

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2676-SB of 2010
Date of decision: 15.07.2015

Ravinder @ Mor

..... 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. Sunil Panwar, Advocate
for the appellant.

Ms. Dimple Jain, AAG, Haryana.

R.P. NAGRATH, J.

The appellant faced trial for offences under Sections 366 and 376 of the Indian Penal Code (IPC). He is alleged to have abducted the prosecutrix on 10.04.2009 with an intent that she may be forced to illicit intercourse with the appellant and further between 10.04.2009 to 25.04.2009, the appellant committed rape on the prosecutrix. Learned trial Court convicted the appellant of the charges framed against him and awarded him sentence to undergo rigorous imprisonment for ten years and to pay fine of ₹ 3000/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months under Section 376 IPC. The appellant was also sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹ 2000/-, in default of payment of fine to further undergo rigorous imprisonment for 2 months under Section 366 IPC. Sentences of imprisonment under both the heads were to

run concurrently.

2. As per custody certificate placed on record by learned State counsel, the appellant has undergone actual sentence of more than 6 years and 1 month of imprisonment and more than 8 years 7 months including remissions.

3. This was seemingly a case of prosecutrix eloping with the appellant and stayed with him for about two weeks, and had lot of fun, but later on turned around and made statement against the appellant out of fear of society, her parents and to save her married life. But the appellant has suffered the incarceration for so many years leaving everything to his fate. He even did not apply for suspension of sentence after 08.11.2010, when the instant appeal was admitted and his application for suspending sentence was dismissed as withdrawn at that stage. The system must awake itself from such sinister designs of those launching prosecution and not to permit the process of law to be misused in this way taking advantage of the general mood and perception with regard to offence of rape. This is need of the hour and to take pragmatic view on such matters especially keeping in view the liberty of the citizens.

4. A complaint in writing was made by father of the prosecutrix on 14.04.2009. The prosecutrix was married about 9 years ago at Village Marot. The prosecutrix stated in cross-examination that distance between her parental village Kabulpur and Marot is about 15 to 20 kms. She had two children from the wedlock, elder being 5 years old son and younger a 3 years old daughter. It was stated that the prosecutrix had come to her

parents' house alongwith children.

5. On 10.04.2009, the complainant and his wife had gone to the fields for harvesting the wheat crop. When they returned home in the evening they were told by children of the prosecutrix that their mother had received a phone call on the landline number of Suresh, the brother of complainant, from Mobile No. 9991873855 of the appellant. The appellant told the prosecutrix that her husband was seriously ill and admitted in Beri hospital. She was also told that her husband was calling her immediately. The prosecutrix immediately left the house for hospital by informing the children.

6. On the next day i.e. 11.04.2009, the complainant spoke to his son-in-law that the prosecutrix got a message from appellant about his ailment and had soon gone to Beri hospital where he was statedly admitted. The son-in-law of complainant responded that he was quite well and very much present in the house. The complainant went out in search of the prosecutrix and ultimately the complaint in writing Ex. P-3 was made to the police on 14.04.2009, on the basis of which FIR Ex. P-12 was registered in the police station. It was stated that the prosecutrix was called on the false pretext with an intent that she would be subjected to sexual intercourse.

7. On 24.04.2009, the prosecutrix and the accused were located in front of the gate of bus-stand, Rohtak. Appellant was holding the prosecutrix from her hand. He was apprehended by police in the presence of real brother of the complainant. The prosecutrix was handed over to parents on the next day. For both

these proceedings memos Ex. P-14 and P-4 respectively were prepared.

8. On 25.04.2009, prosecutrix was examined by PW-7 Dr. Asha Goel, Medical officer, General Hospital, Rohtak. PW-7 made her deposition in the affidavit Ex. PW-7/A. There was abrasion mark on the forearm linear. As per history reported to the doctor this injury was caused by bangles due to the struggle. There was no other mark of injury. PW-7 prepared the sealed parcel of the underwear of the prosecutrix, two vials with trimmed pubic hair and introitus and vaginal swab and also prepared a sample seal. The doctor further stated that possibility of sexual intercourse cannot be ruled out.

9. As per report of Forensic Science Laboratory (FSL) Ex. P-7, semen was detected on Ex. 2a, the parcel containing dirty light brown cotton underwear of the prosecutrix. But the semen was not detected in rest of the exhibits i.e. pubic hair, introitus and vaginal swab.

10. To connect the report of FSL, the prosecution examined PW-6 SI Baljit Singh, MM with whom the case property was deposited on 25.04.2009 by the investigating officer. PW-6 tendered his affidavit Ex. PW-6/A and according to statement made in the affidavit, the parcels were sent to FSL through Constable Sukhdarshan on 08.05.2009. Constable Sukhdarshan PW-1 stated that the case property remained intact so long it remained in his possession.

11. In all the prosecution examined 15 witnesses.

12. During his examination under Section 313 Cr.P.C., the appellant denied all the incriminating circumstances appearing in

the prosecution evidence against him. He pleaded that the prosecutrix was not on good terms with her husband and in-laws. Her husband studied only upto 6th standard whereas the prosecutrix had done 10+2. The prosecutrix and her husband were also disowned by her father-in-law. It is further pleaded that prosecutrix left her house voluntarily and accompanied the appellant upto Udaipur as she wanted to go for sightseeing and also looking for a job. She had been roaming with the appellant of her free will and posed for the photographs. No evidence was led by the appellant in defence.

13. I have heard learned counsel for the appellant, learned State counsel and also perused the record quite extensively with their able assistance.

14. Learned counsel for the appellant, vehemently, contended that this was a clear case of the prosecutrix leaving home and giving company to the appellant of her own free will. She remained with the appellant for about 14 days before they were ultimately apprehended. Learned counsel further submitted that the manner in which the prosecution has shown apprehension of the prosecutrix and appellant is highly contradictory version which would further bring suspicion to the story.

15. Learned State counsel, on the other hand, submitted that the prosecutrix would not rope in the appellant falsely on such a serious charge and to harm her own dignity and honour and that of the family.

16. I have given my thoughtful consideration to the rival contentions of the parties and find from perusal of the record that

there is no indication of the prosecutrix having been abducted or use of mildest of the force to say that the appellant committed sexual intercourse without her consent.

17. Version set up by the prosecutrix in her statement under Section 161 Cr.P.C. Ex. DA was that she had come to her parents about 5 or 6 days before the occurrence. She received a phone call from the appellant on 11.04.2006 about serious ailment of her husband who had called her to come. She went out of the house by informing her children. Near the bus-stand appellant was present. The appellant took her to nearby fields and forcibly committed sexual intercourse with her. Thereafter, the prosecutrix insisted upon her being taken to her husband in the hospital at Beri but the appellant took her in the bus from Rohtak bus-stand to Rewari. From there the appellant took prosecutrix to Jaipur in a train and then to Udaipur where the appellant had hired a room in a hotel. The appellant had been taking her in the town by holding her from her hand and during the night committing sexual intercourse with her. The prosecutrix was also produced before learned Magistrate on 26.04.2009 who recorded her statement under Section 164 Cr.P.C.

18. While appearing in the witness-box the prosecutrix as PW-3 stated that after she received a phone call she went to Beri hospital where the appellant told her that her husband was not admitted there and had been taken for treatment at Jhajjar. Then the appellant told the prosecutrix that her husband was lying in the car. The appellant had told her that her father-in-law, mother-in-law and brother-in-law were also sitting in the car. The prosecutrix

went near the car parked there and looked inside that the appellant pushed her inside the car where two boys with muffled faces were sitting and they caught hold of the prosecutrix from her hands and pulled her inside. She scuffled with those boys resulting into breaking of her bangles. The prosecutrix was not able to manage those boys a handkerchief was put on her mouth and she became unconscious. Then she narrated about the repeated acts of sexual intercourse by he appellant for about 11 to 12 days at Udaipur.

19. There is, thus, material improvement and contradiction in the story with which the prosecutrix was duly confronted with her statements recorded under Sections 161 and 164 Cr.P.C. The version about the prosecutrix being taken in the car where two boys were sitting was for the first time narrated by her in the statement under Section 164 Cr.P.C. recorded by the Magistrate on 26.04.2009. In that statement she rather stated that the appellant had not committed any wrong act with her at Udaipur but she was given beating. The prosecutrix was confronted with the aforesaid statement but she tried to explain that there must have been some confusion while recording statement by the Magistrate.

20. PW-15 Mr. Chander Hass, Judicial Magistrate Ist Class recorded the statement of prosecutrix under Section 164 Cr.P.C. and the statement is Ex P-2.

21. The basic question in the instant case is whether the prosecutrix who was about 30 years old was abducted or taken away by deceitful means on the pretext that her husband was quite unwell and admitted in the hospital or whether the prosecutrix eloped with the appellant of her own free will especially under the

circumstances that they stayed together in a hotel at Udaipur for about 11-12 days.

22. It becomes easier to make assessment of the above controversy by looking into the photographs of appellant and the prosecutrix taken at Udaipur. The photographs are Ex. DB and Ex. DC. The prosecutrix is posing comfortably and in happy mood with appellant by wearing local fancy dress. The prosecutrix is holding a fully decorated pitcher. The factum that these are the photographs of appellant and prosecutrix was not denied by her in the witness-box. In cross-examination she stated that she had seen both the photographs but she does not know when these photographs were taken. She could not say under what condition and what place these photographs were taken. She also could not say if these photographs were taken in front of the City *Mahal* at Udaipur. PW-3 stated that she does not usually wear the dress as shown in the photographs Ex. DB and Ex. DC.

23. This is coupled with the facts that appellant and the prosecutrix went to Rewari in a bus and from there she accompanied the appellant to Jaipur and then Udaipur. Traveling such a long distance and staying there for so many days, it would be quite difficult to accept that she was forced to stay in the room of a hotel at Udaipur under the threats from the appellant.

24. Husband of the prosecutrix seems to very well know about the illicit affair of the prosecutrix with appellant and that is why the couple is living separate since then.

25. Husband of the prosecutrix was examined as PW-13. He did support the prosecution story about the appellant calling his

wife on the false information that PW-13 was admitted in the hospital. PW-13, who was examined on 31.07.2010 about more than one year after the occurrence, stated that since the registration of this FIR his wife, namely; the prosecutrix was residing with her parents. Similar is the statement of PW-3 and PW-4 in cross-examination.

26. PW-4 father of the prosecutrix also stated that the appellant had been coming to their house alongwith his son-in-law earlier. It is quite clear that because of this incident the relations between the husband and wife became strained and that is why the prosecutrix is living with her parents. Had she be not at fault the husband would have made the attempts for rehabilitating his wife even after the incident.

27. It is admitted by PW-3 that they also came in a bus from Udaipur to Rohtak but there is nothing to suggest that she raised any hue and cry during such a long journey.

28. The prosecutrix denied in cross-examination that she made statement to the police that she was first taken in the bus to Rewari and from there to Jaipur by train. She also denied that she was taken from Jaipur to Udaipur by bus. The prosecutrix was duly confronted with the statement Ex. DA on the above facts where it was so recorded.

29. There is also serious contradiction with regard to manner in which the prosecutrix was recovered. PW-3 in cross-examination stated that family of the appellant brought her from Udaipur in a car and left her in the police station and went away. PW-4 father of the prosecutrix stated that the prosecutrix had come

to the police station of her own for 5 to 6 days of the incident.

30. The version put up by the investigating officer is, however, quite different. According to PW-12 SI Ram Phal, he was present at bus-stand Rohtak alongwith Nafe Singh, the brother of complainant and other police officials. After sometime Nafe Singh pointed out towards the boy and the girl going together were the appellant and the prosecutrix. The appellant was apprehended and the girl was recovered while in the company of the appellant. PW-9 Nafe Singh also stated that while the appellant and the prosecutrix alighted from the bus he was holding the prosecutrix and they started walking towards Sheela bypass and were apprehended. It is not the version of both these witnesses that the girl was under any stress or was showing any resistance against the appellant.

31. After narrating story and reproducing the entire evidence the trial Court has failed to appreciate the aforesaid circumstances which would rule out any forcible sexual intercourse by the appellant.

32. The important evidence was the photographs Ex. DB and Ex. DC of the prosecutrix and the appellant. The trial Court has simply observed that these photographs do not carry much weight in the light of testimony of the prosecutrix who has categorically stated that the appellant misrepresented the facts stating that her husband was lying in the hospital. These photographs could not have been brushed aside but the trial Court by referring to certain case laws observed that a lady would not put her character at stake. It is quite obvious that the prosecutrix has made statement simply to save her marital life.

33. I thus find the present to be a clear case of consent of the lady who eloped with the appellant and stayed with him for more than 10 days.

34. In view of the above, the appeal is accepted by setting aside the judgment of conviction and the appellant stands acquitted of the charges framed against him. The appellant be set at liberty forthwith, if not required in any other case.

July 15, 2015
jk

(R.P. NAGRATH)
JUDGE