

**325 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **CRA S-541-SB of 2005.**
Decided on : 9.10.2015.

Usha **...Appellant**
Versus
State of Haryana **...Respondent**

(2) **CRA S-601-SB of 2005.**
Decided on : 9.10.2015.

Parmod **...Appellant**
Versus
State of Haryana **...Respondent**

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**

Present : Mr. Akshay Jain, Advocate,
Amicus Curiae.

Mr. Ripu Daman, AAG Haryana.

JITENDRA CHAUHAN, J.

This judgment shall dispose of aforesaid two criminal appeals bearing number CRA-S-541-SB of 2005 and CRA S-601-SB of 2005, arising out of common judgment of conviction dated 17.2.2005 and order of sentence dated 19.2.2005, passed by the Additional Sessions Judge (Fast Track Court), Bhiwani vide which both the accused-appellants were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
120-B IPC	RI for 3 years	Rs.500/-	RI for 3 months
342 IPC	RI for 6 months	--	--
506 IPC	RI for 6 months	Rs.500/-	RI for 3 months

The accused Parmod was also convicted under

Section 376 IPC and sentenced to undergo RI for seven years and to pay fine of Rs.1000/- and in case of default of payment of fine, to further undergo RI for six months. He was also convicted under Section 323 IPC and sentenced to undergo RI for 6 months.

All the substantive sentences were ordered to run concurrently.

In brief, the case of the prosecution is that the victim was married to Ramesh in the year 2000. She was blessed with a son, who was aged 11 months. On the occasion of Rakshabandhan festival, the victim came to the residence of her mother. On 24.8.2003 at about 3.00 pm, she was coming from the street then accused Kiran @ Usha wife of Parmod called her to her house and offered her tea. After some time, her husband i.e. accused Parmod came there and he forcibly took her (victim) to the store room and made her lie on the ground. When she tried to get herself free, the accused Parmod gave her fist blows on her face and nose and Parmod also caught her hair and smashed her on the walls. She further alleged that Parmod gave her bites on her breasts and thighs and tore her jumpher (lady shirt) and also removed her salwar and underwear and threw her clothes in the court-yard. She raised alarm, upon which, Parmod's wife bolted the door and switched on the Faratta (high speed) fan. She further stated that Parmod committed rape upon her against her will and had given her injuries.

Thereafter, both the accused intimidated her that in case, she disclosed this occurrence to anybody, then she would be killed. During the

occurrence, her both ear-rings and nose pin fell down at the spot and her bangles were broken. Her mother had gone to do labour work and on her return, she disclosed the entire occurrence to her and thereafter they approached the Police Post for recording FIR. On the basis of statement of the victim Ex.PA, FIR Ex.PA/2 was registered against both the accused under Sections 342, 376, 323, 506 and 120-B IPC. The victim was medico-legally examined. After completion of investigation, challan against the accused was presented in the court.

After complying with the provisions of Section 207 Cr.P.C, the case was committed to the Court of Session. Charges under Sections 120-B, 342 and 506 IPC were framed against both the accused. Accused Parmod was also charged under Sections 323 and 376 IPC. The accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined eleven witnesses.

PW-1, Ashok Kumar is the Photographer. He took snaps of the place of occurrence.

PW-2, is the victim herself. She has stated that on 24.8.2003, on the eve of 'Rakshabandhan', she visited her parental home. At about 3.00 pm, while she was in the street, she was called by accused Kiran @ Usha to her house. She was served a cup of tea and in the meantime, accused Parmod husband of Kiran also came there.

Parmod caught hold of her and took her to store room and made her lie on the ground and thereafter committed wrong with her after

undressing her. He threw her salwar and underwear in the court-yard and tore her shirt 'jumper'. She was bitten on her breasts and thighs by him. She was given beatings as well.

PW-3, Dhanpati, the mother of the victim testified that her daughter had come to her residence on the occasion of Rakshabandhan. On that day, she had gone to do the labour work in the morning and returned at 8.00 pm. The victim told her about the incident and thereafter she along with her daughter got the FIR registered against the accused.

PW-4, HC Bushan Kumar stated that the case property was deposited with him on 24.8.2003 and he handed it over to MHC Janak Raj on 29.9.2003. It remained with him in intact condition.

PW-5, Dr. Sudha Garg medico-legally examined the victim on 24.8.2003 and found two abrasions one below right nipple and another on nose of the victim. A diffused swelling was also present on her right eye. She deposed that pubic hair of the victim were well developed and vagina admitted two fingers easily without any resistance. Uterus was of normal size. Cervix was healthy and no tenderness was present. No bleeding was present as per vaginal examination.

PW-6, ASI Om Parkash is the Investigating Officer of this case.

PW-7, Dr. Rajender Rai medico-legally examined the accused Parmod on 29.8.2003.

PW-8, Parveen Chandra, Draftsman prepared the site-plan.

PW-9, MHC Janak Raj stated that he took the case property from MC Bhushan Kumar and sent the parcels to FSL, Madhuban on 1.10.2003.

PW-10, Constable Jai Parkash stated that on 24.8.2003 he had delivered copies of special report to the higher officers.

PW-11, Constable Bal Krishan stated that he took parcels from MHC Janak Raj and deposited the same with FSL Madhuban on 1.10.2003.

The statements of accused under Section 313 Cr.P.C were recorded and all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication.

The accused, Parmod took the plea that husband of the victim used to harass and beat her and he had turned her out from her house. Her husband visited the residence of her mother on the day of occurrence and gave her beatings. The victim and her mother suspected that her husband gave beatings to her at the instance of the accused, Parmod. Due to this, he was falsely involved in the case. His wife Usha was not present at the time of alleged occurrence.

Accused Usha alias Kiran also took the plea that she had been falsely implicated in the case. She was not present at her

house at the time of alleged occurrence. She used to do cleaning work in the houses of other persons. She was innocent.

No defence witness was examined by the accused.

After appraisal of the evidence, learned trial Court vide the impugned judgment of conviction and the order of sentence convicted and sentenced the accused-appellants as narrated above.

Feeling dis-satisfied with the impugned judgment and the order, the accused-appellants have filed the present appeal.

Learned counsel for the appellants contends that the alleged occurrence took place on 24.8.2003, though, the FIR was registered on the same day but the articles like broken bangles, ear rings etc. were recovered from the place of occurrence on 29.8.2003 i.e on the fifth day of the occurrence. He further contends that the story of the prosecution is that the accused gave teeth bites to the victim on her breasts and thigh. As per PW-5, Dr. Sudha Garg, abrasions were present below right nipple and nose of the victim. It is contended that the abrasions cannot be caused by teeth. The abrasions can be caused by rubbing of rope or string. He further contends that as per the statement of PW-5 and report of FSL, no semen stain or blood stain was found on the undergarments of the victim. He further contends that Ex.P-15, the victim had changed her underwear at the time of examination. The Doctor had mentioned the colour of the underwear as brown but surprisingly, after its return from FSL, Madhuban, the colour of the underwear of the victim was found to be blue, which as

per Ex.P-15, did not belong to her.

On the other hand, the learned State counsel contends that the prosecution has established its case beyond reasonable shadow of doubt. The accused have been rightly convicted by the trial Court. He supports the judgment and order passed by the trial Court.

I have heard learned counsel for both the parties and have gone through the record of the case.

The case of the prosecution as emanating from the mouth of the victim is that on the fateful day i.e. 24.8.2003 at about 3.00 pm, accused Kiran @ Usha wife of Parmod called her to her house and offered her tea. After some time, her husband i.e. accused Parmod came there and he forcibly took her (victim) to the store room and made her to lie on the ground. When she tried to get herself free, the accused, Parmod gave her fist blows on her face and nose and Parmod caught her from hair and smashed her on the walls. The accused, Parmod gave her bites on her breasts and thighs and tore her jumpher and after removing her underwear, committed rape upon her. The co-accused, Usha, wife of Parmod bolted the door and switched on the Faratta (high speed) fan. Thereafter, both the accused intimidated her with dire consequences. During the occurrence, her both ear-rings and nose pin fell down at the spot and her bangles were broken.

PW-6 ASI Om Parkash, Investigating Officer of this

case in his examination-in-chief stated that on 24.8.2003 he recorded

the statement of the victim and the FIR was registered on the same day.

On 29.8.2003 he raided the house of the accused i.e. the place of occurrence and collected ear-rings and some broken pieces of bangles from the spot. The accused Parmod was also present in his house and he was arrested on that date. This Court is at a loss to understand as to how the torn bangles and ear-rings remained on the spot for five days particularly when the accused was present in his house. Had the story of the prosecution been true, the accused would have been the first person to remove the articles from the place of occurrence. But as per the case of prosecution, the articles remained on the spot for five days which seems to be unnatural. The Doctor PW-5 has stated that the sealed packet containing brown underwear of the prosecutrix was handed over to the Laboratory but as per FSL report Ex.PE, the packet contained a blue colour underwear. Further, as per the version of the victim, the accused gave her teeth bites on her breasts and thigh but as per PW-5, Dr. Sudha Garg, two abrasions were present on the body of the victim. The abrasions cannot be said to have been caused by teeth bite. This aspect of the matter based on medical evidence was not properly examined by the trial Court and makes the case of the prosecution doubtful. The matter does not rest here, the case of prosecution is that the accused Parmod committed rape upon the victim in the presence of the co-accused, the wife of the appellant, Usha. As per prosecution case, she facilitated the commission of offence by

calling the victim to her house, serving her tea, bolting the room from

outside and then switching on the high speed fan to curb noise. This Court is unable to accept that a wife will ever facilitate the commission of offence of rape by her husband without there being a very strong motive. The natural reaction of a wife to such a conduct of the husband would be that of hostility and of disapproval as it undermines her position and infringes upon her matrimonial right that may entail unpleasant consequences for the whole family and particularly for her as a wife. No wife will allow her matrimonial bond to be damaged by exciting the husband to commit rape upon another lady. The role assigned to the accused, Usha wife of the appellant, Parmod creates doubt in the story of the prosecution. It is suggestive of the fact that the occurrence, if any, did not happen in the manner as has been projected by the prosecution. A doubt stands created in the mind of the Court. The benefit of the same will go to the accused. In the circumstances, this Court feels that prosecution has not been able to prove its case beyond a reasonable shadow of doubt.

In view of the observations made above, the present appeals stand allowed. The impugned judgment of conviction and order of sentence stand set aside. The accused are acquitted. Their bail bonds and surety bonds stand discharged.

9.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE