

CRA-S-1734-SB of 2011 and
CRA-S-1737-SB of 2011

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

CRA-S-1734-SB of 2011

DATE OF DECISION : February 19, 2015

Kuldeep Singh

...Appellant

Versus

State of Haryana

...Respondent

CRA-S-1737-SB of 2011

Sishan

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Kartar Singh Malik , Advocate for the appellant
in CRA-S-1734-SB of 2011.

Mr. Rakesh Nehra, Advocate for the appellant
in CRA-S-1737-SB of 2011.

Ms. Tanisha Peshawaria, DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. The appellant Kuldeep Singh was convicted under Section 376, 323 and 342 of the Indian Penal Code whereas Sishan was convicted only under Section 342 of the Indian Penal Code. Aggrieved by the judgment of conviction and sentence passed by the trial Court the above individual appeals have been preferred by the respective accused.

2. It is the case of the prosecution that on 14.8.2005 at about 3.00 P.M. when the prosecutrix proceeded to answer the nature's call holding a bucket of water in her hand, accused Sishan called her inside his house to lift the wooden logs. Accused Sishan pushed her inside her room and bolted the room from outside. Accused Kuldeep Singh, who was present inside the room, having gagged the mouth of the prosecutrix, tore off her clothes and caused injury and thereafter, committed rape upon her. PW9 Satyawan, the uncle of the prosecutrix and PW10 Kamla arrived at the scene of occurrence having heard the noise of the prosecutrix. PW10 Kamla saw the accused inside the room and gave beating to him. The prosecutrix shared the occurrence of rape with her mother. PW11 Jaipal waited for two days for the Panchayat to take a decision in this matter. As no fruitful decision was arrived at by the Panchayat, PW11 lodged a complaint with the police on 16.8.2005.

3. PW12 was subjected to medico legal examination by PW1 Dr. Kulpratibha on 16.8.2005. She found the following injuries

on the person of PW12 :-

- “1. An abrasion 3x0.5 cms. with scab formation on the left cheek. It was reddish brown in colour.
2. Complaint of pain on left wrist and left hand. Swelling was present. X-Ray was advised. Opinion of the Orthopedic surgeon was sought.
3. Diffused swelling on the right hand at the base of middle ring and little fingers. Tenderness was present on the right hand. X-ray was advised. Orthopedic Surgeon's opinion was sought.
4. A bluish green contusion 7x3 cm. on the back of upper 1/3rd of right leg.
5. Two contusions 2x2 cms and 4x2 cm. on the back of upper half of left leg.
6. Swelling on the forehead right side having size 2x2 cm. was present.

4. On external genital examination, she found that there was an old healed tear on the hymen at 9 O' Clock position. Vagina entered two fingers easily. Minimal bleeding was present. Swabs were taken from the vagina. He opined that possibility of sexual intercourse could not be ruled out. FSL report disclosed that semen was not detected on the clothes and the swabs of the wound sent for examination.

5. PW2 Dr. Vimal Sharma medico-legally examined accused Kuldeep Singh on 22.8.2005 at about 6.15 P.M. on the basis of the request made by the police. On examination, he opined that there was nothing to suggest that accused Kuldeep Singh was not able to

perform intercourse.

6. In the statement under Section 313 Cr.P.C. accused Kuldeep Singh has contended that he was innocent but he was falsely implicated in this case. The father of the complainant had borrowed a sum of ₹20,000/- from him. When he demanded the money back, he refused to pay and got the present case registered against him in collusion with the police.

7. Accused Sishan took up a stand in her statement under Section 313 Cr.P.C. that she was innocent but she had been falsely implicated in this case. She was closely related to the prosecutrix. There was previous ill-will with the family of the prosecutrix, therefore, she had been falsely framed in this case.

8. On the side of the defence, DW1 was examined. He has deposed that no such occurrence took place in the village on 14.8.2005. He spoke about the Panchayat convened in connection with the amount payable by PW11 Jaipal to accused Kuldeep Singh.

9. The trial Court having adverted to the evidence on record, heavily relied upon the evidence of PW9 to PW12 in the background of the medical evidence and recorded conviction as stated supra.

10. The learned counsel appearing for appellant Kuldeep Singh would vehemently submit that in the complaint which was lodged by PW11 Jaipal before the police on 14.8.2005, no allegation of rape was made. Had there been any rape on 14.8.2005, as

deposed by PW10, PW11 and PW12, there would have been an allegation of rape in the complaint submitted by PW11 before PW13 on 14.8.2005. The injury had been suffered by the prosecutrix only at the hands of her mother Kamla who was examined as PW10. Therefore, the Court cannot jump to a conclusion that the prosecutrix suffered injuries at the hands of accused Kuldeep Singh. Referring to the FSL report spoken to by PW1 Dr. Kulpratibha, he would submit that semen was not detected on the clothes of the prosecutrix. Therefore, it is his submission that the prosecution miserably failed to establish the charges framed as against him.

11. The learned counsel appearing for appellant Sishan would submit that except the interested version of the prosecutrix, there was no evidence that the appellant Sishan pushed the prosecutrix inside her room facilitating the commission of rape by accused Kuldeep Singh. There was no allegation in the complaint submitted on 14.8.2005 by PW11 that appellant Sishan pushed the prosecutrix inside her room and, therefore, the version of the prosecution is highly doubtful, it is further submitted.

12. I also heard the submission made by learned DAG for the State supporting the verdict of conviction and sentence passed by the trial Court.

13. The prosecutrix who was examined as PW12, has categorically deposed that on 14.8.2005 at about 3.00 P.M. when she was proceeding to answer the nature's call holding a bucket of

water in her hand, accused Sishan who called her inside to lift wooden logs pushed her inside the room and bolted the door from outside. Accused Kuldeep Singh gagged her mouth, tore her clothes, caused some injuries to her and committed rape upon her. PW12 also shared this information with PW10 Kamla, her mother, who rushed to the scene of crime on hearing some noise from the room where the crime of rape was committed. PW10 Kamla also had witnessed the presence of the accused inside the room where the occurrence took place. She had in fact delivered blows not only on the accused but also on her daughter who had chosen to enter into the room of Sishan innocently. PW9 Satyawar also was present at the scene of occurrence on hearing the noise from the room. He had also witnessed accused Kuldeep Singh running away from the scene of crime. The evidence of Kamla cannot be ignored as hearsay evidence. Kamla has deposed as to the information shared by the prosecutrix immediately after the occurrence. In other words, sharing of information by PW12 to PW10 almost formed part of the crime of rape committed by the accused. Therefore, the evidence of Kamla can be classified as res-gestae in terms of Section 6 of the Indian Evidence Act, 1872. The evidence of Kamla also supports the version of PW12.

14. The medical evidence also discloses that there was a possibility of rape committed on the prosecutrix.

15. PW12 was found to be a young girl aged more than 17

years at the time of occurrence. It is quite unbelievable that PW11 Jaipal and PW10 Kamla had sacrificed the reputation of the prosecutrix in order to back out from their obligation to pay a sum of ₹20,000/- to the complainant. In other words the defence set up by accused Kuldeep Singh that he demanded back a sum of ₹20,000/- owed by PW11 but he refused to repay and launched prosecution as against him is found to be quite imaginative and unbelievable. Therefore, I have no hesitation to reject the defence set up by the accused that the money transaction had culminated into the present prosecution as against him.

16. There was no reason for PW11 to implicate accused Sishan if at all a criminal case was lodged as against accused Kuldeep Singh just because he demanded back the amount owed by PW11. The sequence of occurrence spoken to by PW9, PW10, PW11 and PW12 would go to establish that accused Sishan had called the prosecutrix and pushed her inside the room where Kuldeep Singh committed rape upon the prosecutrix.

17. There were some injuries found on the person of the prosecutrix. She has deposed that not only the accused but her mother also delivered some blows on her as she happened to enter into the room of Sishan without minding the consequences. There is no reason to reject such an explanation given by the prosecutrix for the injuries found on her person. The clothes of the prosecutrix had been torn by the accused. He had also delivered some blows on the

prosecutrix. PW1 had noted down injuries found on the person of the prosecutrix. The injuries on the prosecutrix also corroborate the version of the prosecution.

18. The occurrence had taken place on 14.8.2005 at about 3.00 P.M. The evidence of PW10, PW11 and PW12 would go to show that on 14.8.2005 PW11 has chosen to lodge a complaint on the ground that there had been some altercation between the accused party and the prosecution party. It is to be noted that the above complaint originally submitted on 14.8.2005, as regards the altercation that took place between the parties, was not exhibited before the trial Court. At any rate, it is the admitted position that on 14.8.2005 there was a complaint lodged by PW11 alleging some altercation between the parties. The question that arises for consideration in the above context is whether the failure on the part of PW11 to refer to the actual rape committed on PW12 would materially cast a dent in the case of the prosecution. In my view, the answer is in the negative. The prosecution parties as well as the accused belonged to an under privileged section of the society. The prosecution party has taken very lightly the offence of rape committed by accused Kuldeep Singh on PW12. Unashamedly PW11 would depose that a Panchayat was in fact convened to compromise the occurrence that took place. As there was no fruitful decision in the Panchayat, he approached the police on 16.8.2005 with a detailed complaint as to the rape committed by the accused

on his daughter. The explanation submitted by PW11 is found to be quite convincing and acceptable. Further, delay of two days in lodging the complaint in a case of rape in the village setting of our country by itself does not throw any doubt on the case of the prosecution.

19. It is true that FSL report as spoken to by PW1 Dr. Kulpratibha discloses that semen was not detected on the clothes and swabs collected from the prosecutrix. Firstly, I find that the swabs were lifted only after two days. The clothes had been torn off and thereafter rape was committed. No wonder, there was no semen detected either on the clothes or on the swabs collected in this case.

20. Learned counsel appearing for the appellant would submit a decision of Hon'ble Supreme Court in **Ram Kumar versus State of Haryana 2007 (2) R.C.R (Criminal) 305** wherein it has been held as follows :-

“The appellant, aggrieved by the order passed by the High Court filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned Counsel for the appellant drew our attention to the statement of the girl Bimla (P.W.5) and also drew our attention to the evidence of the Doctor. We have carefully

analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing, it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Indian Penal Code is on the high side. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly.”

21. In the instant case, of course, the prosecutrix had got married after the occurrence and was blessed with two children. The marriage of the prosecutrix does not mitigate the gravity of the offence of rape committed upon her. Further, in Ram Kumar's case (supra) the prosecutrix was with the accused right from 9.3.1991 to 29.3.1991. It was only the police who recovered her on 29.3.1991 at the instance of the parents of the prosecutrix. But in the instant case, there was no such accompaniment of the prosecutrix with the accused. The prosecutrix who innocently responded to the request made by Sishan to render help to her was pushed inside her room and the co-accused Kuldeep Singh committed rape upon her. Facts

in the present case are quite distinguishable. Therefore, the above decision does not apply to the case in hand.

22. Minimum sentence has been imposed on accused Kuldeep Singh under Section 376 IPC. Therefore, the question of reducing the sentence also does not arise for consideration. In view of the above, I find that the trial Court has rightly convicted both the accused under Section 342 and the accused Kuldeep Singh under Section 323 and Section 376 of the Indian Penal Code and sentenced there-under. There is no merit in the appeal and, therefore, confirming the judgment of conviction and sentence passed by the trial Court, both the appeals stand dismissed.

23. Accused-appellant Sishan in CRA No. 1737-SB of 2011 is on bail. She shall surrender within 15 days from the date of this judgment before learned Chief Judicial Magistrate, Rohtak, failing which the learned Chief Magistrate, Rohtak shall issue warrant of arrest and send her to jail to undergo the unexpired portion of sentence.

(M. JEYAPPAUL)
JUDGE

February 19, 2015

p.singh