

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

CRA No.S-1703-SB of 2010

Date of decision: 29.05.2015

Mahender Singh

..... 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. N.S. Shekhawat, Advocate for the appellant.

Mr.R.S. Doon, Assistant Advocate General
for respondent-State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 04.06.2010, passed by learned Additional Sessions Judge, Narnaul, vide which appellant Mahender Singh was held guilty and convicted for the offences punishable under Sections 376 and 323 of the Indian Penal Code, 1860 (here-in-after called 'IPC') and the order on the quantum of sentence dated 07.06.2012, vide which the appellant was sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months for the offence

punishable under Section 323 IPC. He was further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for the offence punishable under Section 376 IPC.

2- The sequence of the events leading to this prosecution are that the prosecutrix, aged about 50 years having two sons and a daughter, moved an application Ex.PG to the SHO, Police Station Mohindergarh, alleging therein that on the night intervening 20/21.04.2009, she along with her son Manmohan (PW13), nephew Sandeep and the present accused-appellant had gone to their fields by tractor for threshing the wheat crop. After threshing the wheat crop, her son Manmohan and nephew Sandeep stayed at the field for the safety of the wheat crop, however, the prosecutrix along with the present accused-appellant came back on the tractor. At about 12:00/12:30 A.M., when they reached near the tube-well of Mahender Singh, then he asked the prosecutrix that one bag of barley was lying at his tube-well and he is to carry the said bag. He brought the tractor on the tube-well. He asked the prosecutrix to help him for loading the bag on the tractor. There was darkness in the tube-well room. The prosecutrix entered into the room for helping the accused-appellant in loading the barley bag. In the meantime, the accused-appellant forcibly laid her on the ground and committed rape upon her. Thereafter, he fled away from the spot on the tractor. The prosecutrix came to house of PW14 Krishan Kumar, her brother-in-law (dever) and

narrated him the entire occurrence. On the basis of this application, the formal FIR Ex.PW5/A was registered. The prosecutrix was medico legally examined. The Investigating Officer visited the place of occurrence and prepared the site plan. The accused was arrested and on completion of the formalities of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') was presented in the Court.

3- The case was committed to the Court of Sessions for trial.

4- The accused-appellant was charge-sheeted for the offences punishable under Sections 323 and 376 IPC, to which the accused-appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, the prosecution examined as many as 15 witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that he has no tractor or thresher for threshing the wheat crop, nor he went along with the prosecutrix, Manmohan and Sandeep on 20.04.2009 (midnight) to the fields. He further pleaded that during 20/21.4.2009, he had seen the prosecutrix and her brother-in-law Krishan in objectionable condition, therefore, they manipulated a false story in collusion with ASI Satbir Singh to save their skin and reputation from Phool Chand, other family members and the society. He further pleaded that his father Jawahar Singh had cordial relations with Phool Chand the brother-in-law of the prosecutrix. The prosecutrix and Krishan had strained relations with Phool Chand. Phool Chand had executed an

agreement regarding the sale of his ¼th share of plot bearing Killa No.70 to his father. After coming to know the fact of execution of agreement regarding sale of the plot, Krishan Kumar objected and moved a false application in the Police Station Mohindergarh. On that application, his father Jawahar Singh and his brother were arrested under Section 107/151 Cr.P.C.

7- In the defence evidence, the accused-appellant examined Dharam Singh as DW1 and Kamal Singh as DW2, the inhabitants of his village, who have supported his defence plea.

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 accused- appellant for the offences punishable under Sections 323 and 376 IPC and the appellant was sentenced to undergo the imprisonment as mentioned in the upper part of the judgment.

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

10- I have heard Mr. N.S. Shekhawat, Advocate, learned counsel for the appellant, Mr. R.S. Doon, learned Assistant Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Learned counsel for the appellant pleaded that the version of the prosecution is highly improbable and unbelievable. The

prosecutrix is a rustic grown up village lady having strong body, who cannot be subjected to sexual assault by the appellant single handedly. He further contended that as per the prosecution version, she was raped on the pucca floor in the tube-well room but no injury was found on her person as well as the private parts. The intention to falsely implicate the appellant is evident from the fact that she has falsely deposed that accused-appellant had given a blow on her left eye but in fact from the statement of PW2 Dr. Kanchan Yadav the Eye Specialist, the left eye of the prosecutrix was normal except for mild conjunctival congestion. In the cross examination, she has categorically stated that such mild conjunctival congestion may be due to infection or due to dust other than injury. He further contended that the place of occurrence is situated near the public path. The prosecutrix has not raised any alarm nor any person was attracted to the spot. In those days, the harvesting of wheat crop was going on and various people might be present in the surrounding fields but no independent witness has been produced to corroborate the testimony of the prosecutrix. He further contended that the prosecutrix could not tell as to whether the floor was katcha or pucca. She could not tell about the size of the room. He further contended that the prosecutrix was medico legally examined at 06:45 A.M. on 21.4.2009 but her petticoat was deposited in the Malkhana by the Investigating Officer in the evening after a delay of 12 hours. The colour of the petticoat which was sent to the Forensic Science Laboratory, Madhuban (here-in-after called 'the FSL') was grey, whereas the white colour petticoat was taken

into possession. Thus, even the petticoat of the prosecutrix was changed to create the evidence.

12- He further contended that in fact the present appellant has seen the prosecutrix and PW14 Krishan Kumar, her brother-in-law, in compromising position and due to that reason, the prosecutrix in collusion with the police has falsely implicated the appellant. The father of the appellant was also having the land dispute with the family of the prosecutrix. The defence plea raised by the appellant is fully proved from the testimony of DW1 Dharam Singh and DW2 Kamal Singh.

13- On the other hand, learned State counsel pleaded that the prosecutrix has categorically deposed that the appellant has committed forcibly rape upon her, which is further corroborated from the medical and the scientific evidence. Blood mixed discharge was found present in the vaginal orifice of the prosecutrix. Even the human semen has been found present on her petticoat and the underwear of the accused. The prosecutrix is a widow lady having two married children and another grown up son. It is not believable that she will put her honour on stake just for the sake of the false implication of the appellant. There was no motive for the false implication of the appellant. Mere absence of the injury on the person of the prosecutrix, is not a ground to disbelieve the prosecution case. Thus, he pleaded that the conviction of the appellant has been rightly recorded by the learned trial Court.

14- I have given my thoughtful consideration to the aforesaid contentions.

15- The prosecutrix has stepped into the witness box as PW10. She has deposed in detail that on 20.04.2009, she along with her son Manmohan and her nephew Sandeep had gone to the fields on the tractor of appellant Mahender for threshing the wheat crop. At about 11:00 P.M., she along with Mahender accused was returning on the tractor towards their house, whereas her nephew and son were left in the field to look after the wheat crops. The tractor was being driven by appellant Mahender. At about 12:00 in the night, when they reached near the well of Mahender, then he said that one bag of barley is lying in his tube-well room and he had to lift the same. Mahender took the tractor to his well. He parked the tractor near the room and entered in the room. He made a call to her from the room that Tai come in the room and help him to lift the bag of barley. When she entered into the room, the accused caught hold of her from back side and made her lie on the floor. When she resisted, he gave a fist blow on her left eye and, thereafter, he forcibly committed rape upon her. Thereafter, the accused fled away on the tractor. She returned to the house of her dever and narrated the entire incident to her dever Krishan. She also narrated the incident to Subhash, the son of her sister, resident of village Jaghroli. Krishan telephonically informed her son Manmohan about the incident. Thereafter, she along with Krishan and Subhash went to the Police Station Mohindergarh and moved the application Ex.PG to the police. Thereafter the police took her to C.H.C. Mohindergarh, where she was medico legally examined. Her petticoat was taken into possession at the time of her medico legal

examination.

16- The statement of the prosecutrix is also corroborated from the testimony of PW13 Manmohan Singh, the son of the prosecutrix and PW14 Krishan, the brother-in-law of the prosecutrix, to whom the entire incident was narrated.

17- The plea raised by learned counsel for the appellant that though the occurrence has taken place near the public path and people were present in the fields being harvesting season but the statement of the prosecutrix is not supported from any independent witness, carries no substance. The occurrence has taken place in the dead hours of the night i.e. in the midnight when normally the people are not expected to be present in the fields for doing work. Moreover, PW9 HC Mahesh Kumar, the draftsman who had prepared the scaled site plan of the place of occurrence has stated that the place of occurrence is at a distance of 170 feet from the main public path. Thus, it cannot be stated that the place of occurrence was just adjacent to the public path. Moreover, the occurrence has taken place inside the room i.e. an enclosed place and not in the open land. In these circumstances, It is not possible that public man would have been attracted to the place of occurrence.

18- Moreover, it is the settled principle of law by this time that the testimony of the victim of rape should not be viewed with doubt, disbelief or suspicion. The evidence of the victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent even more reliable. In case State of **Rajasthan Vs. Om Parkash 2002**

(2) RCR (Criminal) 764, the Hon'ble Apex Court has laid down as under:

“13. The conviction for offence under Section 376 Indian Penal Code can be based on the sole testimony of a rape victim is well settled proposition. In State of **Punjab v. Gurmit Singh & Ors., 1996 (1) RCR (Criminal) 533 (SC) : 1006(2) SCC 384**, referring to it, State of Maharashtra v. Chandraprakash Kewal Chand Jain, (1990) 1 SCC 550, this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr. Justice A.S. Anand (as His Lordship then was), speaking for the court, that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.”

19- Again in case **Mohd. Imran Khan Vs. State (Govt. of NCT Delhi) 2012(1) RCR (Criminal) 75**, the Hon'ble Apex Court had laid down as under:-

“15. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Indian Evidence Act, 1872 (hereinafter called 'Evidence Act'), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration.”

20- In view of the aforesaid ratio of law, the legal position emerges that if the statement of the prosecutrix is found to be worthy of credence and is reliable it requires no corroboration. The Court can record the conviction of an accused on the sole testimony of the prosecutrix. In the instant case also, learned counsel for the appellant has not been able to point out any infirmity in the statement of the prosecutrix in order to render her statement unworthy of credence and reliability. Thus, the sole statement of the prosecutrix in the present case can be safely relied upon even without any corroboration.

21- Moreover, the testimony of the prosecutrix in this case is also corroborated from the medical as well as the physical evidence. The prosecutrix was medico legally examined by PW7 Dr.Kajri Sharma, the Medical Officer, C.H.C., Mohindergarh. With respect to the internal examination, she has deposed that in the vaginal orifice the blood mixed discharge was present. As already mentioned, the prosecutrix was a widow. The presence of blood mixed discharge in her vaginal orifice shows that she was subjected to the forcible sexual intercourse. Dr. Kajri Sharma has further deposed that in her opinion the possibility of rape cannot be ruled out.

22- The petticoat of the prosecutrix was taken into possession by PW7 Dr. Kajri Sharma. The said petticoat was duly signed by her and was handed over in a sealed box to the Investigating Officer. The said box containing petticoat of the prosecutrix was sent to the FSL, Madhuban for examination. The report of the FSL is Ex.P6. The underwear of the accused was also sent to the FSL for examination. As per the report of the FSL Ex.P6 the human semen has been detected on the petticoat of the prosecutrix as well as underwear of the accused. The presence of the human semen on the undergarment of the accused and the petticoat of the prosecutrix further corroborates the version of the prosecutrix that she was subjected to sexual assault.

23- Learned counsel for the appellant has raised the plea that the petticoat in question was changed and the same was deposited with a delay of 12 hours in the Malkhana. But this plea of learned counsel for

the appellant is also devoid of any merits. The prosecutrix was medico legally examined at 06:45 A.M. on 21.04.2009. PW7 Dr.Kajri Sharma has deposed that she stayed with her for about 1/ 1 ½ hours. PW15 ASI Satbir Singh the Investigating Officer has stated that the lady doctor has handed over him the sealed parcels at about 08:00 A.M. They left the hospital at 08:00 A.M. and they reached at the place of occurrence at 08:30 A.M. and remained there upto 2:00 P.M. So, the Investigating Officer had remained present at the spot upto 02:00 P.M. and, thereafter, he came to the police station on that very evening. The parcel containing petticoat was deposited in the Malkhana. So, there is no undue delay in deposit of the petticoat in the Malkhana. There is no doubt about the identity of the petticoat. As per the medico legal report Ex.PD/1 the colour of the petticoat was white. In the report of FSL Ex.P6 the colour of the petticoat has been mentioned as dirty grey colour petticoat having muddy stains. PW7 Dr. Kajri Sharma has stated that the colour of the petticoat produced in the Court seems to be light grey, which may be due to passage of time. She further categorically stated that this is the same petticoat which was taken into possession and was delivered to the police by her because it bears her signatures. So, this positive statement of Dr. Kajri Sharma establishes that the petticoat Ex.P1 belonging to the prosecutrix was taken into possession by her and it was the same petticoat which was sent to FSL for examination. The signatures of Dr. Kajri Sharma cannot be manipulated later on by the police.

24- As per the medical evidence, except swollen left eye, no

injury was found on the body and private parts of the prosecutrix. But mere absence of the injuries on the person of the prosecutrix, is no ground to disbelieve the prosecution case. In case **Rafiqu Vs. State of U.P. AIR 1981 SC 559**, it was laid down that absence of injury on the person of the victim is not fatal to the prosecution case. Similar ratio of law has laid down by Hon'ble Apex Court in case **Dastagir Sab and another Vs. State of Karnatka 2004 (2) RCR (Criminal) 601**. In case **O.M. Baby (Dead) by LRs. Vs. State of Kerala 2012 (3) RCR (Criminal) 663**, the Hon'ble Apex Court has laid down that the absence of injuries or mark of violence on the person of prosecutrix may not be decisive . Thus, in these circumstances, the absence of the injuries on the person or private parts of the prosecutrix is also no ground to disbelieve the prosecution case.

25- I also do not find any substance in the defence plea raised by the appellant. The appellant has pleaded that he was falsely implicated as he has seen the prosecutrix and her brother-in-law Krishan in compromising/objectionable position during 20/21.04.2009. But this is very vague plea. The accused-appellant has not mentioned as to at what point of time he has seen the prosecutrix and PW14 Krishan Kumar in that position. It is also not mentioned at what place he has spotted them and how he happened to be present there. It appears that this plea has just been raised by the appellant because the prosecutrix in this case is a widow lady.

26- The second plea raised by the accused-appellant that

there was some dispute with respect to the plot sold by Phool Chand, the other brother-in-law of the prosecutrix to the father of the appellant and in connection with that dispute, Jawahar Singh the father of the appellant and his brother were arrested under Sections 107/151 Cr.P.C. is also without substance. The copy of the Calendra under Sections 107/151 Cr.P.C. is Ex.D2 which is dated 27.07.2009 i.e. after more than three months of the occurrence. The appellant has not been able to establish the motive for his false implication by the prosecutrix by putting her honour at stake. The prosecutrix is a grown up lady. She is having three children, i.e. two sons and a daughter. Her elder son and daughter are married. Her younger son Manmohan is also grown up and has appeared in this case as PW13. She is a traditional village lady. An Indian woman traditionally will not concoct an untruthful story for bringing the charges of rape for the false implication as the rape victim loses value as a person. A forcible sexual assault brings inhumiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to the victim. It is, therefore most unlikely of a woman particularly a widow lady having grown up children roping in somebody falsely exposing her chastity. Thus, it is not believable that the prosecutrix has falsely implicated the accused in collusion with her brother-in-law PW14 Krishan Kumar and ASI Satbir Singh. To support this view, reference can be made to case State of U.P. Vs. Chhoteylal, AIR 2011 (SC) 697 and O.M. Baby (Dead) by LRs. Vs. State of Kerala (supra).

27- Mere this fact that the prosecutrix has not been able to tell as to whether the floor on which she was raped was pucca or katcha or what was the size of the room, is no ground to discard her testimony. These are very minor aspects and do not adversely affect the evidentiary value of her testimony. The prosecutrix has promptly reported the matter to her family members narrating the entire incident and within four hours she along with her family members had reached the police station. PW15 ASI Satbir Singh has categorically stated that the prosecutrix came to the police station at 04:00 A.M. and even the FIR Ex.PW5/A was registered at that very time. The special report was also received by the Sub Divisional Judicial Magistrate at 06:20 A.M. on 21.04.2009. The prompt reporting of the crime to the police also rules out the concoction of the false version. If the motive would have been only to falsely implicate the appellant, there was no need for the prosecutrix and her family members to rush to the police in the night itself. So, there is no escape from the conclusion that on the night intervening 20/21.04.2009, the prosecutrix was ravished by the present appellant. So, no fault can be found in the conviction of the appellant recorded by the learned trial Court under Section 376 IPC.

28- However, I found substance in the plea raised by learned counsel for the appellant that the injury on her left eye is not proved from the medical evidence. PW7 Dr.Kajri Sharma has stated that left eye was swollen due to injury and tenderness present. However, she was referred to the eye surgeon. PW2 Dr. Kanchan Yadav is the Eye Specialist and she

gave the following statement :-

“On examination, vision in both eyes was 6/6 with correction. Ocular movement of both eyes were full and orbital margins on palpation were intact. On examination of left eye, lids were normal, mild conjunctival congestion was present inferiorly. Cornea was clear. Anterior chamber was normal depth. Pupil was normal size and normal in reaction. Fundus examination was within normal limits. In my opinion the left eye was normal except for mild conjunctival congestion. My opinion in this regard is Ex.PA/1, which is in my hand and bears my signature.

XXXXXX by learned defence counsel.

Mild conjunctival congestion may be due to infection or due to dust etc. other than injury.”

29- As per the aforesaid statement of Dr. Kanchan Yadav, the Eye Specialist the prosecutrix was having mild conjunctival congestion, which may be due to infection or due to dust other than injury. So, no injury was found in the left eye of the prosecutrix. Moreover, in the application Ex.PG the prosecutrix has nowhere mentioned that accused had given blow on his left eye and she was duly confronted on this aspect in her cross examination. So, the offence punishable under Section 323 IPC is not established beyond shadow of reasonable doubt.

30- Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The conviction of the appellant and the sentence as recorded by the learned trial Court for the offence punishable under Section 323 IPC is hereby set aside, however, the conviction and sentence to the appellant for the offence punishable under

Section 376 IPC is hereby maintained and affirmed and qua this part, the appeal stands dismissed.

31- The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Narnaul, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Narnaul, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 29.05.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE