 of Scheduled Caste and Scheduled Tribes Act, 1989. To the charge, accused did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded, wherein he denied each allegation of the prosecution. The defence taken by the accused is this; that he has been falsely implicated in this case. He was not present at village Dharuhera. On the day of occurrence, he had gone to play cricket from 7.00 AM to 7.00 PM at village Tapukara, District Alwar, Rajasthan. In support of his defence, he has also examined Manoj Sharma as DW-1, Harkesh as DW-2 and Kailash Chand as DW-3.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned Trial Court recorded the impugned judgment of acquittal.

We have heard counsel for the parties besides appraising the entire

material and evidence coming on record.

It was contended by the learned counsel for the appellant that the testimony of prosecutrix as PW-1 and that of her mother Lalita as PW-2 prove the case against the accused. They categorically stated that accused-respondent No. 1 entered into the house of prosecutrix and committed rape upon her without her consent and also extended threat to kill her and abused her by her caste. Only on account of delay in lodging the FIR, the accused of this case has wrongly been acquitted.

The contention of the learned counsel for the appellant regarding abusing of the prosecutrix by the accused by her caste is not sustainable as there is no such allegation in the complaint i.e. the FIR Ex. PA in this regard. Even at a later stage, the copy of SC certificate was taken on record. There is, in fact, nothing on record to show that knowing fully well that the prosecutrix belongs to a SC caste, the accused violated her person or abused her in any way.

Of-course, prosecutrix as well her mother as PW-2 deposed against the accused to the effect that when the prosecutrix was all alone in the house, accused entered into her house; took the prosecutrix inside the room; made her lay on the ground and then committed rape on her against her wishes. Prosecutrix is of the age of 19 years. She is major. The learned Trial Court examined the statements of PW-1 and PW-2 in detail and observed that the incident is dated 01.01.2012 whereas FIR was got registered on 18.05.2012. Prosecutrix as PW-1 deposed that she along with her parents lodged report with the police the next morning but no such report has seen the day of light. She

also deposed that she took treatment from City Nursing Home, Bhiwadi and did not disclose this incident to the concerned doctor. This fact further makes the statement of prosecutrix highly doubtful as no reasonable explanation is coming-forth as to under what circumstances she did not do that or as to why the police did not record her statement regarding the incident in question. The learned Trial Court also observed that prosecutrix deposed that she remained admitted in hospital from 01.01.2012 to 03.01.2012. As such, if she remained in the hospital for the aforesaid period, how she could go to the police with her parents on 02.01.2012 for lodging the report. As such, the story of rape propounded by the prosecutrix is not believable. The statement of PW-2 Lalita is also on the same lines and for the same reasons, as mentioned above, her testimony is also not believable. The learned Trial Court has given detailed reasons of each and every aspect of the statements of PW-1 prosecutrix and that of her mother Lalita PW-2 in paragraphs 22 and 23 of the impugned judgment, which are as follows:

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22. In the anvil of the above principles, when this court tested the version of PW-1, the prosecutrix, and PW2 Lalita Devi, it is unfortunate that the said witnesses have failed to pass any of the tests mentioned above. The incident occurred on 1.1.2012 at about 2-30 p.m. and the FIR was ultimately registered on 18.5.2012 i.e. after more than four months of the occurrence. As per the prosecutrix PW1, she along with her parents went to police station on the next morning and reported the matter to the police. During cross-examination, she also deposed that she took treatment from City Nursing Home, Bhiwadi. She further deposed that she had not disclosed the incident to the

concerned doctor. She also stated that she remained admitted in the aforesaid hospital from 1.1.2012 to 3.1.2012. It is very strange that why the prosecutrix has not disclosed the incident to the doctor despite the fact that she has reported the matter to the police on the very next day of the incident. As per the prosecutrix, she along with her parents went to the police station on 2.1.2012 but the prosecutrix has deposed that she remained admitted in the hospital from 1.1.2012 to 3.1.2012. If the prosecutrix was admitted in the hospital from 1.1.2012 to 3.1.2012, then how she went to the police station on 2.1.2012. As such, story of the prosecutrix that she along with her parents went to the police station for reporting the matter on 2.1.2012 is not believable. PW2 Lalita, who is mother of the prosecutrix, also deposed on the same lines and she deposed during her examination-in-chief that on the next day, she along with her husband and daughter had gone to the police station and gave application regarding the incident but the police had not taken any action. But, during cross-examination she also stated that her daughter took medical treatment from Bhiwadi and she remained admitted in the hospital for three days. Therefore, as per the evidence of PW2 Lalita, prosecutrix remained admitted in the hospital for three days and as such the version of prosecutrix that she went to the police station on 2.1.2012 is certainly doubtful. As per the prosecution, accused entered in the house of prosecutrix during day time at about 2-30 p.m. PW1 prosecutrix simply deposed that accused Anupam entered in her house at 2-30 p.m. and he had taken her inside the room and felled her on the ground and without her consent, he had broken the string of her Salwar and committed rape. She also stated that when she tried to cry, the accused tied her mouth with her Chunni and after some time her mother came and on seeing her mother, accused tried to run away from there. PW1

prosecutrix has not stated that she protested or resisted the action of the accused in any manner. During cross-examination, she stated that accused remained in her house for about 10 minutes and her mother came back in the house after 5 minutes and accused remained present in their house for about 5 minutes after return of her mother in the house. Neither the prosecutrix nor her mother tried to catch hold the accused. There is no evidence that the prosecutrix has suffered any injury. PW1 prosecutrix has not stated that her clothes were torn. She has not stated that before committing rape, accused has given threats of any type or the accused was armed with any type of weapon. Prosecutrix is a young girl of 19 years at the time of alleged occurrence and after going through her evidence, it is clear that she remained admitted in a hospital for three days from 1.1.2012 to 3.1.2012, during investigations, certainly creates doubt regarding the authenticity of the evidence of PW1 and PW2. After the alleged rape, PW1 took medical treatment from city nursing home Bhiwadi and therefore the concerned doctor of said hospital was the star witness in tis case and his non-examination as witness is certainly fatal. Blame can not be put only on the investigating agency for non-examination of said doctor as PW1 in her complaint Ex. PA has not disclosed this vital fact regarding her admission in hospital for three days and taking treatment for 2/3 months. As such, the evidence of PW13 Dr. Tejjasvi Yadav is immaterial as PW1 prosecutrix was medically examined after several months of the alleged rape.

23. So far as the evidence of PW2 Lalita Devi is concerned, she came back to her house after half an hour and found her house locked from inside. She has not deposed that she heard any noise or cries. She simply stated that she entered her house from the roof of her neighbour's house as the main gate of her

house was closed from inside. The conduct of PW2 Lalita Devi is also very unnatural. PW2 has not deposed that she knocked at the main gate of her house or she called her daughter to open the main gate of the house. The neighbour from whose house, PW2 entered in her house, was not made witness. PW2 Lalita Devi has not tried to catch hold of the accused. PW2 Lalita Devi confronted with her statement Ex. DA regarding several material facts. It is very strange that PW2 has not got recorded in her statement to the police that the main gate of their house was locked from inside and she entered in her house from the roof of her neighbour's house. PW1 prosecutrix has not stated in her evidence that main gate of their house was locked from inside. As such the conduct of PW2 Lalita Devi was unnatural and she has made material improvements in her statement and she has not mentioned in her statement to the police that her daughter was bleeding at that time. The prosecutrix has not mentioned in her application Ex. PA that she was got admitted in the hospital for two days and she has taken medical treatment for 2-3 months. As the prosecutrix was admitted in the hospital on 1.1.2012 after the alleged incident and as she remained in the hospital up to 3.1.2012 and therefore, the prosecuting agency was required to summon the said doctor to prove the version of the prosecutrix. In these circumstances, the evidence of PW1 prosecutrix and PW2 Lalita Devi is not reliable and in fact their evidence is improbable.

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In view of above discussion, it cannot be said that the judgment under appeal is in anyway perverse or based on misreading of evidence warranting interference of any kind at our end.

Even on the point of delay, the judgment recorded by the learned

Trial Court is well reasoned judgment. The learned Trial Court has taken into consideration the law regarding delay in lodging the FIR in rape cases in detail and then also considered the facts of the present case as well the statements of PW-1 prosecutrix and that of PW-2 Lalita Devi and PW-4 DSP and thereafter concluded that no reasonable explanation could be assigned by the prosecutrix or her mother regarding delay in lodging the FIR, particularly, when PW-4 DSP admitted that police received information on 18.05.2012. From the above discussion as well from the statement of PW-1 prosecutrix, it is evident that prosecution has failed to assign any explanation as to why prosecutrix did not disclose the incident to the doctor, particularly, when she reported the matter to the police, the very next day of the occurrence. Even on this point, the statement of PW-2, mother of the prosecutrix, is discrepant as she has stated that incident was disclosed to the doctor but he has not sent the Ruqa to the police station. In the absence of any such record, it cannot be said that the doctor was at fault, particularly, when the story propounded by the prosecutrix regarding her admission in the hospital from 01.01.2012 to 03.01.2012 and then lodging of report on 02.01.2012 with the police is not plausible as prosecutrix cannot be present at two places at one time. PW-1 prosecutrix and PW-2 Lalita Devi have tried to explain the delay in lodging the FIR like this; that the police kept the matter pending and asked them to settle the matter with the accused but there is not even iota of evidence, available on record in this regard, as to who was the police officer who acted in such a way. Even the report allegedly lodged on 02.01.2012 has not seen the day of light. The very presence of Lalita Devi PW-2 at the scene of the commission of crime is also

doubtful as it is not understandable as to why she would reach the place of occurrence through the roof of her neighbour's house and would not knock at the door for getting the same opened. There is also no evidence on the file to show that the prosecutrix offered any kind of resistance to the aforesaid act of the accused. Under these circumstances, delay in lodging the FIR assumes importance and gives room to concoction of prosecution story.

For the reasons, recorded above, finding no merit in this appeal, maintaining the impugned judgment dated 25.03.2013, the present appeal is ordered to be dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

10.09.2015
Waseem Ansari