

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal No.2435-SB of 2004

Date of Decision : 28.08.2015

Rani and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. O.P. Kamboj, Advocate,
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab,
and Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J.

Assailed in the present criminal appeal is the judgment of conviction and the order of sentence dated 14.10.2004 (hereinafter referred to as 'the impugned judgment'), passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur, (for short, 'the trial Court'), whereby, the accused-appellants have been convicted under Sections 109 of the Indian Penal Code (for short, the IPC) read with Section 376 IPC as well as Section 506 IPC and sentenced to undergo RI for a period of seven years each and to pay a fine of Rs.1,000/- each under Section 109 read with Section 376 IPC or in

default of payment of fine, to further undergo RI for two months each. They have been further sentenced to undergo RI for two years each and to pay a fine of Rs.200/- each under Section 506 IPC or in default of payment of fine, to further undergo RI for one month each.

However, both the sentences were ordered to run concurrently.

Briefly stated, the facts of the present case, as recorded in the impugned judgment, are as under:-

“ *As per allegations in the FIR on 20-8-2003 prosecutrix xxx daughter of Ram Saran was 13/14 years old. She was residing with her parents in Balluana Colony Abohar. On said date Ranjit Singh alias Jitu (since declared Juvenile in conflict with law and facing trial before the Juvenile Justice Board, Faridkot) raped the prosecutrix and at that time accused Rani and Nikki daughters of Nathu were with the aforesaid Ranjit Singh alias Jitu. The accused threatened the prosecutrix that in case she disclosed the occurrence to the police or to her parents, they would kill her and her younger brothers.*

On 15-9-03 the accused again threatened the prosecutrix and also attempted to take her with

them forcibly. Then the prosecutrix told the occurrence of rape to her mother and father. The parents of the prosecutrix took her to Police Post Balluana but the police did not take any action against the accused. Then the parents of the prosecutrix took her to Police Station Sadar Abohar but met with the same fate. On 15-0-03 the prosecutrix moved application to the Sub. Divisional Magistrate Abohar and on the basis of the said application the DM ordered the medical examination of the prosecutrix. She was medically examined on 16-9-03.

On 18-9-03 the prosecutrix moved first informatory application Ex.P-7 to the Additional Superintendent of Police Abohar narrating the aforesaid occurrence and also alleging that the accused were openly rendering threats to her that in case she did not withdraw her earlier application Dt.15-9-03 moved to the Sub.Divisional Magistrate Abohar they would forcibly kidnap her and kill her. The prosecutrix also alleged in the application Ex.P-7 that the accused were openly saying that the police of

Police Post Balluana was under their influence and despite medical report they would not allow the registration of the case. On receipt of application Ex.P-7, the Addl. Superintendent of Police concerned ordered the registration of the FIR against the accused vide Endst.Ex.P-13 on application Ex.P-7, on the basis of which formal FIR Ex.P-12 under Section 376/34 IPC was registered against the accused by ASI Ram Sarup. The investigation was handed over to ASI Harcharan Singh Incharge Police Post Balluana. ASI Harcharan Singh went to the place of occurrence and prepared siet plan Ex.P-15 of the same. He also recorded statements of the witnesses. The accused were arrested by ASI Sukhmander Singh and after completion of entire investigation main accused Ranjit Singh alias Jitu was sent before the Juvenile Justice Board Faridkot to face trial whereas both the present accused were challaned to face trial for their having committed offence punishable under Section 376/120-B/34 IPC.”

Upon presentation of challan, charges were framed against the accused-appellants, to which they pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, the prosecution examined the following witnesses:-

PW1-Dr. Jagmeet Kaur, Medical Officer, Civil Hospital, Abohar, stated that on 16.09.2003, she medically examined the prosecutrix. She was moderately built and nourished. According to her, secondary sexual characters of the prosecutrix were well developed. She was reported to be unmarried. Her external genitalia was developed. Public hair were normal. Hymen was old torn. There was no redness, no swelling and the vagina admitted two fingers easily. The witness also deposed that she had recommened ossification test of the prosecutrix to ascertain her age. She also proved medico-legal report as Ex.P-2, report of the Chemical Examiner as Ex.P-3 and letter as Ex.P-4.

PW2-ASI Sukhmander Singh deposed that he arrested both the accused in the present case and prepared memos Ex.P-5 and Ex.P-6.

PW3-the prosecutrix deposed that about one year ago at about 5 PM, when she was alone in her house, accused-appellants Rani and Nikki, along with accused Ranjit Singh @ Jitu, came there. They requested her to accompany them to help lifting the grass

bundles lying in the fields at a distance of about 10 killas from her house. She accompanied the accused. Both the accused told her that she should first help Ranjit Singh @ Jitu in lifting the bundle of grass. Jitu took her in the Narma crop fields for the aforesaid help. When she went inside, no bundle of grass was lying there. Accused Jitu put his hand on her mouth and raped her. Both the present appellants remained standing on the Watt of the Narma Crop fields in order to keep vigil. After commission of rape by accused Jitu, the accused threatened her that in case she disclosed the occurrence of rape to anyone, they would kill her and her brothers and sisters and left the place. Thereafter, the prosecutrix also came back home but did not tell anything to anyone. On 15.09.2003, accused-appellants again came to her house at about 10.00-11.00 AM when she was alone. They again tried to take her forcibly along with them. She raised raula. In the meanwhile, her parents reached there and on seeing them, the accused ran away. Then she narrated the entire incident to her parents, who took her to Police Post Balluana and Police Station Sadar Abohar, but the police did not listen to them and ultimately, they moved application before the learned Magistrate for her medical examination, whereupon, she was medically examined. She further deposed that the accused again threatened that if she allowed herself to be medically examined, they would kill her. Later she moved first informatory application, Ex.P-7, to the Additional Superintendent of

Police, who ordered the registration of the case.

PW4-Lajwanti, the mother of the prosecutrix also supported the prosecution story.

PW5-ASI Harcharan Singh, the Investigating Officer of the present case, deposed with regard to the investigation carried out by him.

After close of the prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C., the accused-appellant, wherein, they denied all the allegations of the prosecution and pleaded false implication. According to them, accused Rani was married to Shesh Pal for the last 13 years and was staying at Abohar, whereas, accused Nikki was married with Shugar Singh, for the last five years and staying at Ganganagar. Both of them were not present at the spot. It was pleaded that their father had purchased some land from one Satnam Singh, who had already left the village earlier to the alleged occurrence. The father of the prosecutrix wanted to purchase the said land. Due to this reasons, a quarrel also took place between their father and the father of the prosecutrix about 3-4 months earlier to the alleged occurrence. They also denied having any connection with co-accused Jitu. However, they did not lead any defence evidence.

The learned trial Court, after hearing the rival contentions and perusing the evidence made available on record, convicted and

sentenced the accused-appellants, for the offence and terms, as noticed at the outset of the judgment.

Hence the present appeal, which was admitted by this Court on 10.12.2004.

It is contended that both the appellants were married and had been residing at their matrimonial homes. Rani had been married to Shish Pal for the last 13 years, whereas, the appellant Nikki was married to Shugar Singh for the last 5 years as on the date of occurrence. Both the appellants did not have any connection with the main accused, Ranjit Singh @ Jitu. The learned counsel for the appellant contends that there is an inordinate delay of 25 days in lodging the complaint to the police. The prosecution has miserably failed to explain this huge delay. The learned counsel further refers to the testimony of PW1-Dr. Jagmeet Kaur, and states that no injury was noticed on the person of the prosecutrix. No semen was detected from the vaginal swab sent for chemical examination. She was found to be habitual of sexual intercourse. The learned counsel argued that the appellants have been falsely implicated in the present case on account of the dispute between the families over a common wall.

On the other hand, the learned State counsel submits that the prosecution has proved its case against the accused-appellants beyond reasonable doubt. The prosecutrix was a young child of 13-14 years at the time of the occurrence. She was subjected to a lengthy cross-examination, however, she withstood the same and no material

discrepancy could be noticed.

I have heard the learned counsel for the parties and carefully perused the record.

It is worthwhile to mention here that main accused Ranjit @ Jeetu was convicted under Section 376 IPC and sentenced to undergo detention for a period of two years in the Special Home. Criminal appeal No.957-SB of 2012 filed by Ranjit Singh @ Jeetu has been dismissed by this Court vide judgment of even date.

In this case, the incident is of 20.08.2003. The prosecutrix submitted application PW2/C to the Sub Divisional Magistrate, Abohar for the first time on 15.09.2003. There is a delay of about 26 days in filing the first application. PW-4, Smt. Lajwanti, mother of the prosecutrix stated that on 20.08.2003 her daughter (the prosecutrix) told her that Ranjit @ Jeetu scuffled with her, wherein, her clothes got torn and smeared with mud. She did not tell anything else and they both returned to their home. PW-4 admitted that she did not disclose anything to anyone, not even to her husband. The prosecutrix did not say a word to her mother about the role of appellants Rani and Nikki. PW4 stated that about 20-25 days thereafter, appellants Rani and Nikki, along with co-accused Ranjit @ Jeetu came to their house and threatened her daughter not to disclose the incident of rape dated 20.08.2003 to anybody. From the bare reading of statements of PW2, the prosecutrix and PW4, Lajwanti, the mother of the prosecutrix, it is made out that the appellants Rani and

Nikki did not have any role in hatching the conspiracy, overt act, instigation, abetment or assistance in the commission of the offence of rape by the main accused. The delay in lodging the FIR has not been satisfactorily explained. There is possibility of deliberations, consultations, giving twist to the real facts and enhancing the number of the accused on exaggerated version by putting words in the mouth of the prosecutrix. The main accused has already been convicted and sentenced. The evidence of the prosecutrix and her mother against the present appellants-Rani and Nikki @ Pammi is weak evidence and on the strength of this evidence, it cannot be said that the prosecution has proved its case against both of them beyond reasonable doubt.

In view of the above discussion, the present appeal is allowed, the judgment of conviction against the appellants is set aside and the appellant are acquitted of the charge framed against them by giving them the benefit of doubt. Their bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

28.08.2015

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Note: Whether to be referred to reporter ? Yes/No