

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-750-DB-2010

Pronounced on: 4th September, 2015

Vinod Kumar

..... Appellant

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Sanjeev Sharma, Advocate, for the appellant.

Mr.P.S.Bajwa, Addl.A.G., Punjab, for the State.

RAJIVE BHALLA, J.

The appellant challenges judgment and order, both dated 29.03.2010, passed by the Additional Sessions Judge, Ludhiana, convicting and sentencing the appellant in the following terms: -

Offence(s)	Sentence
Under Section 363 of IPC	To undergo rigorous imprisonment for three years and to pay fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for two months.
Under Section 376 of IPC	To undergo imprisonment for life and to pay fine to the tune of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for six months.
Under Section 307 of the IPC	To undergo rigorous imprisonment for seven years and to pay fine to the tune of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for two months.

SI Ashwani Kumar (PW-7), Incharge P.P. Raghunath

Enclave of P.S. Sarabha Nagar, received a telephone call on

28.04.2006, in the early hours, that a girl has been abducted from the area of Barewal and therefore, accompanied by HC Hardev Singh and HC Harbans Singh reached the village where they were informed that the girl has been recovered and has been removed by her father to DMC Hospital, Ludhiana. SI Ashwani Kumar and his colleagues, reached DMC, Hospital, where PW-1 Shiv Narain, father of the girl, recorded a statement Ex.PA, that he has three children, the youngest is a girl (name concealed being a minor), aged 3 years. At about 10:00 PM, yesterday, he and his daughter went to sleep on a cot. At about 01:30 AM (midnight), he woke up and discovered that his daughter is missing. He raised an alarm that attracted the other tenants. All the tenants except Vinod Kumar (appellant) were present. Shiv Narain and residents of the village, began to search for his daughter. As they were walking past a canal minor, in village Singhpura, they saw, in the light of their torch, Vinod Kumar emerging from a clump of bushes and running away. Vinod Kumar was asked to stop but ran away. A search of the bushes lead to the discovery of the minor, who was naked, bleeding and shrieking in pain. Shiv Narain and his companions lifted her and took her to DMC Hospital for treatment. Shiv Narain also stated that Vinod Kumar (appellant) had abducted and raped his daughter with intention to kill her and after raping her threw her in a deep pit and fled from the spot. Shiv Narain signed his statement Ex.PA, which was attested by SI Ashwani Kumar and forwarded to the police

station where it lead to registration of FIR No.71, dated 28.04.2006 (Ex.PA/2), under Sections 363, 376 and 307 of the IPC, at 01:30 AM, recorded by SI Kulwant Singh. Shiv Narain was taken by the police to his home. A rough site plan Ex.PC to the place where the minor was abducted, was prepared. Ex.PD, a rough site plan of the place of occurrence, was also prepared. SI Ashwani Kumar thereafter recorded the statements of witnesses including Smt. Anita Devi (PW-2), mother of the minor.

The police set up a naka and apprehend Vinod Kumar with the help of other police officials on 28.04.2006 itself, at the pointing out of Shiv Narain. Vinod Kumar was formally arrested, vide memo Ex.PE, which is thumb marked by Vinod Kumar and attested by HC Hardev Singh. A personal search memo Ex.PF records that nothing was recovered from Vinod Kumar. The clothes i.e. underwear and vest, worn by Vinod Kumar, at the time of his arrest, were found to be stained with blood. The clothes were converted into a sealed parcel which bears the mark of seal "AK" and were taken into possession vide memo Ex.PG. The memo Ex.PG was also thumb marked by Vinod Kumar and attested by Shiv Narain and HC Hardev Singh. Intimation of the arrest was forwarded, vide memo Ex.PH, to Ramu Sharma, a neighbour of Vinod Kumar. The memo Ex.PH, was thumb marked by Ramu Sharma and attested by HC Hardev Singh. SI Ashwani Kumar recorded a supplementary statement by Shiv Narain and statements of other witnesses, under

Section 161 of the Cr. P.C. The case property was deposited with MHC Chaman Lal. The minor was medico-legally examined at DMC Hospital, Ludhiana, by PW-3 Dr. Reza Gupta, who found seven injuries on her person namely bite marks on her cheek, left side of the cheek, upper lip and dorsum of nose. The doctor also found a second degree perennial tear just short of the anus, bleeding from the vagina and blood stain marks on both legs and feet. The swabs were collected from the left side of the cheek, upper left side of the cheek, right leg and right foot and slides were also prepared for blood grouping etc. The doctor also took vaginal swabs etc.

The police forwarded the medical samples to the Forensic Science Laboratory, Chandigarh, completed investigation and thereafter filed a final report, citing the appellant as the person accused of abduction and rape of the minor, with an intention to kill.

The Additional District Judge, Ludhiana, framed charges under Section 366, 376 and 307 of the IPC, on 28.08.2006, but as the appellant pleaded not guilty, directed the prosecution to adduce evidence.

The prosecution has examined the following witnesses: -

PW-1 Shiv Narain Chaudhry, the complainant/father of the minor, who has deposed in consonance with his statement Ex.PA made to the police, namely that his daughter was sleeping on a cot and when he woke up at 01:30 AM and found her missing. Shiv Narain deposed that he raised an alarm. All his neighbours except

Vinod Kumar collected. They began searching for his daughter and when they were passing by a small canal, saw Vinod Kumar (appellant) emerging from a clump of bushes and running away. Though in his statement made to the police, he has stated that Vinod Kumar ran away but while deposing in Court he has deposed that Vinod Kumar was apprehended by them under the bridge. The defence, however, did not confront him with this contradiction. PW-1, further deposed that they found his daughter naked and smeared with blood. She was removed to DMC Hospital. PW-1 acknowledged his signatures on the statement Ex.PA. PW-1 was cross-examined on various aspect particularly relating to the torch, the time when they discovered his daughter and the allegation that Vinod Kumar was falsely implicated as he had a quarrel with Vinod Kumar a day before the incident but the defence was unable to elicit any contradiction or any such fact as may benefit the appellant.

PW-2 Anita Devi, wife of Shiv Narain and mother of the minor, has corroborated the statement made by her husband in all material particulars and has also deposed that they nabbed Vinod Kumar whose clothes were stained with blood etc. She was also not confronted with this contradiction during cross-examination.

PW-3 is Dr. Reza Gupta, Junior Resident, DMC Hospital, Ludhiana, who medico-legally examined the minor and found the following injuries:-

- “1. Abraded lesion 1 x 0.25 cms on right side of cheek, 2 cm lateral to angle of mouth, right side.
2. Bite mark on left side of cheek about 2.5 cms from angle of mouth.
3. Superficial abrasion was present on the chin 2 cms below the lower lip.
4. Superficial abrasions present on the neck 4 cms below the right ear.
5. Superficial abrasions with bite mark on left side of chest starting from midline and extending laterally towards left side and ending 0.5 cms medial to left nipple.
6. Bite mark present on the upper lip and dorsum of nose.
7. Perineal tear, second degree just short of anus. Bleeding per vaginum was present. Blood stained marks on both legs and feet.

The swabs were collected from the left side of cheek, upper left side of cheek, right leg, and right foot and slides were also prepared, one for blood grouping. Three vaginal swabs were also taken and slides were prepared.”

PW-3 Dr. Reza Gupta, proved her signatures on the injury report Ex.PW3/A, information to the police Ex.PW3/B, the indoor patient register record Ex.PW3/D. The witness also identified the signatures of other doctors.

PW-6 is Dr.G.P.Mangla, District Epidemiologist, Ludhiana, who medico-legally examined Vinod Kumar (appellant) and opined that there was nothing to suggest that Vinod Kumar could not perform sexual intercourse but found no external mark of injury at the time of examination. PW-6 proved the MLR Ex.PB relating to the appellant.

PW-4 is HC Inderjit Singh, PS Sarabha Nagar, Ludhiana, who tendered his affidavit Ex.PW4/A into evidence. The affidavit Ex.PW4/A relates to handing over of special reports to the Illaka Magistrate and senior police officers.

PW-5 is Constable Partap Singh, who tendered his affidavit Ex.PW-5/A into evidence. The affidavit Ex.PW5/A relates

to receipt of a parcel containing a brown green underwear and a blood stained vest which he received from MHC Chanan Lal and deposited in the FSL, Chandigarh, on 13.04.2006. He has also deposed that so long as the case property remained in his custody, it was not tampered with by any person whatsoever.

PW-7 is SI Ashwani Kumar, the investigating officer, who has deposed with respect to the entire investigation which we have already reproduced while narrating the facts. He has also deposed that he did not record the statement of the victim as she could not speak properly due to her tender age.

PW-8 is HC Chaman Singh, PS Haibowal, Ludhiana, who tendered his affidavit Ex.PJ into evidence. The affidavit discloses that HC Chaman Singh was posted as MHC and was incharge of the malkhana. SI Ashwani Kumar deposited a parcel containing a brown green underwear and a white vest stained with blood, sealed with seal “AK”, on 28.04.2006. On 12.05.2006, the parcel was taken out with the seal intact and handed over to Constable Sukhwinder Singh for deposit in the office of the Director, Forensic Science Laboratory, Chandigarh. After removal of objections raised by the FSL, the sample was re-deposited on 20.06.2006.

The Public Prosecutor gave up HC Hardev Singh, HC Harbans Singh and SI Naveen Kumar being unnecessary. On 20.02.2010, the Public Prosecutor tender into evidence the FSL

report Ex.PX.

After conclusion of the prosecution evidence, the incriminating circumstances appearing in the prosecution case were put to the appellant who denied these circumstances and pleaded that he has been falsely implicated as on the relevant date, he had a quarrel with PW-1 Shiv Narain (the complainant) regarding parking of a bicycle but stated that he does not want to lead any evidence in defence.

The Additional District Judge, Ludhiana, thereafter heard arguments on behalf of the prosecution and the appellant and after considering the evidence on record and arguments addressed, convicted and sentenced the appellant as referred to in the opening paragraph of this judgment.

Counsel for appellant submits that there is no independent corroboration of the allegation that the appellant abducted and raped the minor. A large number of migrant labourers reside in the house but none of them have been cited as a witness to corroborate the statements made by PW-1 Shiv Narain and his wife PW-2 Anita Devi. A large number of persons allegedly accompanied Shiv Narain and Anita Devi during the search and when they discovered the minor. The prosecution has not examined any of these witnesses. The statements by Shiv Narain and Anita Devi are contradictory as both do not agree as to the ownership of the torch in the light of which they allegedly identified the person they saw running away from the spot. Counsel for the appellant further submits that as per

the story put forth by the police, Vinod Kumar was arrested at a barrier erected by the police but PWs 1 and 2, the parents of the minor, have deposed that Vinod Kumar was apprehended by them at the spot, thereby proving manipulation in the investigation and raising a serious doubt as to the correctness of the prosecution story. Counsel for the appellant also contends that this discrepancy goes to the root of the matter and as the prosecution has failed to explain this serious discrepancy, the benefit of doubt must be granted to the appellant, particularly, in view of his statement that he has been falsely implicated on account of an altercation with Shiv Narain on the previous evening.

Counsel for the State of Punjab submits that the medical evidence, testimonies of the father and mother of the minor and the fact that they saw the appellant running out of the bushes, from where the minor was recovered, prove the appellant's guilt. The discrepancies in the deposition by the parents of the minor and the investigating officer, do not detract from the evidence on record that proves without a shadow of doubt that the appellant abducted, raped and tried to murder the minor. It is not denied much less contested that the minor was raped. The only question is as to the identity of the offender. The mother and father of the minor saw the appellant running out of the bushes where the minor was found. The fact that the appellant's underwear etc. were found to be stained with human blood, is confirmed by the FSL report.

We have heard counsel for the parties, perused the impugned judgment and order as well as the entire record.

The appellant has been convicted and sentenced for the abduction, rape and an attempt to murder a minor girl, aged three years. The nature of the offence does shock our conscious but whatever be the brutality or perversity of the offence, we cannot deviate from our duty to appraise the evidence and ensure that an innocent man is not convicted. A perusal of the evidence on record, which we have already referred to in detail, reveals that at about 01:30 AM (midnight) PW-1 Shiv Narain (the complainant) found his daughter missing and raised an alarm. A large number of tenants who reside in the building, collected but Vinod Kumar was missing. Shiv Narain, his wife Anita Devi and the neighbours began searching for the minor and eventually as they were passing by a small canal, saw the appellant emerging from clump of bushes and running away. They parted the bushes and found the minor bleeding and shrieking in pain. The minor was removed to the hospital where she was medically examined and treated. The appellant, as deposed by the IO, was arrested at a barricade by the police after he was identified by Shiv Narain. The evidence against the appellant are the testimonies by PWs-1 and 2 (parents of the minor), medical evidence and forensic evidence. A perusal of the depositions by PWs-1 and 2 (parents of the minor) gives us no reason to doubt the veracity of their testimonies that their daughter was found missing from the bed

on which she was sleeping with her father Shiv Narain, a search was conducted as she was eventually discovered in a deep pit after they saw the appellant running out of the bushes. The injuries on the person of the minor and rape are proved by the testimonies of PW-3 Dr. Reza Gupta, medical reports Ex.PB, Ex.PW3/A, Ex.PW3/B, Ex.PW3/C and Ex.PW3/D and the report Ex.PX, prepared by the FSL. A perusal of injuries, which have already been reproduced in a preceding paragraph of this judgment, reveal not only were there simple abrasions but bite marks on her cheeks, upper lip and dorsum of the nose. The doctor also found a second degree perennial tear just short of the anus, bleeding from the vagina and blood stains on both legs and feet. Ex.PW3/C is the report prepared by Dr. Reza Gupta, which records that the minor was subjected to penetration, thereby in our considered opinion, leaving no ambiguity or doubt as to the fact that the minor was raped. The underwear and vest worn by the appellant, at the time of his arrest, were found to be stained with human blood, by the report Ex.PX, prepared by the FSL.

The question, that remains is whether this evidence is sufficient to prove that the appellant was the perpetrator of the this ghastly crime?

A doubt may legitimately arise as to the identity of the perpetrator of this horrendous crime in view of a discrepancy between the depositions of PW-1 and PW-2 (the father and mother of the minor) and PW-7 (the investigating officer) as to the arrest of the

appellant. PWs 1 and 2 have deposed that the appellant was apprehended by them at the spot when he was running away but the IO has deposed that he was apprehended and arrested at a barricade raised by the police after he was identified by Shiv Narain. A perusal of the initial statement made by Shiv Narain, which led to the registration of the FIR, reveals that he clearly stated that he saw Vinod Kumar emerging from the bushes and running away. The statement does not record that Vinod Kumar was apprehended by Shiv Narain (the complainant) and the persons accompanying him. The defence, however, did not confront PW-1 and PW-2 or the investigating officer with these contradictions. It appears that in their zeal to secure a conviction, PWs 1 and 2 may have made an incorrect statement as during their statements made before the police, they did not allege or assert they had apprehended the appellant but stated that after Vinod Kumar came out of the bushes, he ran away and though he was asked to stop did not stop and fled. This apart, we find no reason for the investigating officer to have cooked up a false story when there was nothing to be gained by showing the arrest of the appellant at a barricade if the appellant had indeed been apprehended by PWs 1 and 2 at the spot. The appellant, thus, cannot draw any benefit from this discrepancy. The so called discrepancy as to the ownership of the torch is too minor a matter to cast any doubt on the prosecution case.

from amongst the tenants residing in the house, has been examined, in our considered opinion, does not entitle the appellant to any benefit much less raise any doubt as to the credibility of the prosecution evidence. The deposition by an independent witness is necessary where there is any doubt as to the facts and circumstances or where the complainant appears to be deposing falsely. Where however, there appears to be no material discrepancy or doubt as to the identity of the accused, the prosecution is not expected to multiply witnesses who would depose to the same effect. The failure of the prosecution to examine independent witnesses, does not entitle an accused to any benefit.

The defence, put forth by the appellant, that he was falsely implicated as he had a quarrel with Shiv Narain regarding parking of the bicycle, is too trivial a matter for a person to falsely implicate another for the abduction and rape etc. of his daughter.

We find no reason to doubt the veracity of the prosecution version or record an opinion different from the opinion recorded by the trial Court. Consequently, the conviction and sentence recorded in judgment and order, both dated 29.03.2010, passed by the Additional Sessions Judge, Ludhiana, are affirmed and the appeal is dismissed.

Section 357 of the Code of Criminal Procedure, 1973, mandates that the victim of a crime shall receive compensation but the trial Court has not awarded any compensation. The parties i.e.

both the complainant and the appellant are petty labourers. The appellant may not have enough reasons. We, therefore, assess compensation @ Rs.1 lac, to be paid by the appellant to the minor through her father.

[RAJIVE BHALLA]
JUDGE

4th September, 2015
shamsher

[AMOL RATTAN SINGH]
JUDGE