

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S No.2298-SB of 2010
Date of Decision: 02.09.2015

Bachu Dass

...Appellant.

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

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

Present: Mr. Deepak Gupta, Advocate
for the appellant.

Mr. S.S. Pannu, DAG, Haryana
for the State.

R.P. Nagrath, J.

The appellant stands convicted under Section 376(2)(f) read with Section 511 IPC on the charge of having attempted to commit rape on 2½ years old girl child. Learned trial Court sentenced the appellant to undergo Rigorous Imprisonment for five years and to pay fine of ₹ 5000/-; in default of payment of fine to further undergo Rigorous Imprisonment for one year and three months.

2. As per custody certificate placed on record by the learned State Counsel, appellant has completed his sentence and was

accordingly released on 01.12.2013.

3. The prosecution was launched on the complaint in writing made by the father of prosecutrix. The complainant was working in a cardboard factory located in front of his residential house, where he had gone on 16.12.2009 as per his routine for attending his duty.

4. The prosecution story as brought forward by PW2 mother of the prosecutrix is that she was present in the house alongwith her two children on 16.12.2009. There is a rented room of one Suman Srivastava, a native of Bihar, adjoining the house of the complainant party. Suman Srivastava aforesaid was residing in that room as a tenant alongwith his family. An old man of 60 years, the relative of Suman Srivastava aforesaid, had come to meet him and was staying with them. It was further stated that when the victim was playing in the street with the children of Suman Srivastava, the old man (who is the appellant), took the victim inside the room with a bad intention. PW2 heard the shrieks of her daughter and soon reached the room of Suman Srivastava and knocked at the door. The room was opened by the appellant and the child came rushing towards her mother and held her tightly. The victim was keeping her hands on the private parts and was weeping. PW2 asked the old man as to what he has done with the child. The appellant became scared and tried to deny that he has done anything wrong. PW2 told the incident to the caretaker of their house who gave fist blows to the appellant. He then went away from there.

5. This occurrence took place at about 7 pm on 16.12.2009.

PW2 called her husband from the factory. On his complaint dated 17.12.2009, FIR Ex.PA/2 was registered.

6. Before the complaint was made to the police, the child was taken to the hospital by the police on the night of 16/17.12.2009 at about 2.20 am where she was medically examined. The doctor prepared a parcel of the dirty discharge present locally from the vagina and swabs were taken for chemical examination. As stated by PW3 Dr. Sushila Yadav, hymen was intact, no injury was seen locally. The vaginal swabs and the cloth sheet said to be *Dhoti* of appellant were sent for analysis to the Forensic Science Laboratory and the report Ex. PH shows that no semen or blood could be detected on the exhibits. The appellant was arrested on 17.12.2009. Rough site plan Ex. PD of the place of incident was also prepared.

7. The case was committed to the Sessions Court for trial. The prosecution produced 11 witnesses in support of its case.

8. During his examination under Section 313 Cr.P.C., the appellant denied all the incriminating circumstances appearing against him in the prosecution evidence and pleaded that a few children were playing in the vicinity out of whom the appellant slapped the victim whereupon the child started crying. Due to the said incident of slapping, the appellant has been falsely implicated. It was also pleaded that he was residing with his relative Ramesh who was tenant of the complainant and the complainant party wanted to evict him from the tenanted premises. No evidence was, however, lead in defence.

9. The trial Court convicted and sentenced the appellant as aforesaid.

10. I have heard learned counsel for the appellant, learned State counsel and also gone through the records with their able assistance.

11. Learned counsel for the appellant challenged the conviction of appellant *inter alia* on the ground that: (i) there is unexplained delay in lodging the FIR; (ii) there are material contradictions in the evidence of prosecution and; (iii) medical examination of the child does not corroborate the prosecution story.

12. The learned State counsel on the other hand supported the findings of the trial Court.

13. The most material evidence in proof of the charge comprises of statement of mother of victim examined as PW2. PW2 stated that the appellant took her daughter in the room and committed rape upon the girl. The factum of actual rape seems to be exaggerated statement as that was not even the charge against the appellant. Anyhow, the illiterate and rustic people would have the notion of a person trying for sexual intercourse with a small child as rape. PW2 categorically stated that she heard the cries from her daughter and rushed towards the room of Suman Srivastava. She knocked at the door which was opened by the appellant. She saw her daughter weeping. There was swelling on the vagina of the child.

14. PW2 has been extensively cross-examined and there was no scope of attacking her statement. It cannot be possibly accepted

that the parents of 2½ years old female child would set up such a story as that could damage the dignity of the girl child and honour of the family. If a false story was to be propounded then the story with regard to the assault on PW2 and the child could be set up against the appellant.

15. This was a sensational incident and the police reached the spot on the same day, though formal complaint was accepted on the next day. That seems to be the insensitive attitude of police in listening to the sorrows of people belonging to lower strata of life. There could not have been any basis of delay in recording FIR especially when the police party admittedly reached the spot on the same day and the child was even taken to the hospital in the midnight for its medical examination.

16. PW11 SI Ved Parkash is the investigating officer. He stated that a complaint Ex. PA was made by PW1 to him on the basis of which FIR was registered. The clothes of the girl were also handed over to PW11 for which Panchnama is Ex.PJ. In the cross-examination, PW11 stated that one Mannu informed him telephonically on 16.12.2009 at about 7/8 pm about the incident. He visited the spot alongwith other police officials. Mother of the prosecutrix alongwith other women met them on 16.12.2009. However, he did not record the statement of PW2 at that time. PW11 also stated in cross-examination that on 16.12.2009 itself mother of the child had told him about the incident relating to the attempt to commit rape upon the victim by the accused. PW2 also informed the

police that she was attracted on hearing the cries from the child and went to the room which was bolted from inside. So, the delay part in the present case is not at all of much significance.

17. The responses given by PW2 in the cross-examination would prove her to be making quite natural and correct versions. She stated that son of Suman Srivastava was also inside the room where the appellant had taken her daughter. That boy was outside the Court on the day when PW2 was being examined as stated by PW2. PW2 in cross-examination further stated that she saw the appellant committing rape from the broken portion of the door but that improvement seems to be only because of the anger shown by mother of the victim. PW2 further stated that she knocked at the door which was opened by the appellant but before that appellant had worn his own underwear and *paijami* of her daughter.

18. PW1 is father of the girl who made the complaint in writing to the police. His evidence is of the immediate conduct about his receiving message of the incident. In cross-examination PW1 stated that at about 7/7.30 pm on that day a lady worker of his factory told him to go back home as wife of PW1 was reportedly weeping. PW1 went to the house and saw swelling on the vagina of his daughter. The panty of his daughter which she was wearing at the time of the incident was removed by his wife because it was wet and that panty was washed by his wife on the next day. This is natural revelation of facts coming from father of an infant child.

19. There was no such suggestion either to PW1 or PW2 that

Ramesh the relative of the appellant was tenant in the house owned by the father of the victim.

20. PW3 Dr. Sushila Yadav stated in her affidavit Ex.PB that possibility of sexual assault on the child cannot be ruled out. This opinion was challenged by putting question to the doctor that there is also possibility of sexual assault in case slap is given on the private part. However, defence plea under Section 313 Cr.P.C. was that the appellant slapped the girl and, therefore, her parents wanted to falsely implicate him.

21. The appellant was medically examined by PW10 Dr. Anurag who stated in his affidavit that there was nothing to suggest that the appellant was incapable of performing sexual intercourse.

22. In view of the above, I find that prosecution version is proved absolutely beyond doubt that appellant had taken 2½ years old child inside the room of his relative. It is also found that the appellant had closed the door and the moment door was opened reaction of the child was expression of acute pain on her private part. The present was a case nothing less than ful-filling the essential ingredients of attempt to rape as defined in section 376 IPC. This was a beastly act of the appellant that the girl started crying and her cries attracted the mother to the room of relative of the accused. There is no scope of interference in the conclusion reached by the trial Court and the conviction is upheld.

23. The trial Court has awarded minimum sentence of five years Rigorous Imprisonment on proof of charge of attempt to rape a

child of 2½ years. Even otherwise the appellant has already been released from jail on expiry of the sentence.

24. No merit in the instant appeal. Dismissed.

02.09.2015
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(R.P. Nagrath)
Judge