

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1550-SB of 2003

DATE OF DECISION: NOVEMBER 3, 2015

RAM MEHAR

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ASHWANI BHARDWAJ, ADVOCATE FOR THE APPELLANT.
MR. KULDEEP SHARMA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. The appellant has challenged the conviction and sentence passed by the trial Court whereunder he was convicted under Section 376 IPC and was sentenced to undergo 10 years R.I. and to pay a fine of ₹5000/- and in default, to undergo a further period of 1 year R.I. and also convicted under Section 506 IPC and was sentenced to undergo 2 years R.I.

2. It is the case of the prosecution that the appellant who is none other than the brother of the father of the prosecutrix committed rape upon her by threatening her armed with a pistol.

3. PW9, the prosecutrix has categorically deposed that on 5.2.1998 at about 1.30 p.m. when she was present all alone at her house, the accused who is her real uncle entered into her house, pressed her mouth, bit her on her cheek, took her inside the room showing a pistol threatening to do away with her life, opened the string of her salwar, laid her on chaarpai in the room and committed rape upon her. On hearing her cry, PW1 Deep

Chand and one Om Parkash entered into the house. The accused scaled the wall of the house of the prosecutrix after showing his pistol. He was apprehended by the villagers.

4. PW1 Deep Chand has deposed that on 5.2.1998 at about 1.30 p.m., he and Om Parkash heard some noise from the house of the prosecutrix. They went inside her house and saw that the prosecutrix was lying naked and the accused-appellant Ram Mehar was committing forcibly sexual intercourse with her by lying upon her. The prosecutrix was crying and resisting the onslaught. The accused having shown the pistol scaled the wall of the house and thereafter the villagers from the locality apprehended the accused and gave beatings to him and the accused was tied with a Safeda tree with the help of a rope. The police reached the house of the prosecutrix at about 9.30 p.m. on the said day and the accused apprehended handed over to them.

5. PW5 Ram Kumar, Teacher of the school where the prosecutrix studied spoke about the school certificate Ex.PH which establishes that the prosecutrix was born on 8.5.1985. The prosecutrix was 12 years and 7 months as on the date of occurrence which took place on 5.2.1998.

6. PW8 Dr. M.L.Kochar examined the accused and certified that there was nothing to suggest that he was not capable for performing intercourse. PW2 Dr. Renu Aggarwal examined the prosecutrix on 5.2.1998 at about 11.30 p.m. and found a circular mark of abrasion on her right cheek and two small abrasions on the left side cheek with no external injury on the external genitalia. The hymen was partly torn and vagina admitted one finger.

7. PW10 ASI Naresh Kumar, Investigating Officer has investigated the case and filed final report against the accused.

8. The accused has contended in his statement under Section 313 Cr.P.C. that he was innocent and was falsely implicated in this case. There was a property dispute between him and his elder brother Nafe Singh. On the day of occurrence, he convened a Panchayat at the house of Nafe Singh who lodged a false complaint in order to grab the property of the father of the accused.

9. The trial Court having adverted to the above evidence on record returned a finding that the accused has committed rape by threatening to do away with the life of the prosecutrix by wielding pistol.

10. It is a well settled proposition of law that if the evidence of the prosecutrix in a case of rape passes the test of trustworthiness and credibility, the Court need not search for any corroboration. PW9 was 12 years and 7 months old at the time when rape was committed upon her. She was none other than the daughter of the brother of the accused. Though the accused has come out with a plea that there was a property dispute with the father of the prosecutrix and as a result of which he convened a Panchayat at the house of the prosecutrix, there was no evidence adduced by the accused to establish such a version. Considering the relationship of the parties, I am of the considered view that the question of false imputation by the prosecutrix against her real uncle does not arise at all.

11. Though no corroboration is required to establish the charge of rape, PW1 Deep Chand has categorically deposed that he entered into the house of the prosecutrix alongwith Om Parkash and found the prosecutrix

lying on the chaarpai and the accused committing rape upon her. The prosecutrix who was a minor had cried out attracting the attention of the neighbours. No wonder PW1 and Om Parkash had entered into her house, but unfortunately they could not apprehend the accused as he was armed with a pistol. But at any rate, it is found that the accused was apprehended by the neighbours in spite of the fact that the accused could successfully scale the wall of the house of the prosecutrix in order to escape from the clutches of PW1 Deep Chand and Om Parkash. The evidence of PW1 is found to be quite natural. There was no reason for PW1 to come and depose against the accused if at all he had not committed rape upon his real niece. The presence of PW1 and Om Parkash at the scene of crime was spoken to by PW9. Therefore, in my view, it is a rare case where there is also an eye witness account for the crime of rape.

12. The medical evidence also supports the case of the prosecution. PW8 Dr.M.L.Kochar who examined the accused has deposed that there was nothing to suggest that the accused was incapable of performing intercourse. PW2 Dr.Renu Aggarwal was categorical that two abrasions were found on the cheek of the prosecutrix. In fact, the prosecutrix also spoke about biting on her cheek by the accused. The medical evidence that the hymen was partly torn and the vagina admitted one finger corroborates the version of the prosecutrix and the eye witness who was examined in this case.

13. Learned counsel appearing for the appellant would vehemently submit that a false case was launched as against the accused-appellant due to property dispute.

14. As already pointed out by me, there was nothing on record to suggest that there was any property dispute, nor was any Panchayat held in the house of the prosecutrix. Even otherwise, in my view rape committed by the accused was independently established by the above telling evidence adduced by the prosecution.

15. It was submitted by learned counsel appearing for the appellant that imprisonment of 10 years awarded by the trial Court is far excess and disproportionate to the offence proved by the prosecution.

16. I fail to understand the above submission made by learned counsel appearing for the appellant. Rape was committed upon a girl aged 12 years and 7 months. Though the old provision under Section 376 IPC which alone will apply to the present case, contemplates mandatory punishment of 10 years in a case of rape committed upon a girl under 12 years of age, the fact remains that the prosecutrix has just crossed 12 years of age, which cannot be lost sight of. Further, the accused has committed rape upon his own brother's daughter. In other words, the accused has acted very cruelly as against a minor victim of his extended family. It is established that the accused was armed with a pistol and threatened the minor girl aged 12 years and 7 months before subjecting her to rape. Therefore, the question of reduction of sentence as pleaded by the counsel for the appellant does not arise for consideration.

17. For all these reasons, I find that there is no merit in the appeal. Therefore, the judgement of conviction and sentence passed by the trial Court stands confirmed and the appeal is dismissed.

18. The accused-appellant is on bail. His bail bond stands

cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Jind who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Jind shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

November 3, 2015
Gulati

(M. JEYAPPAUL)
JUDGE