

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

**CRA-S-714-SB-2004 (O&M)**  
**Date of Decision: 16.07.2015**

**Madan Lal**

...Appellant(s)

**Versus**

**State of Punjab**

...Respondent(s)

**CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. R.P. Dhir, Advocate  
for the appellant.

Mr. Deep Singh, Addl. A.G., Punjab  
counsel for the respondent-State.

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**ANITA CHAUDHRY, J.**

1. This appeal is by the convicted accused who was sentenced to undergo rigorous imprisonment for a period of 7 years along with fine of Rs.1,000/- and in default of payment of fine, he was to undergo further imprisonment for a period of 3 months, under Section 376 IPC, by the Sessions Judge, Hoshiarpur, vide order dated 10.03.2004.

2. The case of the prosecution in brief is as under:-

The mother of the prosecutrix had died 10 years ago. Her father was a band master. She had come to her maternal uncle's house in village Pandori Baghel Singh 3 – 4 days ago. Talks of her engagement were going on through Madan Lal accused, resident of village Kotli Khas in his in-

laws village Sarna. Allegations are that Madan Lal came to her maternal uncle's house at 8:00 P.M. and told her that Tarsem Lal, father of the prosecutrix was in village Sarna and the family in which the engagement was to be settled was also arriving and they were waiting to see the prosecutrix and he had been sent to bring the prosecutrix to the village.

The prosecutrix accompanied Madan Lal on the cycle. On the way Madan Lal stopped the cycle near the village Kotli and forcibly took the girl to the sugar cane field and raped her. He, thereafter, fled from the spot. The prosecutrix wore her clothes and came out of the sugar cane field where she met her maternal uncle Kishan Chand and Preetam Kaur of village Kotli Khas. They were looking for her. The victim narrated the entire incident and was taken to village Pandori Baghel that night. The incident was reported to the police the next morning and the FIR was registered. The accused was apprehended and was sent for medical examination. On completion of investigation, charge-sheet was filed under Section 376, 506 IPC.

3. Upon committal of the case, the accused appeared and pleaded not guilty and came to be tried. The prosecution examined 10 witnesses besides relying upon documentary evidence. During the examination under Section 313 Cr.P.C., the accused denied the incriminating circumstances appearing against him and pleaded false implication. He further stated that Preeto Devi, the Bua of the prosecutrix was responsible for kidnapping his brother's daughter and

she was inimical towards him and he was falsely involved and was married and had four children. In defence, he examined Amarnath DW-1.

4. After hearing the parties and on assessment of the oral as well as the documentary evidence, the learned Sessions Judge, Hoshiarpur held the accused guilty under Section 376 IPC but acquitted him of the charge under Section 506 IPC. The learned Sessions Judge repelled the contention of the defence that there was no penetration or that the accused had been falsely implicated.

5. I have heard learned counsel for the parties.

6. The learned counsel for the appellant contended that there was a variance in the age given by Shri Mohinder Pal, S.M.O. PW-1 and the age given by the Medical Officer of ESI Hospital and if the variation is of 2 years then the prosecutrix was major. It was urged that there was no injury on the back and the prosecutrix had stated that she had received injuries on her back. It was urged that the medical evidence also does not support the prosecution and there was a delay in lodging the FIR. It was urged that the hymen was not torn. Continuing with the submissions, it was vociferously urged that the story appeared improbable as the incident is said to have occurred at a place near the Abadi and it would have been difficult that no person got attracted to the cries.

7. Per contra, the State counsel sought to justify the judgment under appeal and contended that the judgment did

not suffer from any perversity or illegality and the Sessions Judge on proper appreciation of the oral and documentary evidence had recorded finding of guilt which is sound and reasonable. It was urged that with respect to the age, the dental age was given between 15 to 16 years by the SMO (Dental) who had given the report from the clinical examination and it was reported that the upper and lower third molars had not erupted in the oral cavity whereas the Radiologist had given the age between 14½ to 16½ years. It was urged that the Sessions Judge was justified in holding that the delay had been satisfactorily explained and had assigned cogent and acceptable reasons.

8. I have bestowed my anxious considerations to the submissions made by both the sides and have scrutinized the evidence.

9. As noticed above, the incident took place on 8:00 P.M. on 23.05.2003. The prosecutrix had come to her maternal uncle's house at village Pandori Baghel. The accused was married and had children and he was mediating and had found an alliance for the prosecutrix. He came to take the prosecutrix from her uncle's house to village Kotli which was at a short distance and returned on his cycle. On the way, he took the girl to the sugar cane field and raped her. Before the prosecutrix could raise alarm the accused stuffed her Chunni (Head Cloth) into her mouth and after committing the gory crime, he left her behind. Meanwhile, the family of the prosecutrix were on the way to village Kotli.

The prosecutrix found them on reaching the road and narrated the incident. The girl was taken to the house and the matter was reported to the police the next day.

10. The prosecution evidence consists of the statement of Kishan Chand PW-5 who is the maternal uncle. He supported the prosecution case and deposed that Madan Lal accused had come to his house and had told him that the family was waiting in village Kotli in connection with the negotiations regarding the marriage and he had been asked to bring the prosecutrix to village Kotli as the boy was there and therefore, there was an urgency. The maternal uncle in his testimony before the Court stated that reposing faith in him, he sent his niece along with the accused and after about 10 – 20 minutes, he also started for village Kotli and on the way, he met Preetam Kaur, his father's sister and he told her as to why he was proceeding. He stated that Preetam Kaur was not aware of this and she stated that she did not know that the boy was coming. On hearing this they started searching for the girl. On the way they found her standing on the bank of the canal near the sugar cane field. He stated that he brought the girl back to Preetam Kaur's house and the matter was reported to the police the next morning.

11. Besides this, the victim in her deposition before the Court gave a detailed account of the horrible incident while appearing in the witness box as PW-4.

12. The Medical Officer who had examined the prosecutrix namely Dr. Shobha Saini PW-10 had found an

abrasion measuring 1 cm x .25 cm on the just lateral to left ala. She had stated that as per the history given by the patient, the incident took at about 8:00 P.M. and the girl had not changed her clothes. She stated that vaginal smear and swab were taken and as per the chemical report semen was detected on vaginal smear. She stated that the hymen was intact.

13. The main argument on behalf of the appellant was that there was a delay in lodging the FIR. No doubt, the FIR should be recorded at the earliest and mere delay in lodging the complaint by itself is not fatal to the case unless from the circumstances it can be shown that the delay has been utilized for false implication or for projecting a coloured version.

14. [In State of Punjab v. Ramdev Singh](#), (2004) 1 SCC 421, the Supreme Court had held:

" 9. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. X x x x x "

15. [In Ramdas v. State of Maharashtra](#), [ (2007) 2 SCC 170 ] at paragraph 24 the Apex Court had held:

"24. x x x x x x In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation.

16. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts to an outsider. There are also cases where the family may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on the daughter for the rest of her life. These are cases where the initial hesitation of the family to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the Court has to consider the delay in the background of the facts and circumstances of each case.

17. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the Court that is important.

18. In the case in hand the delay is only of about 14 hours. The witnesses have explained that the delay had occurred, as night had fallen. The prosecution had satisfactorily explained the delay and it is not a case of embellishment in the prosecution version on account of the

delay nor it is fatal. It is not a case that another person had been trapped and the main person had been let off. The accused was known to the family. He was mediating and the story could not be concocted.

19. With respect to the age, the doctor who had carried out the dental examination and the radiological report shows that the age has been indicated between 14½ to 16½ and 15 to 17. The accused has not taken the plea of consent. Therefore, the argument is irrelevant. The girl was at her maternal uncle's house. The accused was mediating and knew that she was at her uncle's house and had therefore, come to fetch her. The prosecutrix had made a statement against the petitioner. The evidence of the prosecutrix must be given pre-dominant consideration. The story is not improbable nor belies logic. The Chemical Examiner's report nails the accused completely. Semen was detected on the vaginal smear. There is no evidence of false implication. Merely because the hymen was found to be intact is not a good ground for acquittal.

The condition of hymen being torn does not necessarily lead to infer previous conduct and conversely hymen being not torn also does not necessarily mean that there was no sexual act. An intact hymen does not rule out sexual assault.

20. There is no perversity or illegality in the judgment. The trial Court had appreciated the evidence correctly. The statement made by the prosecutrix was acceptable. It is not

a case of consent. There was injury on the face and it is a case where the appellant had forced himself upon the girl. The appellant had taken advantage of the trust reposed by her family. The victim, a young girl of 17 -18 years accompanied the appellant as he was a mediator but took advantage of the occasion. There is no evidence of false implication. The allegations against the appellant had been fully established. The judgment of conviction and order of sentence are affirmed. The appeal is dismissed.

**(ANITA CHAUDHRY)**  
**JUDGE**

16.07.2015  
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