

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal S-454-SB of 2004
Date of decision March 10, 2015

Satbir Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE T.P.S.MANN

PESENT: Mr J.S.Dahiya Advocate
for the appellant.

Mr Randhir Singh, Additional Advocate General, Haryana

T.P.S.MANN, J.

This appeal has been preferred against the judgment and order dated 17.10.2003 passed by the Additional Sessions Judge, Panipat, whereby the appellant was convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for six months. The period of detention already undergone by him during the investigation and the trial was ordered to set off against the period of sentence awarded to him.

The prosecution case, in nutshell, is that on 2.12.2002, the prosecutrix, alongwith her husband, appeared before SI Atma Ram and got recorded her statement that she had three daughters and her husband was a cloth merchant. On 1.12.2002, her husband was away to U.P. to buy cloth.

She went to Yamuna Tapu Goela Khurd to seek blessings of a Saint so that she

may give birth to a son. On her way back, she came across the appellant, who belonged to her village. The appellant gagged her mouth and forcibly took her to the sugarcane field. He removed her salwar and committed rape upon her. Her shirt was torn. When she raised an alarm, the appellant ran away. She returned to her house but did not narrate the occurrence to anybody. However, when her husband returned, she apprised him about the occurrence.

Further case of the prosecution is that on the basis of aforementioned statement made by the prosecutrix, FIR No.75 dated 2.12.2002 under Section 376 IPC was registered against the appellant at Police Station, Bapoli. During the investigation of the case, the appellant was arrested and subjected to medical examination. The prosecutrix was also medically examined. The statements of the witnesses were recorded. Scaled site plan of the place of occurrence was prepared. After completion of the investigation, the challan was presented against the appellant. This was followed by commitment of the case to the Court of Sessions, where charge under Section 376 IPC was framed against the appellant. The appellant pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the prosecutrix as PW-11, who deposed about the commission of rape upon her by the appellant. The husband of the prosecutrix also appeared as PW-9 and stated that when he had returned from U.P at about 8.00 PM on 1.12.2002, his wife told him about the appellant having subjected her to forcible sexual intercourse. He further testified that on the next day he, alongwith his wife, appeared before SI Atma Ram and the statement of his wife was recorded. His statement under Section 161 Cr.P.C was also recorded. He identified the appellant, who was his neighbour and used to work as a mason. PW-5 Rakesh Kumar, Halqa Patwari,

proved scaled site plan Ex.PE of the place of occurrence, which he had prepared on 17.12.2002 at the instance of the prosecutrix. PW-8 Dr.Jai Parkash testified that he medically examined the appellant on 6.12.2002 and found that there was nothing to suggest that he was not capable of performing sexual intercourse. PW-12 Dr. Divya Mangla testified that on 2.12.2002, she medico-legally examined the prosecutrix and found abrasions over her chest, breasts and lower limbs. Her shirt was torn. In her opinion, the prosecutrix had been subjected to rape. Apart from the above, the prosecution examined PW-1 C.Surender Singh, PW-2 ASI Randhir Singh, PW-3 HC Ram Kumar, PW-4 ASI Ramesh Chand, PW-6 C.Rajbir Singh, PW-7 HC Rajpal and PW-10 SI Atma Ram, who testified about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C, the appellant denied the allegations against him and pleaded false implication. In defence, he examined DW-1 Guddi, DW-2 Narayani Devi and DW-3 Sarbati.

The trial Court believed the prosecution version, rejected the defence plea and, accordingly, convicted and sentenced the appellant, as mentioned above.

This Court had heard learned counsel for the parties and scanned the evidence with their able assistance.

The stand of the appellant was that the FIR was registered after an inordinate delay and, thus, the prosecution case deserved to be rejected straightway.

From the evidence available on the file, it is apparent that on 1.12.2002 when the husband of the prosecutrix was away to U.P to buy cloth, she went to seek blessings of a Saint as she was having three daughters but

could not give birth to a son. On her way back, she was accosted by the appellant, who after gagging her mouth forcibly took her to the sugarcane field. He took off her salwar and had forcible intercourse with her. In the process her shirt was torn. Only when she raised an alarm that the appellant decamped from the spot. She reached her home but did not inform anybody. However, when her husband returned on the same day at about 8.00 PM that she apprised him as to what had happened with her when she was coming back after seeking blessings of a Saint. It is true that once the husband of the prosecutrix had learnt from her that she had been raped by the appellant, he was required to lodge the report with the police without any loss of time. However, when the honour of the family is at stake and the person involved in the commission of crime was none else but their co-villager, who resided in their neighbourhood and worked as a mason, they would have thought twice before leaving for the Police Station. Ultimately, on 2.12.2002 at about 4.00 PM, the prosecutrix and her husband left for reporting the matter to the police and came across SI Atma Ram near the Paper Mill, where statement Ex.PC of the prosecutrix was recorded. On its basis, FIR Ex.PD came to be registered at Police Station, Bapoli on 2.12.2002 at 5.40 PM. Thus, whatever delay occurred in the late reporting of the matter, stood duly explained.

Learned counsel for the appellant submitted that the prosecution version about the prosecutrix wearing the torn shirt at the time when she met SI Atma Ram makes the prosecution case highly improbable. Moreover, neither there was any injury found on the person of the appellant nor any injury was noticed on the perineum of the prosecutrix. All this showed that the prosecutrix had been a consenting party at the time of commission of sexual intercourse with her.

From the testimonies of PW-12 Dr. Divya Mangla, it is apparent that when the prosecutrix was medico-legally examined, abrasions were found present over her chest, breasts and lower limbs. The shirt Ex.P9 which was in torn condition from the upper side i.e. breast part, alongwith salwar Ex.P8 were made into a sealed parcel. Besides, vaginal swabs and slides were also prepared. From the report Ex.PK of the Forensic Science Laboratory, Madhuban, it is made out that there were human semen stains found on the salwar of the prosecutrix and kachha (underwear) of the appellant. Merely because PW-12 Dr. Divya Mangla testified in her cross-examination that the injuries shown in the M.L.R could be self-inflicted, is no ground to hold that no such injury was received by the prosecutrix or she had self-suffered those injuries. The type of injuries i.e. abrasions which were found on the chest, breasts and lower limbs of the prosecutrix at the time of her medico-legal examination are clearly suggestive of the fact that at the time of the occurrence, the appellant had over-powered the prosecutrix and an attempt had also been made by the prosecutrix to offer resistance to the forcible act of sexual intercourse being committed by the appellant. Further, as per the Forensic Science Laboratory report, human semen was not found on the swabs and slides but that does not run counter to the prosecution case as the occurrence had taken place on 1.12.2002 and the prosecutrix was medically examined a day later. During this period, the prosecutrix must have passed urine and also taken bath which would explain the absence of human semen on the vaginal swabs and slides. As regards the torn shirt still being worn by the prosecutrix when she appeared before SI Atma Ram, who recorded her statement, it may be noticed that the prosecutrix and her husband belonged to lower strata of society, who could not afford large number of wearing apparels. Even the

prosecutrix might have thought it appropriate to proceed for reporting the matter to the police while wearing the same clothes which she was wearing at the time of the occurrence.

According to the defence, the appellant had worked as mason at the house of brother of the prosecutrix's husband, who owed a sum of Rs.5,000/- to the appellant towards labour charges and only in order to wriggle out of the said liability that the prosecutrix and her husband came up with a false version of the appellant committing rape upon the prosecutrix. The plea taken by the appellant that there was a dispute between the prosecutrix and the appellant regarding a sum of Rs.5,000/- which was owed by the former to the latter as labour charges and the prosecutrix threatening to teach a lesson to the appellant is sought to be supported by the testimony of DW-1 Guddi, who stated that she had moved an application to the S.H.O for conducting an inquiry in the matter. However, said DW-1 Guddi deposed in her cross-examination that she had moved the application only on 16.7.2003 i.e. about 7/8 months after the occurrence. Moreover, this witness is none else but the wife of the appellant, who might have submitted the said application so as to prolong the case and to harass the prosecutrix and the other witnesses. Therefore, the said plea of the defence is, hereby, rejected.

DW-2 Narayani Devi and DW-3 Sarbati, both residents of village Goela Khurd had testified before the trial Court that on 1.12.2002 at about 9/9.30 AM when they were cutting grass in the field, in the meantime, the appellant came there and after meeting them, he left. Both of them then heard noise and noticed that one woman, alongwith two persons, was chasing the appellant and they gave fist blows to the appellant. However, none of them during their cross-examination could state as to from whose field they were

cutting grass at the relevant time. Moreover, the occurrence in question had taken place in the area of village Goela Khurd and the prosecutrix chasing the appellant, in a way, supports the prosecution case itself that after committing rape, the appellant had run away from the spot. Of course, the prosecutrix would not have hesitated to give chase to the appellant. Therefore, some sort of incident, even according to the defence, had taken place at the time of occurrence and that too, in the area of village Goela Khurd. The prosecution case when read in conjunction with the defence plea, stands proved that it was the appellant, who had committed rape upon the prosecutrix and when the prosecutrix had raised an alarm, he had managed to run away from the spot.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court. Even the sentences of imprisonment and of fine imposed upon the appellant by the trial Court do not call for any interference as the sentence of imprisonment imposed is the minimum prescribed for the offence of rape punishable under Section 376 IPC.

Resultantly, the appeal is without any merit and, therefore, dismissed.

The appellant is on bail. The bonds furnished by him and by his surety/sureties stand cancelled. He be taken into custody forthwith to undergo the remaining sentence of imprisonment imposed upon him.

March 10, 2015
pds.

(T.P.S.MANN)
JUDGE