

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-823-DB-2012 (O&M)

Date of decision: 18.11.2015

Brij Bhushan

..... Appellant

Vs.

State of Haryana

..... Respondent

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

Argued by: Mr. Harsh Chopra, Advocate
for the appellant.

Mr. Vivek Saini, Assistant Advocate General, Haryana.

RAJ RAHUL GARG.J.

This is a case of rape of minor of the age of 6 years old girl who was none else but the sister of appellant's wife. Appellant was thus a close relative of prosecutrix and a person in the position of trust.

Briefly prosecution case is like this; that on 25.11.2010, ASI Jai Pal Singh of Police Station, Tigaon, received a telephonic message from Anil Mishra, Child Welfare, Gurgaon, regarding rape of 6 years old girl by Brij Bhushan (accused). On receipt of this information, ASI Jai Pal Singh alongwith police officials reached village Korali. Khem Singh gave an application Ex.PD to the effect that at about 8:00 A.M., he alongwith Ajit (uncle's son) were going on foot for realising the money on account of water bill from his uncle's son (father's elder brother's son). At about 8:10 A.M., when they reached in front of the house of Brij Bhushan (accused), they heard cries of a child and also noise of beatings from the house of

Brij Bhushan. Complainant had tried to get the door opened but Brij Bhushan did not open the door. At this, complainant and Ajit scaled over the wall of the house and saw Brij Bhushan giving beatings to his wife Kalpana and prosecutrix (name withheld) was weeping. They saved Kalpana from the hands of accused and saw injury marks on the eyes of prosecutrix. On inquiry, prosecutrix told him that Brij Bhushan had committed rape on her yesterday and Brij Bhushan had also given beatings to her, the previous evening, as well earlier to it. Kalpana told them that Brij Bhushan had given beatings to her and asked her not to disclose the factum of rape of prosecutrix by him to anybody, otherwise he shall kill her. She also disclosed that Brij Bhushan had detained them (Kalpana and prosecutrix) in the room. Khem Singh-complainant then produced prosecutrix as well Kalpana before the police for taking legal action against the accused. On this complaint, ASI Jai Pal Singh made his endorsement Ex. PD/3 and sent the same to the police station for registration of the FIR, whereupon, formal FIR was registered. Rough site plan of the spot was prepared as Ex. PK. Grey colour blood stained woolen bed sheet with green strips was taken into possession vide memo Ex. PH. Finger prints expert was called at the spot. Prosecutrix was got medico-legally examined. Kalpana was also got medico-legally examined as she was having some injuries. After medical examination, doctor handed over the parcel containing clothes, a glass vial containing swab and an envelope containing sample seal, to Investigating Officer, which were taken into possession vide memo Ex. PI. Prosecutrix was referred to B.K.Hospital, Faridabad for further treatment. Investigating Officer got prosecutrix admitted in

B.K.Hospital, Faridabad. Parents of the prosecutrix met the police party in B.K.Hospital, Faridabad. Accused Brij Bhushan was arrested. He was also got medico-legally examined from PHC Tigaon. After examination, doctor handed over an underwear and an envelope containing sample seal to Investigating Officer, which were taken into possession vide memo Ex.PJ.

Scaled site plan of the spot was got prepared from Sarwan Kumar, draftsman. Discharge summary of prosecutrix from Safdarjang Hospital, Delhi, was produced by Saroj, mother of the prosecutrix, before the police. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused for committing offence punishable under Sections 323, 342, 376 and 506 of Indian Penal Code (for short 'IPC'), he was charge-sheeted accordingly. After taking entire prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded wherein he denied each prosecution allegation and pleaded his innocence and false implication.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the impugned judgment of conviction dated 09.07.2012 and order of sentence dated 11.07.2012, as set out in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides going through the record of this case.

The first and foremost argument advanced by learned counsel for the appellant-accused is this; that complainant Khem Singh, in fact, is having illicit relations with Kalpna to which accused objected. As such,

appellant-accused has been implicated falsely in this case. Not only this, even Kalpana has been residing with Khem Singh in village Tigoan. Though, learned counsel for the appellant-accused has taken this defence yet no proof of this fact was brought on record nor there is any material placed on file. Even, at one time when Saroj appeared as PW11, the suggestion was given to her to the effect that she was having illicit relations with Khem Singh and due to this reason and on account of money, there used to remain quarrel between her and the accused. Thus, in fact, the appellant's defence is not consistent. In statement under Section 313 Cr.P.C., it was stated that Khem Singh was having illicit relations with Kalpana whereas when Saroj appeared as PW11, a suggestion was given to her that she was having illicit relations with Khem Singh. Even otherwise, only on the basis of suggestion given to the witness, it cannot be said that the defence taken by the accused in this regard is probable. It is general tendency that whosoever comes forward to render help to the helpless, he is roped in falsely in some criminal cases so that he may not dare to help the victim. Thus, the contention of learned counsel for the appellant-accused is without any substance.

The next point of argument raised by Shri Harsh Chopra, Advocate, counsel for the appellant is this; that as per report FSL Ex. PG, the semen could not be detected on any of the exhibits i.e. the clothes of prosecutrix as well the cotton-wool swab as well on the clothes of accused. This shows that no rape had actually been committed by the accused and this fact also shows the falsity of the prosecution case.

The above argument of learned counsel for the appellant-

accused is also devoid of any force, as for the offence of rape, mere penetration of male organ is sufficient. It is not the requirement of law that semen should be detected on the clothes or vaginal swabs. Apart from it, there is overwhelming evidence both oral as well as medical available on the record which establishes beyond the shadow of doubt that prosecutrix was raped by appellant-accused Brij Bhushan. Kalpana is the wife of accused Brij Bhushan. Prosecutrix is the sister of Kalpana. Kalpana as PW12 categorically stated that she was married to accused on 14.12.2009. After her marriage, she came to know that accused was already married with one Bimlesh, who had taken divorce from the accused. She deposed that accused was having bad habits. He was habitual drunkard. During *navratras* in the year 2010, accused brought her sister (prosecutrix) to his house on the pretext of getting her admitted in school for studies. She was aged about 6 years. Afterwards, accused started giving beatings to her as well to the prosecutrix. She further deposed that on 24.11.2010, at about 7:00 P.M., accused came to the house in a drunken condition and carried prosecutrix in the room. At that time, she was outside the room and was working. She was busy in her household work. After sometime she heard the cries of prosecutrix from the room. She went inside the room and saw accused committing forcible sexual intercourse with prosecutrix. The bed sheet was stained with blood. When she asked the accused as to what had he done, accused threatened her to kill if she makes complaint and, thereafter, gave beatings to her and to the prosecutrix. Then somebody informed the police and police came to their house on the next day.

Prosecutrix as PW13 also categorically stated that Brij Bhushan-accused is

her Jeeja. Her sister Kalpana is married to him. Accused brought her to his house saying that he will get her admitted in school for getting education. She further deposed that accused Brij Bhushan used to beat her. On one day, in the evening, when he was drunk, he committed rape on her; when she cried, her sister Kalpana and other persons came to the house. She also deposed that accused had given beatings to her as well to Kalpana. He also threatened them to kill if they disclose anything to anybody. Her statement is also to the effect that she was taken to hospital next day where she was medico-legally examined. Thus the prosecutrix, who is of the age of 6 years, established the guilt of the accused beyond any shadow of doubt. Accused is the close relation of prosecutrix. As such, identity of accused cannot be said to be disputed in any manner. For this reason authority cited as *State of U.P. Vs. Ashok Dixit, 2000 AIR (SC), 1066*, is not applicable. Even if he committed rape on the prosecutrix in the dark, Kalpana, wife of accused, and sister of the prosecutrix reached the spot at the time of the incident and also deposed against the accused in so many words that he (accused) committed rape on the prosecutrix. Even Saroj, mother of prosecutrix, categorically stated that when on receipt of information she reached the hospital. Her daughter Kalpana informed her that accused Brij Bhushan has committed rape on the prosecutrix on 24.11.2010. She also deposed to the effect that in the year 2010 during *navratras*, accused Brij Bhushan had taken away the prosecutrix, aged about 6 years, to his house on the pretext that he will get her admitted in school. Thus, the fact that accused brought the prosecutrix to his house for getting her admitted in school, also stands proved on record beyond reasonable doubt.

Khem Singh (PW10) is the complainant of this case. He heard the cries from the house of accused at 8:00 A.M. on 25.11.2010, while he alongwith Ajit was going to the house of his Tau. On hearing the cries, he knocked at the door of Brij Bhushan and entered. On entering the house of Brij Bhushan, they saw that the wife of Brij Bhushan namely Kalpana was weeping. Kalpana told him that Brij Bhushan gave beatings to her and committed rape upon her sister (prosecutrix). The prosecutrix was also sitting inside. Thus, with the afore-discussed statement of witness, it stands established on the file that the accused had committed rape on the prosecutrix, who was of the tender age of 6 years. Might be semen was not detected on the clothes, sent to FSL for examination, yet from the statement of doctor Rachna Mishra (PW1), who medico-legally examined prosecutrix, it is established that on p/v examination hymen was absent. p/v bleeding present. Anal vaginal pathway became common due to injury stool was seen in vagina. She also gave her opinion that possibility of sexual assault cannot be ruled out. Even during the course of her cross-examination, when the defence wanted to show that the injuries on the person of prosecutrix could be caused due to fall on a pointed heavy object, doctor Rachna Mishra voluntarily stated that as per her opinion it was a case of sexual assault as there was some other type of injuries also present on the person of prosecutrix. For facility of reference, the injuries, found on the person of prosecutrix is mentioned by the aforesaid doctor in her affidavit Ex. PA, which are as follows:-

1. hematoma reddish is seen under (L) eye, no conjunctival haemorrhage seen.

2. Multiple bruise mark is seen on thigh (L) & calf

muscle. Pt is c/o pain. Multiple nail mark is seen.

3. Multiple bruise mark is seen on (L) side multiple nail mark & scartch mark issseenon back.

4. An injury is seen on R cheek. Pus is coming from the wound. Wound measuring 2 cm.

5. Bluish hematoma is seen on R & L arm/forearm & on the chest.

Dr. Karishma Thariani, Sr. Resident, Safdarjang Hospital, New Delhi deposed from the discharge summary of prosecutrix that prosecutrix was admitted on 26.11.2010 and discharged on 10.12.2010. Copy of discharge summary is Ex. PL. This doctor deposed that the patient was operated for vaginal repair with perieneal body reconstruction with RVF (Recto Vaginal Fistula) repair under general anesthesia. With this kind of injuries on the person of prosecutrix, it is established on the file that the person of prosecutrix was violated. The offence committed by the accused is very heinous in nature and the manner in which it was committed is also gruesome. As such, even if no semen was detected on the clothes of the prosecutrix as well of the accused, as per FSL, it does not make out a case of acquittal or benefit of doubt in favour of accused in any manner. Not only this even from the statement of Dr. Vikas Sharma (PW2) who proved the MLR of Kalpana and deposed about the injuries on her person by giving his affidavit Ex. PB, the case of the prosecution that accused gave beatings to Kalpana stands established. Regarding giving her beatings, besides statement of Kalpana (PW12), statement of Khem Singh (PW10) and the

statement of prosecutrix (PW13) are also there. The case law cited as *Tameezuddin @ Tammu Vs. State of (NCT) of Delhi, 2009 (15) SCC, 566, Dinesh Jaiswal Vs. State of M.P., 2010 (2) JT,210, State of Maharashtra Vs. Ahmed Shaikh Babajan and others, 2009 (14) SCC 267 and Atender Yadav Vs. State Government of NCT Delhi, 2014 (8) RCR (Criminal), 2601*, by the counsel for the appellant-accused on the point of acceptance of evidence of prosecutrix for basing conviction is not proposition of time; are not applicable to the facts and circumstances of the present case.

In the case in hand, there is not only the statement of prosecutrix alone but the sister of prosecutrix who is the wife of accused with whom prosecutrix was living in the house where the person of prosecutrix was violated, is also a witness and deposed against the accused. Even Khem Singh (PW10), who entered the house after hearing the cries from the house of accused and then came to know about the incident in question and the factum of giving beatings by accused to Kalpana and prosecutrix, also deposed against the accused.

It was next argued by learned counsel for the appellant-accused that the statements of Khem Singh (PW10), Kalpana (PW12) and prosecutrix (PW13) are contradictory. As such, no conviction can be based on their statements. Kalpana (PW12) in her cross-examination deposed that at the time of commission of the offence, she was not present in the house. She had gone to fetch water. Accused had committed rape in her absence. At that time, electricity was off. There was some dark in the room as well as in the house whereas in her examination-in-chief, she deposed that at the relevant time she was busy in household work. When accused had taken the

prosecutrix in the room, at that time she was outside the room and was working. Likewise regarding arrest of the accused, there is contradiction in the prosecution evidence. As per Jai Pal Singh (PW14), after getting prosecutrix admitted in B.K.Hospital, Faridabad, and after the parents of prosecutrix met him, he went in search of the accused and arrested him whereas per Khem Singh (PW10) police arrested the accused at the spot and, thereafter, he (Khem Singh) had gone to his house.

Both Khem Singh (PW10) and Kalpana (PW12) have faced lengthy cross-examination. In fact, Khem Singh (PW10) nowhere stated the date of arrest of the accused. Simply because Khem Singh (PW10) deposed about the arrest of the accused would not mean that the accused was arrested on 25.11.2010. itself. Also the statement of Kalpana as to if she was present outside the room or had gone to fetch water, does not make the prosecution case doubtful. The fact remains is this; that Kalpana was in the house and on hearing the cries she had gone to the room where accused was committed rape on the prosecutrix. Thus, the above contention of learned counsel for the appellant-accused is also devoid of any force. The authority cited as **Raj Kumar Vs. State of Rajasthan, 2013 (4) SCC (Criminal) 812,** is not applicable to the facts of the present case as in the afore-cited case the Hon'ble Apex Court noticed that major contradictions/improvements/embellishments in the deposition of witnesses which could not be ignored when examined in correct perspective whereas so is not the case in hand. We have already discussed above that the contradictions pointed out by the learned counsel for the appellant-accused cannot be termed as major contradictions. Even the aforesaid case law was

based on circumstantial evidence whereas the present case is the one in which prosecutrix, who is victim, herself appeared as witness and supported the prosecution case. Besides her, the most material witness i.e. the sister of prosecutrix also corroborated the statement of prosecutrix, clearly established the guilt of the accused.

For the reasons recorded above, finding no merit in this appeal. The impugned judgment of conviction dated 09.07.2012 and order of sentence dated 11.07.2012 are maintained.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

18.11.2015
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