

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-1865-SB of 2010
Date of Decision:21.1.2015

Charan Singh and another

---Appellants

versus

State of Haryana

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.K.D.S.Hooda, Advocate
for appellant No. 1

Mr. J.S.Lalli, Advocate
for appellant No. 2

Mr. Rajesh Gaur, Addl. A.G.Haryana
for the respondent-State

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

REKHA MITTAL, J.

The present appeal lays challenge to the judgment of conviction and order of sentence dated 27.4.2010 and 30.4.2010, respectively passed by the Additional Sessions Judge, Panipat whereby the appellants have been convicted and sentenced for commission of offence punishable under

Sections 376(2)(g), 506 of the Indian Penal Code (in short “IPC”), detailed hereinbelow:-

<i>Under Section 376 (2)(g) IPC</i>	<i>To undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 5000/- each. In case of default of payment of fine, to further undergo rigorous imprisonment for a period of ten months.</i>
<i>Under Section 506 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year each</i>

The story of the prosecution is that on 23.9.2008, the prosecutrix (name kept secret) along with her mother Sudesh and uncle Ishwar Singh met Inspector Virender Singh at Adiyana turn Madlauda where the prosecutrix got recorded her statement Ex. PB. As per allegations, she was a student of 10+2 and her father was employed in Haryana Roadways at Chandigarh. On 9.9.2008, she and her mother were going on foot from their village to Madlauda for obtaining her roll number for 10+2 examinations. At about 1.00 p.m., when they reached near field of Balwan son of Prita resident of village Joshi, accused Charan Singh and Karambir came from the side of village Joshi on motor cycle. They enquired from her as to where she was going. She told them that she was going to Madlauda for obtaining her roll number for 10+2 examinations. Charan Singh told that they were also going to Madlauda and would drop her there. Accordingly, she sat on their motor cycle whereas her mother returned from there. The motor cycle was driven by Karambir. On reaching Madlauda, he turned the motor cycle towards Adiyana. When she inquired as to where she was being taken, they asked her to remain sitting on the motor cycle otherwise she would be done to death. They took her to forest

of village Nain and committed rape upon her one by one. Thereafter, they dropped her at Madlauda and extended threats that if the matter was disclosed to any person, she would be killed. She returned to her village Joshi and narrated the entire occurrence to her mother who advised that whenever her father would return, the occurrence would be disclosed to him. They waited for return of her father but he had not returned so far.

On the statement of the prosecutrix, first information report Ex. PA was registered in police station. Virender Singh Inspector visited the place of occurrence and prepared the rough site plan Ex. PQ. The prosecutrix was got medico legally examined from General Hospital, Panipat. On 25.9.2008, the accused were produced by the relatives and arrested. On interrogation, Charan Singh and Karambir made disclosure statements Ex. PK and PL, respectively. In pursuance of their disclosure statements, they led the police party to the place of occurrence regarding which memo Ex. PM was prepared. Accused Karambir got recovered motor cycle No. HR-12J-7439 which was taken into possession vide memo Ex. PN. Rough site plan of the place of recovery Ex. PR was prepared. The accused were medico legally examined from General Hospital, Panipat. The matriculation certificate of the prosecutrix produced by her uncle Ishwar Singh was taken into possession vide memo Ex. PU. Scaled site plan of the place of occurrence Ex. PF was got prepared from Om Parkash Patwari. On completion of investigation formalities, report under Section 173 of the Code of Criminal Procedure (in short "Cr.P.C.") was submitted in the Court for commencement of trial.

Copies of the documents as contemplated under Section 207

Cr.P.C. were supplied to the accused. The case was committed to the Court of Sessions as offence under Section 376(2)(g) IPC being exclusively triable by the said Court.

After hearing the parties, charge for commission of offence punishable under Sections 376 (2)(g), 506 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

To establish the charge, the prosecution examined as many as 11 witnesses, namely SI Balwan Singh PW1, the prosecutrix PW2, Sudesh PW3, Dr. Shashi Garg PW4, Constable Brijesh Kumar PW5, HC Mahavir Singh PW6, Om Parkash Patwari PW7, ASI Jasbir Singh PW8, Rajbir Singh PW9, Inspector Virender Singh, Investigating Officer PW 10 and Dr. Arvind Kumar PW11.

On evidence of the prosecution being closed, statements of the accused under Section 313 Cr.P.C. were recorded through which they denied incriminating circumstances appearing in evidence against them and pleaded their innocence and false implication. However, they did not examine any witness in defence.

After giving thoughtful consideration to the rival submissions made by counsel for the parties in the light of offence charged against the accused and evidence adduced by the prosecution to discharge its onus to establish culpability of the accused beyond shadow of reasonable doubt, the learned trial court came to hold that the accused are guilty of committing offence punishable under Sections 376(2)(g) and 506 IPC and accordingly, they were convicted and sentenced, noticed hereinbefore.

Counsel for the appellants has submitted that the learned trial

court failed to appreciate version of the prosecutrix in right perspective and as a result fell into serious error in relying upon her testimony to hold against the accused. To substantiate his contention, he has assailed the prosecution version on different counts.

The first submission made by counsel is that story of the prosecution is quite unnatural and improbable. Further dilating, it is argued that no prudent mother would allow her daughter to go with two young grown up boys at the risk of bringing disrepute to dignity and honour of the girl and her family. It is further argued that as genesis of the crime becomes doubtful, therefore, any effort made by the prosecution to built on a weak foundation is bound to crumble.

Counsel would submit that there is considerable delay of 14 days in lodging the FIR which further creates doubt in the Story of the prosecution. No injury was found on person of the victim and had it been true that the prosecutrix was subject to rape, she was bound to offer resistance resulting in sustaining of injuries on her private parts and other body.

Counsel for the State on the other hand, has supported the judgment of the trial court with the submissions that no reasons whatsoever are forthcoming for the prosecutrix or her mother to level such serious allegations against the accused by taking risk of exposing honour and dignity of a young unmarried girl which is likely to seriously affect her matrimonial prospects. The delay in lodging the FIR cannot be taken seriously in cases involving sexual crimes. The prosecutrix has satisfactorily explained as to why the matter was not reported for a period

of 14 days as the prosecutrix and her mother thought of talking to her father before making the crime public.

I have heard counsel for the parties and perused the records.

The contentions raised by counsel for the appellants are interwoven as the appellants have sought to raise plea of false implication on the basis thereof. So far as delay in lodging the FIR, delay itself is not a ground to discard the prosecution version though it put the Court on guard to be more circumspect in evaluating the prosecution evidence to rule out possibility of false implication. In crime involving sexual assault which leaves a permanent scar and has a serious psychological impact on the victim and her family member, delay loses its relevance as no one would concoct a story of rape just to falsely implicate a person. In Indian set up, no girl or a woman would make such an allegation against a person as she is fully aware of repercussions flowing therefrom. A victim of sexual assault is looked upon by the society with contempt and she is being treated as an outcaste. For an unmarried girl, it would be difficult to find a suitable match. Keeping in view serious implications of the crime, courts have consistently held that testimony of prosecutrix stands at par with that of an injured and it is not necessary to insist for corroboration if evidence of the prosecutrix inspires confidence and appears to be credible. In this view of the matter, the accused cannot derive any benefit from delay of 14 days in lodging the FIR. This apart, there is a valid and justified explanation tendered by the prosecutrix and her mother for their omission to approach the police all these days as they had been waiting for father of the prosecutrix to come back and thereafter make the crime public.

Much stress has been laid by counsel for the appellants that the story of the prosecutrix that she left with the accused on motor cycle is highly unbelievable. It appears that counsel has raised such a contention oblivious of the fact that claim of the prosecutrix in this regard has been confessed by the accused during her cross examination as well as cross examination of her mother.

The learned defence counsel put a suggestion to the prosecutrix, reads thus:-

“It is incorrect to suggest that the accused had been only taking me on the motor cycle on the date of occurrence and they did not commit rape upon me.”

Similarly, it has been suggested to Sudesh, mother of the prosecutrix in the following terms:-

“It is incorrect to suggest that on the day of occurrence the accused had been only roaming with my daughter and do not commit any rape.”

These suggestions go a long way to corroborate version of the prosecutrix that on the day of occurrence, the accused were roaming around with the prosecutrix on the motor cycle. It is not the plea of the accused that the prosecutrix had developed any intimacy or affair with any one of them. The prosecutrix has candidly and categorically deposed as to how, where and at what time she was subject to rape by both the accused turn by turn. I would hasten to add that had the prosecutrix developed an affair with one of the accused, there was no reason for her to consent for physical relations with two persons. As has been rightly argued by counsel for the State, there

is no reason forth coming for the prosecutrix or her mother to indict the accused falsely in a serious crime of attacking fidelity and virginity of a young unmarried girl. The appellants have failed to highlight any such fact on record which can persuade this Court to differ with the findings recorded by the trial court, based upon detailed and meticulous appreciation of evidence on record. Counsel for the appellants has failed to point out any infirmity much less illegality in the findings recorded by the Court below which are well founded and admit no fault.

In view of the above, I do not find any reason to interfere in the judgment passed by the trial court holding the appellants guilty of committing offence charged against them.

Counsel for the appellants have made mercy plea for reduction of sentence by invoking proviso appended to Section 376(2)(g) IPC. It is argued that the appellants have faced trauma of criminal proceedings for the past more than six years. They are behind bars since their arrest in the case. Charan Singh was 26 years old and Karambir was 22 years at the time of occurrence. The appellants have virtually spend the best period of their lives in jail. The prosecutrix was not kidnapped or forced to go with the accused. She voluntarily offered to go with the accused and did not raise any alarm despite the accused and the prosecutrix being together for 3-4 hours prior to the commission of alleged sexual assault. It is submitted that there are mitigating circumstances which entitle the appellants to some leniency.

Counsel for the State has opposed the prayer with the submissions that there are no adequate and special reasons to extend any

benefit in favour of the accused.

I have given my thoughtful consideration to the submissions made by respective counsels.

The appellants are neither previous convicts nor there is any material suggestive of the fact that they are involved in any other criminal case. They have suffered incarceration for a period of more than six years as they are behind bars since the time they were arrested in the case. The prosecutrix was a student of 10+2 and was about 18 years of age. It appears that the prosecutrix and accused Charan Singh knew each other and they met by chance when she was on her way to Madlauda for getting her roll number for her examinations.

Keeping in view cumulative effect of facts and circumstances obtaining in the case, I am of the considered opinion that it is expedient in the interest of justice that the substantive sentence awarded to the appellants for offence punishable under Section 376(2)(g) IPC is reduced to a period of 08 years.

For the reasons aforesaid, the appeal stands disposed of with modification in the aforesaid terms.

(REKHA MITTAL)
JUDGE

21.1.2015
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