

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-1223-SB of 2012

Date of Decision: 22.12.2015

Manoj Kumar
State of Haryana
Versus
.....Appellant
.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 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?

Present:- Mr. J.S. Mehndiratta, Advocate,
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

SHEKHER DHAWAN, J

Present appeal against judgment of conviction dated 02.02.2012 and order of sentence dated 04.02.2012, passed by Additional Sessions Judge, Palwal, whereby appellant Manoj Kumar was convicted and sentenced as under:

<i>Offence U/s</i>	<i>Substantive sentence</i>	<i>In default</i>
U/s 376(2)(g) IPC	RI for 10 years with fine of Rs.50,000/-	In default to undergo further RI for 6 months.

2. Relevant facts of the case that on 15.06.2010 complainant Brij Mohan reported to the police vide complaint Ex.P1 that on 13.06.2010 at around 10 a.m. he along with his wife Smt. Mishri Devi had gone to

Ferozepur Jhirka, District Mewat. Their children including prosecutrix (named withheld), aged about 13 years, were at home. They came back to home at about 9.00 a.m. In the next morning, the complainant had gone to his shop and at about 10.00 a.m. He was called by his wife and she told that their daughter (prosecutrix) was told her that on 13.06.2010 at about 6.00 p.m. she was alone at home and she had closed the doors of the house from inside. Other sisters had gone to fetch vegetables from the market. In the meanwhile, their neighbours Manoj, Amit along with Pawan intruded into their house by scaling wall. Amit sat on a cot near the main gate. Manoj shut her mouth. Then, Pawan and Manoj accused committed sexual assault with her and she became unconscious. As per Smt. Mishri Devi, her daughter had not informed about the incident during night because of fear and shame. On this, police started investigation and accused persons were arrested. Accused Manoj and Pawan were got medico-legally examined. However, accused Amit was not arrested because he was found innocent after investigation. Accused Pawan was juvenile. After completion of investigation, the challan was presented against accused Manoj.

3. During trial of the case, learned trial Judge after completing various formalities including framing of charge against the accused, recording of statement of prosecution witnesses, examining of accused under Section 313 Cr.P.C. and after considering the prosecution evidence and defence version held appellant Manoj guilty for the commission of an offence under Section 376(2)(g) and convicted and sentenced him thereunder.

4. Learned counsel for the appellant while arguing on the innocence of the accused mainly took the plea that the prosecution case

suffers from various infirmities including delay in reporting the matter to the police, as the alleged occurrence had taken place on 13.06.2010 and the matter was reported to the police on the next day and FIR was recorded on 15.06.2010.

5. Learned counsel for the appellant further submitted that learned trial Judge has relied upon statement of prosecution witnesses, which are contradictory on material points and as such wholly unreliable. More so, as per statement of PW6 Dr. Hima Chugh, who had conducted medico-legally examination of the prosecutrix on 15.06.2011, there were no struggle marks on the body of prosecutrix.

6. Learned counsel for the appellant also submitted that in fact dispute was going on between the families of appellant and complainant and present appellant has been implicated because of inimical relations and as such the appellant deserves acquittal.

7. Learned State counsel submitted that learned trial Judge has considered all these facts while recording the judgment of conviction and delay in this case has been duly explained. There are no contradiction on the material points in the statement of witnesses. Inimical relations are not of such a nature so as to invite false implication by complainant while putting reputation and life of her daughter at stake. Otherwise, the prosecution case has been duly proved and appeal deserves dismissal.

8. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the prosecution has mainly placed reliance upon testimony of prosecutrix, aged about 13 years, who appeared as PW-3. She had stated in so many words that on 13.06.2010, when her parents had gone out of station to see some relatives, her younger

sisters had gone to the market to take vegetables and at that time three boys, namely, Amit, Pawan and present appellant Manoj intruded in their house from upstairs, Manoj was identified in the Court during trial. Amit sat in the outer room of his house. Manoj pressed her mouth and Pawan removed her clothes and subjected her to sexual intercourse followed by Manoj. She became unconscious. Thereafter, she regained conscious when nobody was present in the room. She put her clothes. She had not disclosed the incident to anybody on that day. However, she narrated the entire incident to her mother in the next morning, who in turn informed her father. Thereafter, the matter was reported to the police. Police took her to hospital where she was medico-legally examined. She made statement Ex.P2 before the magistrate, which bears her signatures. Defence counsel cross examined the said witness at length but nothing persuaded the Court to disbelieve the version of PW-3. Her version is duly supported by testimony of PW-2 Brij Mohan (father of the prosecutrix).

9. As per statement of PW-6 Hima Chugh, she conducted the medico-legally examination of prosecutrix on 15.06.2010 at about 2.00 PM. However, no struggle marks were present and hymen was found torn. Medical officer opined that the possibility of sexual intercourse could not be ruled out. The remaining prosecution witnesses have supported the prosecution case. On the contrary, the defence version is plea of denial as per statement of accused under Section 313 Cr.P.C.

10. Learned trial Judge has rightly placed reliance upon testimony of prosecutrix, which is supported by testimony of PW-2 Brij Mohan and duly corroborated by medical evidence. The delay in reporting the matter to the police has been duly explained by the prosecution. Law on the point is settled

that delay, if any, in reporting the matter to the police is not fatal for the prosecution but the requirement of law is that same must inspire confidence. In the case in hand, the delay has been duly explained that at the time of alleged occurrence parents of prosecutrix had gone out of station. On the next day, the prosecutrix had informed her mother, who in turn informed her husband and thereafter the matter was immediately reported to the police. As regards to plea that appellant has been falsely implicated because of inimical relations the same is not believable at all and the same has rightly been discarded by learned trial Judge.

11. It is inconceivable that complainant would go to the extent of staking his reputation and future of minor girl to falsely set up a case of gang rape for the sake of some inimical relations. As regards the delay in lodging the first information report, the same has been duly and satisfactorily explained and has been rightly discarded by learned trial Judge. There is no reason to differ from the view taken by learned trial Judge in this regard. Once it is established that the appellant/accused had acted in concert and entered the house of the victim and thereafter raped her, then all of them would be guilty under Section 376(2)(g) IPC irrespective of whether she had been raped by one or more of them. Explanation, under Section 376 IPC reads as under: -

“Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.”

12. This Explanation has been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce

clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.

13. In view of above, learned trial Judge has rightly recorded the judgment of conviction of appellant and appeal against judgment of conviction without any merit and same stands dismissed.

14. As regards to appeal against order of sentence, learned trial Judge has already taken a reasonable view on the point of sentence. The said order does not call for any leniency on the point of sentence.

15. Resultantly, the appeal against judgment of conviction and order of sentence, without any merit and same stands dismissed.

December 22, 2015
naresh.k.

(SHEKHER DHAWAN)
JUDGE