

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

KAMAL DEEP SEHRA
2015-01-12 13:59

Crl. Appeal No.S-262-SB of 2004
DATE OF DECISION: January 09,2015

Ravi Kumar and others

....Appellants

versus

State of Punjab

....Respondent

CORAM:- 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: Sh.B.R.Bansal, Advocate for the appellants.
Ms.Minakshi Goyal, AAG, Punjab.

RAJ RAHUL GARG,J.

This appeal is directed against the judgment dated 7.1.2004 and order of sentence dated 8.1.2004 rendered by Sh.O.P.Garg, the then Additional Sessions Judge (Adhoc) Fast Track Court, Patiala, whereby all the three appellants were held guilty and appellant Ravi Kumar was; sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for two years for committing offence punishable under Section 376 IPC; sentenced to undergo rigorous imprisonment for five years

and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 328/34 IPC; sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 363/34 IPC; sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 366/34 IPC; sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for six months for committing offence punishable under Section 342/34 IPC; and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- and in default of payment of fine to further undergo rigorous imprisonment for one month for committing offence punishable under Section 506/34 IPC. Appellant Jaswinder Singh was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 328/34

IPC; sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 363/34 IPC; sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for committing offence punishable under Section 366/34 IPC; sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for six months for committing offence punishable under Section 342/34 IPC; and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- and in default of payment of fine to further undergo rigorous imprisonment for one month for committing offence punishable under Section 506/34 IPC and appellant Kaushalya Devi was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for six months for committing offence punishable under Section 342/34 IPC; and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- and in default of payment of fine to further undergo rigorous imprisonment

for one month for committing offence punishable under Section 506/34 IPC.

Brief facts of the case are like this: that the police machinery set into motion on the statement of prosecutrix (name with-held), Ex.PA, which was recorded on 10.4.2003 by ASI Amarjit Singh. As per prosecution story narrated by the prosecutrix, on 6.4.2003 the entire family of the prosecutrix had gone to the field of Nachhtar Singh for harvesting the wheat crop. In the evening, prosecutrix was coming back to her house. At about 7/8.00 p.m. when she was just near the village, she saw Ravi Kumar, appellant and Jaswinder Singh alias Jony already standing outside the village Phirni. They made her smell one handkerchief. She became semi conscious. They also gave a threat to her if she raises alarm, she and her family will be done to death. Out of fear and being semi conscious, she proceeded with them. They took her to the partially demolished house adjoining the residential house of Jaswinder Singh, appellant. She was left there with Ravi Kumar appellant and thereafter Jaswinder Singh left that place. During the whole night, Ravi Kumar, appellant committed forcible rape upon her against her will. In the morning of 7.4.2003, appellant Ravi Kumar also left that place. While going away, he extended threats that if she comes out of the room or raises alarm, she would be killed. Thereafter, Kaushalya

Devi, mother of Jaswinder Singh came to her and told that she will get her marriage solemnized with Ravi Kumar, appellant and she should not raise alarm. Kaushalya Devi, appellant remained with her for the whole day and did not allow her to go out. Ravi Kumar, appellant again came to her in the night and committed rape upon her against her will. In the morning of 8.4.2003, Ravi Kumar left her. Thereafter, at about 10/11.00 a.m., her father Jarnail Singh, mother Surjit Kaur and father's elder brother Jarnail Singh, her father's sister's husband Bachitar Singh came there in search of prosecutrix and started enquiring from Kaushalya, mother of Jaswinder Singh, appellant while standing in the court-yard. The prosecutrix recognised their voice and raised alarm to save her. Then, they took her out from the aforesaid partially demolished room. She was not in good health at that time. She was nervous and perplexed. Here parents took her to their house keeping in view the honour of the family. The prosecutrix gave her date of birth in her statement Ex.PA as 8.8.1987 and further that she had passed 9th stand from Govt. High School, Daunkalan in March 2003. The prosecutrix narrated the story to her parents and her relations while weeping. Thereafter, prosecutrix along with her parents lodged report Ex.PA with the police. This report was sent to the police station for registration of the case, whereupon, formal FIR, Ex.PA/2

was recorded. After going to the spot along with the complainant and her parents, ASI Amarjit Singh, Investigating Officer of the case, prepared rough site plan Ex.PH with correct marginal notes and also recorded the statements of the witnesses. The prosecutrix produced her clothes i.e. shirt, salwar, underwear and sameez before ASI Amarjit Singh which were made into parcel and parcel was sealed with seal bearing impression 'AS' and were taken into possession vide recovery memo Ex.PB. The prosecutrix was got medico legally examined on 11.4.2003. The accused were arrested on the same day. On 12.4.2003, appellants Ravi Kumar and Jaswinder Singh were got medico legally examined vide applications Ex.PK and Ex.PL, respectively, through ASI Baldev Raj who produced one sealed parcel sealed with the seals of medical officer which was taken into possession vide memo Ex.PM and was attested by PWs. On return, the case property was deposited with Sudh Singh, MHC of the police station with seals intact. Appellant Kaushalya was arrested on 25.4.2003. On receipt of Chemical Examiner Report, Ex.PN, ASI Amarjit Singh moved an application Ex.PO to the Medical Officer to get his opinion, whereupon, doctor gave his opinion that possibility of occurrence of rape cannot be ruled out. The scaled site plan was got prepared from draftsman. After completion of investigation, challan was

presented against the accused for offences punishable under Sections 376,366,363,342,328,506,34 IPC.

Finding a prima facie case against the accused, the appellants were charge sheeted for committing offences punishable under Sections 376,366,363,342,328,506,34 IPC to which they did not plead guilty and claimed trial.

After taking prosecution evidence, statements of accused under Section 313 CrPC were recorded wherein the accused pleaded their innocence and stated that they have been falsely implicated in this case.

Appellant Ravi Kumar took the plea that the prosecutrix had love and affection for him and she also wrote love letters frequently. She also gave a proposal for her marriage with him but since they were of different casts, therefore, he told frankly to the prosecutrix that his parents would not agree to the proposal of the marriage and they would not be able to perform their marriage. Ravi Kumar, appellant had also taken the plea that the prosecutrix was not of a good moral character as she used to leave her parents house herself and used to come back of her own. He refused to marry her. The parents of the prosecutrix also pressurized him to marry the prosecutrix but he did not agree. Thus, feeling offended, he has been falsely implicated in this case in connivance with the police. By placing reliance on letters mark D1 to D48, it was asserted

that the same are in the handwriting of the prosecutrix and he identified her writing and signatures thereon as he has been receiving letters written and signed by her. The prosecutrix used to deliver the aforesaid letters at his house by putting them in the letter Box fixed outside his house. He further gave the age of the prosecutrix as about 20 years.

Kaushalya, appellant took the plea that prosecutrix and her parents suspected that she and her son Jaswinder Singh, were finding faults in prosecutrix and were creating hurdle in the way of matrimonial alliance with Ravi Kumar, appellant and on that account, she has been falsely implicated in this case.

Jaswinder Singh, appellant has also taken the same defence. In defence evidence, appellants examined Navdeep Gupta, Handwriting and Finger Print Expert, Patiala as DW1 who gave report Ex.D1 after examining the letters with admitted hand writing of the prosecutrix.

After hearing both the parties and perusal of entire evidence and material on the record, the trial Court recorded the judgment of conviction dated 7.1.2004 and also order of sentence dated 8.1.2004 as mentioned in detail in the earlier part of this judgment.

I have heard Sh.B.R.Bansal, Advocate for the appellants and Ms.Minakshi Goyal, AAG, Punjab for the

State, besides appraising the entire material coming on record.

The present case is a case of kidnapping and rape of a minor girl below the age of 16 years. Under these circumstances, if it stands proved on the file that the rape was committed on the person of prosecutrix, it would not matter if that was with or without the consent of the prosecutrix as per clause sixthly of Section 375 of IPC.

Learned counsel for the appellants wanted to show that the prosecutrix was above the age of 16 years, as such, since it was a case of consent in view of love letters mark D1 to D48, therefore, the appellants are entitled to acquittal.

First of all, it was argued that the age of the prosecutrix was 20 years. She was not below the age of 16 years. It is a case in which there is no conclusive evidence regarding the age of prosecutrix, as such, ossification test of the prosecutrix was got conducted. Dr.Ramanpreet Kaur (PW3) examined prosecutrix. She deposed that she x-rayed right shoulder, right elbow, right wrist, pelvis, right knee joint and right ankle joint, as such, radio logically, the age of the prosecutrix in her opinion was between 17 to 19 years. She proved her report Ex.PB in this regard and also proved x-ray films Ex.MO1 to Ex.MO4. During the course of cross examination, she deposed that difference may be three

years i.e. in this case the age of prosecutrix could be between 17 to 20 years. Thus, with the statement of this witness, as per learned counsel for the appellants, the age of the prosecutrix was 20 years.

It was next argued by learned counsel for the appellants that the prosecution has placed on file result card showing the details of marks obtained by the prosecutrix in middle standard examination. PW4 Balwinder Singh, Clerk, Examination Branch, Punjab School Education Board, Mohali proved this photocopy of the result card as Ex.PC by bringing in the Court result sheet of the year February 2002 of middle standard. But this document cannot be said to be a conclusive evidence to prove the age of the prosecutrix. As per counsel for the appellants, prosecutrix has given her age as 15/16 years but no birth entry was produced in the Court. Prosecutrix (PW1) admitted in her cross examination that entries regarding birth of the child in the village is recorded in the register of Chowkidar but no entry of the register of Chowkidar was placed on the file. PW2-Surjit Kaur, mother of the prosecutrix admitted during the course of cross-examination that she is an illiterate lady and she did not go to the school for getting admitted prosecutrix. Her mother-in-law got the prosecutrix admitted in the school and she gave the age of the prosecutrix by way of approximation. Thus, with this

evidence on the file, it cannot be said that the date of birth mentioned in school certificate, Ex.PC, is the conclusive proof of the date of birth of the prosecutrix. Under these circumstances, the medical evidence which says that the age of the prosecutrix could be between 17 to 19 years can be taken into consideration. It is true that the possibility of age variation on either side of two years in the ossification test, cannot be ruled out. Learned counsel for the appellants citing the judgment rendered in Avdesh v. The State of Haryana 2011(1) Crimes 175 contended that where two views are possible from the evidence, produced by the prosecution, then the view, which is favourable, to the accused, is required to be taken into consideration. Reliance has been placed on the judgment rendered in Sagar Kumar v. State of Haryana 2011(1) RCR (Criminal) 620. In that case, as per radiological test, the prosecutrix was around 15-1/2 to 16 years. Thus, taking into consideration the variation of two years either side, the age of the prosecutrix was counted towards higher side and she was held as major. The principle expounded in **Avdesh's** case (supra) is not disputed but the facts of the afore-cited two judgments are altogether different. In the aforementioned case of **Avdesh**, there was no documentary evidence produced to prove the age, whereas, in the case in hand, detailed mark sheet of the middle standard examination of

the prosecutrix is on the file. In the second case, the prosecutrix remained with the appellant of that case for about 13 days and she had travelled various places by public transport and had many opportunities to escape and raise alarm, as such, it was held that silence of the prosecutrix on very occasion can be termed as a consenting party, whereas, so is not the situation in the case in hand.

It was further argued by learned counsel for the appellants that the date of birth recorded in the school certificate would have no evidentiary value, unless the person, who made the entry or gave the date of birth is examined. In support of his contention, he has cited judgment rendered in Alamelu and another v. State Rep. by Inspector of Police 2011 AIR (SC) 715.

The principle expounded in the afore-cited judgments is not disputed. In that case, the prosecution was relying upon the school certificate issued by Headmaster of Govt. School but in the case in hand the prosecution is relying upon the middle standard detailed mark sheet issued by the Punjab School Education Board, Mohali. The date of birth of the prosecutrix finds mention in that certificate is 8.8.1987. This certificate is as good as a matriculation certificate which is considered as proof of the date of birth of a person, unless that is rebutted by cogent evidence, like, birth certificate etc. In the case in hand, prosecutrix was

born in village. The entry regarding birth is generally got recorded in the register kept by the Chowkidar but this Court cannot lose sight of the fact that even today there are many persons who do not get the date of birth recorded in the register of Chowkidar. If PW1 has stated that Chowkidar make entries regarding date of birth in the register but that would not mean that the date of birth was also got entered in the register of Chowkidar. The statement of PW1 and that of her mother (PW2) is consistent on the point of age of the prosecutrix. The prosecutrix made a mention in the FIR itself which is Ex.PA that her date of birth is 8.8.1987. The prosecutrix is not an illiterate girl. PW2 has also given the age of prosecutrix as 15 years when appeared in the witness box. In fact, there is no material available on record to doubt the certificate Ex.PC. Only on the basis of ossification test, in the circumstances of the present case, the age of the prosecutrix cannot be held as 20 years. In fact, there is no material to brush aside the middle standard detailed mark sheet of the prosecutrix issued by the Punjab School Education Board. On this point, learned Assistant Advocate General, Punjab has cited judgment rendered in Bhoop Ram v. State of UP 1989(1) RCR (Criminal) 573. In that case, the question of proof of age was there and medical certificate and school certificate were at variance with regard

to age of accused. There was no material on record to doubt school certificate. Under those circumstances, it was held that school certificate cannot be brushed aside on the surmise that parents usually understate the age for securing benefits to their children in their future years.

Reliance has also been placed on the judgment rendered in Sunil v. The State of Haryana 2003(2) RCR (Criminal) 313. In that case, the age of the prosecutrix was 14 years as per school certificate. The incident of rape was corroborated by medical evidence, as such conviction was upheld despite the fact that mother of the prosecutrix appeared as defence witness and stated that her daughter was above 18 years and she was not kidnapped. In the case in hand as well, the incident of rape stands corroborated by medical evidence. In this very judgment, it was further held that it is not the law of land that as and when the date of birth has been recorded in the school record, it must be found false in every case will depend upon its facts. Another judgment has been relied upon in the case of Rajan and others v. State of Rajasthan 2003(2) RCR (Criminal) 328. In that case, it was held that the medical evidence would be taken into consideration only when primary evidence which is found in the birth certificate or school certificate is not available as medical evidence has a margin of error. Thus, in view of the above discussed case law and arguments of

learned counsel for the appellant that the age of the prosecutrix is 20 years on the date of alleged occurrence is devoid of any force.

As prosecutrix was below 16 years of age on the date of commission of this crime, therefore, the case of the consent put-forth by learned counsel for the appellants is not sustainable. The discussion regarding letters mark D1 to D48 becomes irrelevant. Even otherwise, it is settled proposition of law that science of hand writing is not a perfect science, whereas, it is so in case of thumb impressions. The aforementioned letters are not signed by the prosecutrix.

Above all, the defence taken by the appellants is not consistent. At one time, appellant Ravi Kumar took the defence that the complainant party used to support Raghbir Singh in Panchayat elections, whereas, the accused were supporters of Jasbir Singh and since Raghbir Singh was defeated in the elections, therefore, they have been falsely implicated at the instance of Raghbir Singh. Subsequently, he took the plea that the prosecutrix was having love affairs with him and she wanted to marry with him but on account of caste barrier and further that the prosecutrix was a lady of a bad character, therefore, he (Ravi Kumar) refused to marry her. Thus, he has been implicated falsely in this case. All this goes to show that defence version is not

probable and at least prosecutrix was not a consenting party. Section 114-A of Indian Evidence Act says that where the victim makes a statement in the Court that she did not consent, the Court shall presume that she did not consent. Jaswinder Singh and Kaushalya Devi took the defence that since they were creating hurdles in the marriage of the prosecutrix with Ravi Kumar, therefore, they were implicated falsely; again does not seem to be probable as there is no material available on record to show the probability of this defence version. On the other hand, prosecutrix has categorically stated that while she was returning home after harvesting crop of Nachattar Singh, appellants Ravi Kumar and Jaswinder Singh were already standing outside the phirni of the village. They made her smell one handkerchief and took her away to the partially demolished house adjoining the residential house of Jaswinder Singh, where Ravi Kumar committed rape upon her against her will and also kept her confined there under threat that if she raises alarm she would be done to death. Kaushalya Devi, mother of Jaswinder Singh, came to her and told that she should not raise alarm and she would get her marriage solemnized with Ravi Kumar and she remained with her for the whole day and did not allow her to go out. The prosecutrix further stated that Ravi Kumar again came in the night to her and committed rape upon her against her will. PW2, mother of

the prosecutrix, also corroborated the statement of prosecutrix.

Of course, no external mark of injury was there on the person of prosecutrix but that is not enough to discard the statement of the prosecutrix. In the present case, with the statement of PW6-Dr.Sushank Sood, Medical Officer, who medico legally examined Ravi Kumar, appellant and found following four injuries:

- “1.An injury with scab on left shoulder about 5 cm long extending medio laterally.
2. An abrasion with scab formation about 5 cm anterior to the left tragus.
3. Abrasion with scab formation 3 cm below the left anterior superior iliac spine.
4. Bluish black contusions on both hips.”

The aforesaid injuries go to show that the prosecutrix resisted attempt of rape on her person and the rape was forcible act on the part of Ravi Kumar, appellant.

PW10-Neena Gupta, Medical Officer, Civil Dispensary, Rajpura Colony, Patiala, medico legally examined the prosecutrix and opined that as per vaginal examination, vagina admits one finger easily. Hymen appears to be ruptured and tenderness was present on vaginal introitus. Cervix appears to be downwards and uterus is anti-verted.

The report of FSL (Ex.PN) shows that semen was detected on the contents of exhibits No.II & No.III. No

spermatozoa were detected on the contents of exhibits No.I & No.IV.

Dr.PW6-Dr.Sushank Sood, Medical officer, who medico legally examined appellant Ravi Kumar reported that he found nothing to suggest that the accused Ravi Kumar was incapable of performing sexual intercourse. Thus, with this medical evidence on record which corroborates the statement of prosecutrix PW1 and her mother PW2 on the point of rape it stands established on the file beyond reasonable doubt that the accused Ravi Kumar committed rape upon the prosecutrix after kidnapping her with the help of his co-accused Jaswinder Singh and further kept her confined in the partially demolished house in which Kaushalya Devi, appellant also helped him and appellant Ravi Kumar had also given threat to the life of prosecutrix if she raises alarm.

It was next argued by learned counsel for the appellants that as per prosecution case, the occurrence is of dated 6.4.2003. The prosecutrix was recovered on 8.4.2003, whereas, FIR of the case was got recorded on 10.4.2004. The FIR is, thus, delayed one and during this period, there was enough time for the prosecutrix to make consultations and to rope in innocent persons, like, appellants of the case. No explanation has been put-forward

as to why the matter was not reported to the police on that very day the prosecutrix was allegedly recovered.

It was further argued by learned counsel for the appellants that the prosecutrix was missing since 6.4.2003 but the parents of the prosecutrix did not take the trouble to lodge the FIR upto 10.4.2003. PW2-Surjit Kaur, stated that on the next date i.e. 7.4.2003, they met Sarpanch and also made the announcement on the public address system of Gurdwara Sahib of the village but could not trace the prosecutrix. It is unbelievable that announcement would be got made regarding missing of the girl in the aforesaid manner but the matter would not be reported to the police, whereas, the first step should have been to lodge the FIR with the police.

The above argument of learned counsel for the appellant is not sustainable. The parents of the prosecutrix had been trying to search the prosecutrix. In search of prosecutrix, they had reached the house of Kaushalya Devi where ultimately they could find the prosecutrix on 8.4.2003. When she was recovered, she was in a semi-conscious condition. She was, thus, taken to the house. On 9.4.2003, prosecutrix narrated the whole incident to her mother in the evening and that time she told her that she was raped by Ravi Kumar, appellant. Under these circumstances, if FIR was got lodged on the statement of

prosecutrix on 10.4.2003, it does not make the prosecution case doubtful. It is settled proposition of law that the statement of prosecutrix in a rape case is like the statement of injured. In fact, the statements of prosecutrix, her mother, coupled with the medical evidence, inspire confidence in the mind of Court regarding guilt of the accused, as such, recording of FIR on 10.4.2003 in no way warrants any benefit to the accused.

Learned counsel for the appellants also argued that PW10-Neena Gupta deposed that the prosecutrix was rescued by the police on 8.4.2003, whereas, as per statement of prosecutrix and prosecution story, she was rescued by her parents. This contradiction makes the entire prosecution story doubtful.

Again, this argument of learned counsel for the appellant is devoid of any merit as Dr.Neena Gupta nowhere stated that the prosecutrix told her that she was rescued by the police. Under these circumstances, it cannot be said that the prosecutrix ever told Dr.Neena Gupta that she was rescued by the police. Even otherwise, PW2, mother of the prosecutrix, did not state that she was rescued by the police. Even Investigating Officer did not state so. The Investigating Officer ASI Amarjit Singh categorically stated that the prosecutrix along with her parents met him and then he recorded the statement Ex.PA of the prosecutrix.

For the aforesaid reasons, finding no merit in this appeal, it is ordered to be dismissed maintaining the judgment of conviction dated 7.1.2004 and order of sentence dated 8.1.2004 passed by the trial Court.

If the appellants are on bail, their bail bonds, shall stand cancelled and they be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Patiala shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance report, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

January 09, 2015
KD

(Raj Rahul Garg)
Judge