

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **Criminal Appeal No. S-3109-SB of 2009**
Date of Decision : February 25,2015

Harpal Singh @ Baba

.....Appellant

VERSUS

State of Punjab

.....Respondent

2. **Criminal Appeal No.S-2977-SB of 2009**

Pal Kaur

....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Ravi K. Mattoo, Advocate
for appellant-Harpal Singh @ Baba.

Mr. Gurinder Singh Sandhu, Advocate
for appellant-Pal Kaur.

Mr. P.J.S. Hundal, Assistant A.G., Punjab.

T.P.S. MANN, J.

By a common judgment, this Court intends to dispose of the aforementioned two appeals filed by each of the appellants as they have challenged the judgment and order dated 20.10.2010 passed by the Additional Sessions Judge, Patiala.

The prosecution case, in nutshell, is that complainant

Raghbir Gupta, father of the prosecutrix, appeared before

ASI Gurdev Singh on 6.5.2007 and reported that the prosecutrix was a student of third standard. On 27.4.2007 when the prosecutrix was returning home from the school, Pal Kaur appellant took her to the house of Pirthi situated at Bhawanigarh Chowk, Samana, where Harpal Singh appellant was all alone. Pal Kaur left the prosecutrix in the room with Harpal Singh, who subjected her to rape. Harpal Singh threatened her that if she disclosed about the incident to anyone she would be killed. On 2.5.2007, Pal Kaur again took the prosecutrix to the room of Harpal Singh. Pal Kaur locked the prosecutrix and the appellant in the room by bolting the same from outside. Harpal Singh again raped the prosecutrix.

Further case of the prosecution is that as the statement made by complainant revealed commission of cognizable offences, ASI Gurdev Singh sent the statement of the complainant to the Police Station where formal FIR under Sections 376 and 120-B IPC was registered against the two appellants. During the investigation of the case, the prosecutrix was subjected to medico-legal examination. The Investigating Officer visited the spot and prepared rough site plan, besides getting prepared scaled site plan. The appellants were arrested on 7.5.2007. Harpal Singh appellant was got medically examined.

Upon completion of the investigation, challan was

presented in the Court against the appellants. The case was, thereafter, committed to the Court of Sessions where the appellants were charged for the offences punishable under Sections 376 and 120-B IPC. Both the appellants pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Raghbir Gupta, complainant as PW1, prosecutrix as PW2, Dr. Alkesh Arora as PW3 Dr. Baljit Kaur as PW4, Dr. Harpreet Singh as PW5, Constable Gurdeep Singh as PW6, Satpal, Patwari as PW7, HC Harminder Singh as PW8, ASI Gurdev Singh, Investigating Officer as PW9 and HC Ajit Singh as PW10. Besides, the prosecution tendered report Ex.PY of the Forensic Science Laboratory, Chandigarh.

When examined under Section 313 Cr.P.C., the appellants pleaded false implication. In defence, they examined DW1 Nishan Singh.

After hearing learned Additional Public Prosecutor for the State and learned counsel for the appellants, besides going through the record of the case, the trial Court held that the prosecution had been able to prove guilt of the appellants beyond reasonable doubt. Accordingly, Harpal Singh appellant was convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of ten years

whereas Pal Kaur appellant was convicted under Sections 376/120-B IPC and sentenced to undergo rigorous imprisonment for a period of seven years. The period already undergone by them in jail during investigation and trial was ordered to be set off against the substantive sentences imposed upon them. Hence, the present appeal.

This Court has heard Mr. Ravi K. Mattoo, Advocate for Harpal Singh appellant, Mr. Gurinder Singh Sandhu, Advocate for Pal Kaur appellant and Mr. P.J.S. Hundal, Assistant Advocate General, Punjab and minutely scanned the evidence minutely with their able assistance.

Taking up the case of Pal Kaur-appellant first, this Court finds that she was said to have taken the prosecutrix to the room of Harpal Singh appellant on 27.4.2007 and, thereafter, on 2.5.2007. Both the time she left the prosecutrix with Harpal Singh appellant in a room, where the latter was putting up who had been subjecting her to forcible sexual intercourse. For this act of Pal Kaur appellant, the prosecution wants to show her involvement in the main crime of rape by making her party to the same and, thus, conspiring with Harpal Singh appellant. However, with the whatever evidence available on the file, it cannot be said that Pal Kaur appellant ever conspired with Harpal Singh appellant, pursuant to which the latter forcibly committed sexual intercourse with the

prosecutrix. It has come in the evidence of the prosecutrix that prior to her family shifting to the house where she was living at the relevant time, her father was also a tenant in one of the rooms near the house of Harpal Singh. Therefore, the prosecutrix was also known to Harpal Singh appellant and in such a situation it cannot be imagined that Pal Kaur, who herself is a woman, would have facilitated the commission of rape upon the prosecutrix by Harpal Singh appellant. The prosecutrix has also stated in her cross-examination that Pal Kaur was a good lady. She also testified that Pal Kaur, at no point of time, threatened or pressurized her by any means to succumb to the advances of Harpal Singh appellant. So much so, she stated that Pal Kaur appellant never subjected her or took her to the house of Harpal Singh appellant. Under these circumstances, it would not be safe to sustain the conviction of Pal Kaur appellant under Sections 376/120-B IPC.

As regards the involvement of Harpal Singh appellant, there is consistent case of the prosecution that he committed rape upon the prosecutrix, first on 27.4.2007 and, thereafter on 2.5.2007. The testimony of complainant Raghbir Gupta, who had stepped into the witness-box as PW1 is fully corroborated by the prosecutrix, who appeared a PW2 before the trial Court. The prosecutrix in her testimony testified that on both the occasions Harpal Singh had forcibly committed

rape upon her. The prosecution version regarding commission of rape upon the prosecutrix is further corroborated by PW3 Dr. Alkesh Arora, who had medically examined upon the prosecutrix. PW3 Dr. Alkesh Arora testified that the prosecutrix was physically fit and mentally sound. There was no mark of injury on breast, abdomen, inner side of thigh, genitalias and any other part of the body. The breasts were developing. Pubic hair were scanty and developing. Hymen was not intact. There was no mark of injury on the vagina or vaginal orifice. The vagina was healthy and easily admitting one finger. As the report received from the Forensic Science Laboratory, Chandigarh, which showed the presence of human semen on the slides and swabs taken from the prosecutrix, the doctor opined that the prosecutrix had sexual relationship within 48 hours of examination. The prosecutrix was also subjected to x-ray examination for determination of her age. On the basis of various tests conducted upon her, PW4 Dr. Baljit Kaur testified that the bone age of prosecutrix was 12 to 14 years. PW5 Dr. Harpreet Singh had testified about Harpal Singh appellant being fit to do the sexual act. Therefore, there is no escape to hold that the appellant had twice subjected the prosecutrix to rape which made him liable for committing the offence punishable under Section 376 IPC.

As regards the quantum of sentence of imprisonment

imposed upon Harpal Singh appellant, it may be noticed that the appellant is in custody since 8.5.2007. Custody certificate has been produced which shows that he has already undergone an actual period of seven years one month and five days. The appellant had claimed before the trial Court that he was the sole bread-earner of his family, consisting of wife and four children. Taking into consideration the totality of circumstances, this Court finds that the sentence of imprisonment of ten years imposed upon the appellant is on the higher side and liable to be reduced.

Resultantly, the conviction of Harpal Singh appellant under Section 376 IPC is upheld. However, his sentence of imprisonment is reduced from ten years to rigours imprisonment for eight years. The appeal of Pal Kaur appellant, is accepted and she is acquitted of the charges against her.

Pal Kaur appellant is on bail. The bonds furnished by her as well as her sureties shall stand discharged.

February 25, 2015
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(T.P.S. MANN)
JUDGE