

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

CRA No.S-1461-SB of 2011

Date of decision: 04.02.2015

Shesh Karan

..... Appellant

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr.P.K. Ganga, Advocate for the appellant.

Mr.Mukesh Kaushik, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 20th April, 2011, vide which appellant Shesh Karan has been held guilty and convicted for the offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (hereinafter called 'IPC') and the order of sentence dated 25 April, 2011, vide which the appellant was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for two months for the offence

punishable under Section 376 IPC. He was further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month, for the offence punishable under Section 506 IPC. Both the sentences were ordered to run concurrently.

2- The brief facts, giving rise to this prosecution, are that on 30th December, 2009, prosecutrix moved an application Ex.P1, alleging therein that on 25th December, 2009, at about 11:00 a.m., she was suffering from fever, so, she went to the clinic of Dr. Shesh Karan. But the clinic was lying closed. She came to know that Dr.Shesh Karan was available at his house. She went there and asked him to give her medicine for fever. Accused-appellant Dr.Shesh Karan gave her one tablet and told that she will immediately feel relief from the fever and, thereafter, he will give an injection. After some time, she started feeling drowsy. The accused asked her that if she was feeling some difficulty, she should lay on the cot. Thereafter, appellant started closing the door. The prosecutrix asked him as to why he was closing the door. He suddenly closed the door and kept his hand on her mouth and laid her on the cot and, thereafter, forcibly committed sexual intercourse with her. He also threatened the prosecutrix that if she disclosed anything to anyone, then he will eliminate her and her family members. She was sent to her home after giving the medicine. She could not narrate the occurrence due to the insult to the family. Today i.e. on the date of the application, she narrated the incident to her mother Smt.Monika. Her mother further narrated the

incident to Smt.Bhagwani, the aunt (Tai) of the prosecutrix and, thereafter, the matter was reported to the police. On the basis of the application Ex.P1, FIR Ex.P12 was registered and investigation was started by PW6 SI Surender Kumar.

3- On the same day, the prosecutrix was taken to M.A.M.C. Agroha and was medico-legally examined. Thereafter, the Investigating Officer inspected the place of occurrence and prepared the rough site plan Ex.P14. The doctor handed over the parcels to the Investigating Officer, after the medico-legal examination of the prosecutrix, which were taken into possession. On 31st December, 2009, statement of the prosecutrix was recorded under Section 164 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') by the Duty Magistrate. On 13th January, 2010 accused-appellant was arrested. He was also got medico-legally examined on the same day. On interrogation, he made the disclosure statement Ex.P18 and demarcated the place of occurrence. On completion of the formalities of investigation, the report under Section 173 Cr.P.C. was presented in the Court.

4- The accused-appellant was charge sheeted for the offences punishable under Sections 376 and 506 IPC, to which, the appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, the prosecution examined as many as 12 witnesses.

6- When examined under Section 313 Cr.P.C., the appellant pleaded that he was not present in the village on the date of occurrence.

The other private doctors of village Kajla and some other persons were not happy with him and because of this reason, he was made the scapegoat and a false case was got registered against him on the basis of an application, which was scribed by the people of village Landhari, who were inimical towards him. He is innocent.

7- In the defence evidence, Smt.Roshni, the wife of the appellant, appeared as DW1 and supported the defence plea raised by the appellant.

8- On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offences punishable under Sections 376 and 506 IPC. He was ordered to undergo the sentence as mentioned in the upper part of the judgment.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10- I have heard Mr.P.K. Ganga, Advocate, learned counsel for the appellant, Mr.Mukesh Kaushik, Deputy Advocate General, learned counsel for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that there is five days delay in lodging the FIR, which is not explained at all. This delay was utilized for concocting the false story and was fatal to the prosecution case. To support his contentions, he relied upon case **Neha through grand-mother Vimla Devi Vs. State and**

another, 2013(4) RCR (Criminal) 188.

12- He further contended that the medical evidence does not support the allegations of rape. No symptom of rape has been found in the medico-legal examination of the prosecutrix. PW11 Dr.Juli has totally ruled out the forcible sexual intercourse upon the prosecutrix. He further contended that even PW3 Dr.Rakesh Sharma has mentioned that there was no history of vaginal bleeding/discharge. There was no mark of injury over breast, thighs, back, lip or anywhere on the body of the prosecutrix. She was urinating/defecating normally. These witnesses could not tell as to whether the hymen was old or newly ruptured. If a mature person like the appellant would have committed the forcible sexual intercourse with the prosecutrix, there must be the injuries on the person of the prosecutrix. So, the medical evidence totally belies the prosecution case. To support this contention, he has relied upon case **Partap Mishra and others Vs. State of Orissa, 1977 Criminal Law Journal 817.**

13- He further contended that the house of the appellant is situated in the residential *Abadi* of the village. It is not possible that at such a place, the accused could have committed this type of offence in the day time.

14- The prosecutrix has also admitted that the wife and children of the accused also reside in that very house. He further contended that the wife of the appellant has stepped into the witness box as DW1 and has categorically deposed that prosecutrix never came to

their house and she (DW1) throughout remained present in the house. So, it is highly improbable that appellant would have indulged in such an act in their presence. This fact renders the entire prosecution version doubtful. To support his contentions, he relied upon cases **Parvati Vs. State of Haryana, 2013(3) RCR (Criminal) 315** and **Neha through grand-mother Vimla Devi Vs. State and another (supra)**.

15- He further contended that there is a material contradiction in the statements of the prosecution witnesses. The prosecutrix has stated that the application was written in the police station by some villager but the Investigating Officer stated that the application was written by the prosecutrix in his presence.

16- Learned counsel for the appellant further contended that the age of the prosecutrix is also not established. The school certificate relied upon by the prosecution, carries no evidentiary value. No ossification test has been got conducted to determine her age. To support his contentions, he relied upon the cases **Parvati Vs State of Haryana (supra) and Gurdip Singh @ Kala Vs. State of Punjab, 2011(2) RCR (Criminal) 243**.

17- He further contended that the appellant has been falsely implicated in this case due to enmity and at the instigation of other private doctors of village Kajla.

18- He further contended that the sentence awarded to the appellant is also harsh. The appellant has no criminal background and is not a previous convict. He is having wife and children.

19- On the other hand, learned State counsel contended that the statement of the prosecutrix is reliable and is corroborated from the testimony of her uncle. The delay in lodging the FIR in such type of cases, where the honour of the family is involved, is natural. The absence of the injury on the person of the prosecutrix, is no ground to render the prosecution case doubtful, as she was drowsy at the time of occurrence and was not in a position to resist. Moreover, the medico-legal examination was conducted after about five days of the occurrence. He further contended that it is not believable that prosecutrix will become tool in the hands of the other private doctors and villagers for the false implication of the appellant by putting her honour at stake. Thus, he contended that there is no infirmity in the conviction of the appellant, recorded by the learned trial Court.

20- I have duly considered the aforesaid conductions.

21- The occurrence has taken place on 25th December, 2009. The prosecutrix has moved the application Ex.P1 to the police on 30th December, 2009, on the basis of which this case has been registered. So, there is delay of five days in lodging the FIR. In the application Ex.P1 itself, the prosecutrix has mentioned that due to the fear of insult to the family and threat, she did not disclose the incident to anybody. In her testimony also, the prosecutrix deposed that she took rest for 3-4 days and, thereafter narrated the whole incident to her mother. Her mother further told the incident to her aunt (Tai) Smt.Bhagwani and then her aunt told the same to her uncle (Tau) Hanuman. She told to her uncle that she

wants justice and accordingly, her uncle went to the Police Station, Agroha on 30th December, 2009 and moved the application Ex.P1 for taking action against the accused. In case **Dildar Singh Vs. State of Punjab 2006(4) RCR (Criminal) 192**, a girl student was raped by her teacher. She disclosed only when she became pregnant and FIR was lodged. The Hon'ble Supreme Court held that the delay in lodging the FIR cannot detract reliability of the prosecutrix. In normal course of human conduct, a normal girl would not like to give publicity to the traumatic experience she has undergone. The delay in lodging the FIR in sexual offences can be due to variety of reasons, as such incident concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition bound non-permissive society would be extremely reluctant to highlight such incident, which is likely to reflect upon her chastity and being looked down by the society. The Hon'ble Supreme Court in case **State of U.P. Vs. Manoj Kumar Pandey, 2009(1) RCR (Criminal) 238** has laid down that the normal rule regarding the duty of the prosecution to explain the delay in lodging the FIR does not per se apply to the rape cases. In view of the aforesaid ratio of law, five days delay in lodging the FIR is no ground to doubt the veracity of the testimony of the prosecutrix.

22- The occurrence had taken place on 25th December, 2009. The prosecutrix was medico legally examined on 30th December 2009 i.e. after five days of the occurrence. With the lapse of time, there was no possibility of presence of semen or blood on the clothes and vaginal swab

of the prosecutrix. The prosecutrix has categorically stated that she was supplied one tablet by the accused and after taking the tablet, she felt drowsy. She has categorically deposed in the cross-examination that she did not try to stop the doctor for closing the door, as she was not in that position due to effect of the tablet. Thus, the prosecutrix was physically incapacitated to offer any resistance. So, there was no question of any injuries on the person of the prosecutrix. In these circumstances, the absence of the injuries on the person of the prosecutrix is also no ground to discard her testimony. In case **Rafiq Vs. State of U.P., AIR 1981 Supreme Court 559**, after taking note of case **Partap Mishra Vs. State of Orissa** (supra) relied upon by learned counsel for the appellant, the Hon'ble Supreme Court laid down that the absence of the injury on the person of the victim is not fatal to the prosecution case. In case **State of Tamil Nadu Vs. Ravi @ Nehru 2006(3) RCR (Criminal) 500** also the Hon'ble Apex Court has laid down that non-rupture of hymen or absence of injury on victim's private parts cannot belie the testimony of the prosecutrix.

23- When appeared in the witness box as PW1, the prosecutrix deposed as under:

“On 25.12.2009, at about 11:00 a.m. I was suffering from fever. I went for taking medicine from the shop of accused Shesh Karan. When I reached at the shop of the accused, I did not find accused there. However, his clinic/shop was open. I came to know from the people that the accused is at his residence, so I went to there for taking

medicine. I asked him to give some medicine for fever. After examining me, the accused gave me one tablet and said that take this tablet and you will be relived of fever. I started feeling sleepy/doziness after taking the tablet. The accused advised me that if you have more problem, then you may lay down on a cot and take rest for some time and I did accordingly. The accused thereafter committed rape upon me against my wishes and he further told me not to disclose this fact to anybody and threatened me that if you disclose this fact to anybody you and your family will be eliminated. Thereafter, I came to my house and took rest. I took rest for 3-4 days and thereafter, I narrated the whole incident to my mother and my mother further told the said incident to my aunt (Tai) Bhagwani then my aunt told the same to my uncle (Tau) Sh.Hanuman. I told my Tau that I want justice and accordingly, I along with my uncle went to P.S. Agroha on 30.12.2009 and moved an application Ex.P1 before SHO, P.S. Agroha for taking action against the accused. On which police registered a case. Thereafter, police took me to Agroha Medical College, where I was medico-legally examined by the doctor. Then I came to my house with the police and I pointed out the place of occurrence to the police and they prepared a rough site plan on my pointing.....”

24- Thus in her above referred testimony, she has deposed in detail how she was ravished by the appellant-accused. It is settled principle of law that in rape cases, the accused can be convicted on the sole statement of the prosecutrix, where the said statement is cogent and reliable. The plea that no mark of injuries were found either on the person of the accused or the prosecutrix, cannot lead to any inference that

accused has not committed the forcible sexual intercourse on the prosecutrix. If the evidence of the prosecutrix is cogent and trustworthy, the conviction can be recorded on the basis of her statement, even though the medical evidence did not disclose the evidence of sexual intercourse. To support this view, reference can be made to case **B.C. Deva @ Dyava Vs. State of Karnataka 2007(3) RCR (Criminal) 930 (SC)**. In view of the aforesaid authoritative pronouncement of Hon'ble Supreme Court, the contentions raised by learned counsel for the appellant that the medical evidence does not prove any sexual intercourse, carries no substance and there is no reason to reject the cogent and reliable testimony of the prosecutrix.

25- There is no cogent evidence on record to establish that at the time of the occurrence, the wife and children of the appellant were present in the house. PW5 Lilu Ram, the landlord of the appellant stated that the appellant was residing with his family in his old house. The prosecutrix also admitted in the cross-examination that the wife and children of the appellant were residing in that house but in the further cross-examination, she has categorically stated that at that time the wife and children of the accused were not there. The testimony of DW1 Smt.Roshni, the wife of the appellant, does not inspire confidence, as she has come forward only to save her husband. The appellant has not produced any evidence to show that he was not present in the house/village on the date of occurrence and was away to Hisar to attend Smt.Lichhma, the sister of his wife, who was admitted in Gupta Hospital,

Hisar. Even if, for the sake of arguments, the fact that Smt.Lichhma was ill and was lying admitted in Gupta Hospital, Hisar on the date of occurrence is admitted, it will rather corroborate the version of the prosecutrix that the wife and children of the appellant were not present on that day because if anybody from the family of the appellant is go to the hospital to attend Smt.Lichhma, it will be the wife of the appellant being her sister, than the accused appellant. In these circumstances the presence of the wife and children of the appellant in the house at the time of occurrence is not established. Thus, cases **Parvati Vs. State of Haryana** (supra) and **Neha through grand-mother Vimla Devi Vs. State and another** (supra) are of no help to the appellant.

26- As already mentioned, in the cases of sexual offence, the testimony of the prosecutrix can be acted upon even without corroboration, if the same is cogent and reliable because the victim of rape is not an accomplice. Corroboration to her testimony is not the *sine quo non* for conviction. There is inbuilt assurance that charge is genuine rather than fabricated. To support this view, reference can be made to cases **Dinesh @ Buddha Vs. State of Rajasthan, 2006(2) RCR (Criminal) 132 (SC)** and **Moti Lal Vs. State of M.P., 2008(3) RCR (Criminal) 796 (SC)**.

27- The plea raised by the appellant that he has been falsely implicated as the private doctors of village Kajla and some persons were not happy with him and a false case was got registered against him by the people of village Landhari, who were inimical to him, also carries no

substance. The prosecutrix is an unmarried girl. It is not believable that she will become a tool in the hands of said private doctors and other persons to level the false allegations of rape upon her by putting her honour, chastity and dignity at stake. No self-respecting girl could come forward in a court just to make a humiliating statement against her honour such as is involved in commission of rape upon her. Rather Indian woman have tendency to conceal such offence because it involves her prestige as well as the honour of her family. To support this view, reference can be made to cases **Swaroop Singh Vs. State of M.P. 2013(2) RCR (Criminal) 926 (SC)** and **Moti Lal Vs. State of M.P. (supra)**. The prosecutrix in this case is an unmarried girl. It is not believable that she will level the false allegations of rape upon her at the instance of some other persons, as these types of allegations adversely affect the marriage prospectus of an unmarried girl. There is also no evidence on record as to what relation/connection the prosecutrix had with the other private doctors and persons, with whom the appellant was having enmity. Even the particulars of those doctors and persons have not been disclosed by the appellant. So, there can be absolutely no motive with the prosecutrix for the false implication of the appellant.

28- In view of the testimony of the prosecutrix that she was forcibly subjected to the sexual intercourse by the appellant and absence of any plea on the part of the appellant that prosecutrix was a consenting party, the age of the prosecutrix is immaterial. It is not the case of the appellant that the prosecutrix was a consenting party and it was a case of

consensual sexual intercourse, rather he has pleaded false implication and has totally denied the prosecution case. There is also no circumstance on record to establish that prosecutrix was a consenting party. In these circumstances, whether the prosecutrix was below or above 16 years of age, is of no significance. However, the prosecution has examined PW4 Ms.Bimla Rani, Head Teacher, Government Girls High School, Landhari. She has brought the school record and deposed that as per the entry in the Register, the date of birth of the prosecutrix was 8th July, 1995. She proved the photocopy of the extract of the Register Ex.P9 and Certificate Ex.P10. There is no ground to disbelieve the school record produced by the prosecution with respect to the age of the prosecutrix. So, on the date of occurrence, she was below 16 years of age. When the documentary evidence with respect to the age of the prosecutrix was available in the shape of the school record/certificate, there was no necessity for the ossification test of the prosecutrix. The appellant has not produced any evidence to rebut the age of the prosecutrix mentioned in the school record. So, there is no escape from the conclusion that on the date of occurrence, the prosecutrix was below 16 years of age.

29- Learned counsel for the appellant has pointed out the contradiction as to who had scribed the application Ex.P1, on the basis of which, the case has been registered. Said contradiction only relates to the post occurrence aspect and does not go to the root of the case.

30- I also do not find any substance in the plea of learned counsel for the appellant for reduction of the sentence. The appellant was

a doctor by profession. The prosecutrix had come to him as a patient. By taking undue advantage of his noble profession, he committed rape upon the prosecutrix, a girl below 16 years of age. So, the sentence awarded to the appellant by the learned trial Court is just and appropriate.

31- Thus, keeping in view my aforesaid discussion, the statement of the prosecutrix is cogent and reliable. She has absolutely no motive for the false implication of the appellant. Thus, the prosecution has been able to establish the charges beyond shadow of reasonable doubt and I do not find any illegality in the conviction and sentence of the appellant recorded by the learned trial Court and the same are hereby affirmed. Resultantly, the present appeal has no merits and the same is hereby dismissed.

Dated: 04.02.2015
sunil yadav

(DARSHAN SINGH)
JUDGE