

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S No.2335-SB of 2011 (O&M)
Date of Decision: 25.03.2015

Parshu Ram

...Appellant

Versus

State of Punjab

...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: Ms. Gurjeet Kaur, Advocate
for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab
for the State

...

R.P. Nagrath, J. (Oral)

The appellant and his co-accused Om Parkash were convicted under Section 376 of the Indian Penal Code and awarded sentence to undergo rigorous imprisonment for 10 years and to pay fine of ₹ 10,000/- each, in default of payment of fine to further undergo rigorous imprisonment for six months.

2. The facts of the case briefly stated and as emerging during trial are that on 26.02.2008, the prosecutrix 12 years old child studying in 3rd standard in Government Primary School came home after attending the school. The family of prosecutrix belongs to Bihar and they were staying in one room of the building where many other

tenants were residing in different rooms. The prosecutrix was residing in the rented room with her elder sister and parents. Father of prosecutrix is a rickshaw puller. Her mother and sister go to work in a factory from 9.00 am to 7/8.00 pm.

3. At about 4.00 pm on that day appellant-Parshu Ram and his accomplice Om Parkash (since deceased) entered the room of prosecutrix and they committed forcible sexual intercourse with the prosecutrix turn by turn. The girl cried but there was no one to rescue her as occupiers of the building were away for their work. The accused persons left the girl after committing the crime. Feeling scared the girl remained inside the room. When her father (complainant) came home from work she narrated the incident to him. The complainant brought his wife, mother of the victim and they took the prosecutrix to the hospital for medical aid. The complainant accompanied by Gurbhej Singh his landlord went to report the matter to the police. The police party headed by Sub-Inspector Swaran Singh of Police Station Division No.2, Ludhiana met them in the way and recorded statement Ex.PF of the complainant at about 10.30 pm on the basis of which FIR Ex.PF/1 was registered.

4. PW6 Dr. Surinder Pal Kaur conducted medico-legal examination of the prosecutrix on 27.02.2008 at about 12.45 pm. The doctor stated that the prosecutrix was brought before her with the history of rape and also head injury by fall, though there was no visible bleeding from the head at that time. The doctor stated that on external examination of local area there were small abrasions in the

pelvic area. No bleeding externally. Her secondary sex characters were not well developed. On local examination, there was localised pain in the vagina and bleeding from the vagina was ++. Per vaginal examination OS admitted two fingers easily. Profuse bleeding was present. Hymen was torn. Three vaginal swabs were taken and sent for examination. The doctor ordered three investigations, urine for pregnancy test, X-ray for age verification and Ultra Sonography of Pelvic area.

5. PW6 doctor also separated the vaginal swabs and prepared the same into a sealed jar and handed over the same to the police alongwith police papers. The wearing apparels of the victim including the blood stained underwear cream and blue in colour were also prepared into sealed parcel. Copy of the medico-legal report proved by the doctor is Ex.PG. As per report Ex.PH of the Assistant Chemical Examiner to the Government of Punjab, Kharar, in the contents of vaginal swab sent for chemical analysis spermatozoa were detected. The doctor (PW6) was of the view that rape with the prosecutrix cannot be ruled out.

6. It has also emerged during the trial that both the accused were admitted in the hospital for the injuries suffered by them presumably being thrashed by the crowd. PW-10 Inspector Swaran Singh then Sub-Inspector stated in the chief examination that he moved application to the doctor concerned who gave opinion declaring both the appellants unfit for making statements vide endorsements Ex.PL/1 and PM/1 respectively.

7. The accused Parshu Ram was arrested on 27.02.2008 and Om Parkash on 31.03.2008. The Investigating Officer also got them medically examined. The appellant as well as co-accused made statements before the learned trial Court admitted their medical examination reports Ex.PX/2 and Ex.PX/1 respectively. As per these reports, there was nothing to suggest that appellant and his co-accused were not capable of committing sexual intercourse.

8. The investigating Officer also visited the spot on 26.02.2008 and prepared rough site plan Ex.PW-10/A. On presentation of challan the learned Area Magistrate committed the case for trial to the Sessions Court. Charges against the appellant and co-accused were framed under Section 376 IPC stating therein that they committed rape with the girl who was about 12 years old.

9. The prosecution examined 10 witnesses in support of its case.

10. During their examination under Section 313 Cr.P.C., the appellant and his co-accused denied all the incriminating circumstances appearing in evidence against them and pleaded innocence. Om Parkash co-accused, however, took up a defence that complainant i.e. father of prosecutrix had taken friendly loan from him. Being unable to return the loan, the complainant got them falsely implicated. No evidence was led by them in defence.

11. The learned trial Court convicted the appellant and his co-accused and sentenced them as aforesaid.

12. Co-accused-Om Parkash also filed appeal against the

judgment of conviction in CRA No.2543-SB of 2012. That appeal, however, abated as per order dated 18.03.2015 on account of death of Om Parkash taking place on 09.09.2012 while undergoing sentence,

13. As per custody certificate placed on record by learned State counsel the appellant has undergone 7 years 10 months and 23 days imprisonment including the remissions, with actual sentence of more than 7 years out of 10 years awarded by the trial Court.

14. I have heard learned counsel for the appellant, learned State counsel and perused the records.

15. Learned counsel for the appellant has challenged conviction recorded by the trial Court on the grounds, inter alia;

(i) that the prosecution has not been able to prove age of the prosecutrix to be 12 years;

(ii) that the evidence of prosecutrix and her parents is quite contradictory; and

(iii) that story of rape in the room where it is said to have been committed was highly improbable as there were so many people residing in the complex.

16. On the other hand, learned State counsel has supported the judgment of the trial Court that there is overwhelming evidence in support of the charge against the accused persons and there is no possibility of falsely involving them. It is further contended that a few minor discrepancies would not be significant to bring suspicion in the story especially when the defence version of the father of prosecutrix

borrowing money from the accused persons is totally false.

17. Learned trial Court held positively that the age of prosecutrix was less than 16 years but definitely more than 12 years and thus the question of the girl being a consenting party was immaterial. PW2 father of prosecutrix stated that age of his daughter was 12 years on the date of occurrence. The prosecutrix was studying in 4th standard at that time in Government Primary School. The prosecutrix herself as PW3 and her mother as PW4 both have consistently stated age of prosecutrix as 12 years on the date of occurrence. The most relevant would be the statements of both the parents of the girl in proof of her age. This evidence is supported from the school record produced by PW8 Harpreet Kaur of Government High School where the girl was studying. PW8 was Assistant Head Mistress of the said school in the year 2008. The prosecutrix, according to her, was a student of 4th standard in that school as per the record brought by PW8. The date of birth of prosecutrix as per school record is 06.08.1996. The incident took place on 26.02.2008. So she was less than 12 years of age at the time of occurrence as per the school record. Ex.PX is the school certificate of the prosecutrix prepared by PW8. PW2 also stated that he has four children and prosecutrix was his youngest child. The age of eldest child was 19 years as stated by PW2.

18. Learned counsel for the appellant referred to the ossification test conducted for determining the age of prosecutrix. PW5 Dr. Hitinder Kaur radiologically examined the prosecutrix on

28.02.2008 and bone age of the prosecutrix is given between 12 to 14 years. The report furnished by the doctor is Ex.PW5/A. Learned counsel referred to the cross-examination of PW6 Dr. Surinder Pal Kaur who stated that age of prosecutrix according to ossification test may vary from 2 years on either side. I am unable to agree with the above statement of PW6 Dr. Surinder Pal Kaur that the age of girl could vary 2 years beyond the aforesaid extreme limits as stated in the report of PW5. No such question was even put to PW5. Moreover the victim was a student of 4th standard only at the time of occurrence and PW6 also stated on medical examination of the girl that her secondary sex characters were not well developed which would be an indicator for determining age of the prosecutrix on the date of occurrence.

19. In **Vishnu Vs. State of Maharashtra, 2005 CrILJ 303**, it was contended before Hon'ble Supreme Court that age of the prosecutrix by conducting ossification test is scientifically proved and, therefore, the opinion of the doctor that the girl was of 18-19 years of age should be accepted. Hon'ble Supreme Court did not agree with the above contention for the reasons that the expert medical evidence is not binding on the ocular evidence. It was held that the opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is of advisory character and not binding on the witness of fact.

20. In **State of Chhattisgarh Vs. Lekhram, 2006 CrILJ 2139**, it was held by Hon'ble Supreme Court that the register

maintained in a school is admissible evidence to prove the date of birth of the person concerned in terms of Section 35 of the Indian Evidence Act, 1872. It may be true that the entry of the school register is not conclusive but it has evidentiary value.

21. There is no cross-examination conducted of PW4 mother of prosecutrix to challenge her statement about the age of prosecutrix.

22. No doubt in this case there is no record of the office of Registrar, Deaths and Births with regard to the date of birth of prosecutrix, but the deposition of the parents coupled with the ossification test age of prosecutrix was definitely between 12 to 14 years on the date of occurrence.

23. For the purpose of recording conviction, the determination of age of prosecutrix would also not make much difference because the instant is a case of gang rape for attracting Section 376 (2)(g) IPC whereunder also, minimum sentence provided is 10 years rigorous imprisonment.

24. There is, however, cogent and convincing evidence led by the prosecution for establishing beyond suspicion that prosecutrix was sexually ravaged as the doctor has found abrasions in pelvic area. There was localised pain in the vagina and profused bleeding from the vagina was present. Per vaginal examination, OS admitted two fingers easily and hymen was also torn and the above opinion is corroborated from the report of chemical examiner.

25. The prosecutrix herself as PW3 made consistent statement of the appellant and his co-accused (since deceased)

having committed rape on her forcibly. The fact whether she cried or that her mouth was gagged was not so material keeping in view the age of prosecutrix. She is supported by her parents examined as PW2 and PW4.

26. This is a case where the information to the police was promptly lodged and the story of prosecution cannot be even attacked on the ground of delay. Report to the police was lodged at about 10.35 pm and during midnight the FIR was delivered to the Area Magistrate. The building where the prosecutrix with her family and accused persons were residing comprised of cluster of rooms in which so many tenants were residing, but none is examined in support of the defence version.

27. The plea set up by the accused persons in defence is patently false. It was suggested to PW2 father of prosecutrix that his wife borrowed money from the accused but there was no suggestion as to from which of the accused and when the money was borrowed and how much amount was borrowed. PW2 denied the suggestion that the accused persons came for demanding return of money or they were beaten up on this account. It is impossible to accept the contention that the honour and dignity of a small child of 12 to 14 years of age would be sacrificed by the parents to put pressure on the accused persons to desist them from making demand of return of loan.

28. Learned counsel for the appellant vehemently contended that there are certain discrepancies which would make the story

doubtful. It was pointed out that PW2 had stated in chief examination that they were living as tenant in this building for about 06 years but in cross-examination he stated that they were residing here for about 20 years. This is hardly a material discrepancy. No attempt, however, was made to confront PW2 on this contradiction for seeking any benefit.

29. In **State of Punjab V Gurmit Singh 1996(2) SCC 384**, Hon'ble Supreme Court rather held that conviction can be founded on the testimony of prosecutrix alone unless there are compelling reasons for seeking corroboration. Hon'ble Supreme Court further held as under:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such

cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration

notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable".

30. The fact that the appellant and his co-accused were also admitted in the hospital for the injuries on their person on the same day would be another circumstance which would rule out the possibility of their being falsely involved in a sensational and serious charge of gang rape.

31. Inspector Swaran Singh PW10 stated that after recording

statement of PW2 father of the prosecutrix he visited the spot and after inspecting the spot and conducting necessary proceedings returned to the police station. On return to the police station he received two *ruqas* one with regard to admission of both the accused persons and the other with regard to the prosecutrix. He visited the hospital and moved three applications with regard to the condition of prosecutrix as well as the appellant and his co-accused. The doctor had declared the prosecutrix as fit to make the statement vide Ex.PK/1 whereas the accused persons were found unfit to make statements because of the injuries on the persons of accused. Parshu Ram appellant was discharged from the hospital on 27.02.2008 and was arrested by the police whereas co-accused Om Parkash (since deceased) was arrested on 31.3.2008.

32. The investigating officer stated in the cross-examination that the building in which the family of prosecutrix was residing is a three story building in which there are about 25/30 rooms. Om Parkash (since deceased) was residing in a room on the ground floor whereas Parshu Ram appellant on the second floor. The family of complainant was residing on the first floor.

33. The prosecutrix has also been cross-examined extensively but there is nothing for bringing any suspicion to the story for suggesting false implication of the appellant. In the chief examination, prosecutrix stated that while she was present in the room both the appellant and his co-accused entered the room while they were under the influence of liquor. This was, however, not

recorded in the statement of the police but that factor is quite inconsequential. The prosecutrix stated that firstly the appellant committed rape on her and then his co-accused Om Parkash did the same act. She categorically identified both the appellant and his co-accused in the court. Her response in the cross-examination would make her testimony absolutely true. She stated as under: –

“There was no bed in the room. It is correct that if someone peeps inside the room, the entire room is visible. There was no colour on the walls. I was lying on the floor facing towards the door. It is correct that if someone peeps inside through the window only then it is visible inside the room otherwise the inner view cannot be seen. Accused got me laid in a straight manner on the floor. Accused kept my legs apart before committing rape. I tried to resist the said act of the accused. Accused Parshu Ram himself put off his clothes. He also put off my clothes. I had resisted accused but he continue with his attempt. It took about five minutes to resist the accused. I was made to lie on the ground by the accused. Accused had put his organ inside my vagina in the first attempt. Blood had stained my clothes. I do not remember how long I remained lying at the place where I was raped. When I gained consciousness, I got up myself.”

34. The discrepancy about the time at which her mother

came to the house is quite insignificant and immaterial. The fact remains that it is consistent version of the prosecution that prosecutrix narrated the entire incident to her parents. The accused persons could have easy access to the room of prosecutrix in the absence of other family members as they were residing in the same building in different portions.

35. With regard to the discrepancies as referred by the learned counsel, Hon'ble Supreme Court held in **State of Rajasthan Vs N.K., 2000(5) SCC 30** that if the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and given benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It was further held that spurt in the number of unmerited acquittals recorded by criminal courts gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women.

36. Therefore, I find the charge to have been rightly held proved against the accused.

37. After holding so it is to be seen that the offence attracted against the appellant was under Section 376 (2)(g) IPC for having committed gang rape. The charge against the accused was containing all the particulars of gang rape as it was stated that the appellant along with co-accused Om Parkash committed rape on the girl of 12 years of age.

38. In view of the aforesaid discussion I would correct the offence under which the conviction was supposed to have been recorded from Section 376 to Section 376 (2)(g) IPC. The minimum sentence provided under the said provision is 10 years rigorous imprisonment and therefore, the sentence must be maintained.

39. In a view of the aforesaid discussion the instant appeal is dismissed in toto and offence held to be proved against the appellant is altered from Section 376 to Section 376 (2)(g) IPC. Copy of judgement be forwarded to all the concerned for compliance.

(R.P. Nagrath)
Judge

25.03.2015
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