

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2635-SB of 2011

DATE OF DECISION: MARCH 9, 2015

LALIT KUMAR

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

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

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

PRESENT: MS. DIVYA, ADVOCATE
FOR DR. DEIPA SINGH, ADVOCATE
FOR THE APPELLANT.

MR. PRITAM SAINI, ADDL.A.G., HARYANA.

M. JEYAPPAUL, J.

1. Accused Lalit Kumar has challenged the judgement of conviction and sentence passed by the trial Court under Sections 342 and 376 IPC.
2. It is the case of the prosecution that the prosecutrix who was aged 14 years was taken by the accused inside his house and committed rape upon her. As there was no amicable settlement in the panchayat, an FIR was lodged by the prosecutrix.
3. PW2 is the prosecutrix aged 14 years. She has categorically deposed that she was studying in 8th standard in Government School, Sudhail at the time when the occurrence took place. On 7.6.2009, when her parents alongwith her brother had been to the fields for doing labour work, she and her sister PW5 Rajat Rani alone were present at home. At about

12.00 noon, her sister Rajat Rani asked her to fetch water from panchayat hand-pump which had been installed in the street. The house of the accused was located near the place where the hand-pump was installed. When PW2 was fetching water from the hand-pump, accused Lalit Kumar came over there and forcibly took her inside a room of his house. Having bolted the door from inside, he broke the string of her salwar. In spite of hue and cry raised by PW2, the accused committed rape upon her. On coming home, the prosecutrix narrated the incident to her sister PW5 Rajat Rani. PW2 and PW5 disclosed the entire sequence of occurrence to their parents, who returned home by evening. The parents of PW2 and PW5 proceeded to PW1 Amarjit Singh, Sarpanch of the village, who convened a panchayat. But the matter was not sorted out in the panchayat. PW2 thereafter lodged a complaint Ex.P1 before the police on 22.6.2009.

4. PW4 Dr.Poonam Chaudhary, Medical Officer, General Hospital, Jagadhri, medico-legally examined PW2 on 22.6.2009. The prosecutrix informed her that she was sexually assaulted on 7.6.2009. There was no mark of injury on any part of her body. The hymen was not intact. Vagina easily admitted two fingers. The possibility of penetration could not be ruled out. As per her opinion, the victim informed her that she had washed her salwar. But as per the version of her mother, the victim was wearing the same salwar which she worn at the time of incident.

5. PW9 Dr.Naveen Garg, Medical Officer, Civil Hospital, Jagadhri, medico-legally examined the accused on 30.6.2009 and opined in the MLR Ex.P3 that there was nothing to suggest that accused was incapable of performing sexual act. He also noted that there was no injury

on the body of the accused indicating any struggle.

6. The accused took up a plea in his statement under Section 313 Cr.P.C., that he was innocent. A week prior to the registration of the case, there was a fight between his family and the family of the prosecutrix. The parents of the prosecutrix caused injury to him. Thereafter, they roped him in the false case.

7. The trial Court having relied upon the evidence of the prosecution, which was supported by PW1 and PW5 and the medical evidence on record, recorded conviction as against the accused.

8. PW2 who is the prosecutrix in this case was found to be 14 years old at the time when the occurrence took place, as per the birth certificate Ex.P16, produced before the trial Court. It was not challenged that the prosecutrix was studying in 8th standard at the time when the occurrence took place. PW2 has categorically deposed that when she was drawing water from the hand-pump located in the street, the accused came over there and took her inside his house forcibly and committed rape upon her after bolting the room from inside. The evidence of PW5 Rajat Rani lends corroboration to the evidence of PW2. PW5 has deposed that on 7.6.2009 at 12.00 noon, her sister left for fetching water from the hand-pump in the street. But she came around 1.00 p.m. and informed her of the rape committed by the accused.

9. PW1 Amarjit Singh, Sarpanch of the village had in fact convened a panchayat the next day of the occurrence, as a case of rape was reported by the prosecutrix as against the accused. But no amicable solution

was arrived at in the panchayat.

10. The evidence of PW4 Dr.Poonam Chaudhary would go to establish that the hymen of the prosecutrix was not found intact. The vagina admitted easily two fingers. PW9 Dr.Naveen Garg has categorically opined that there was nothing to suggest that the accused was incapable of performing sexual act.

11. There was no reason to reject the evidence of PW2 who was the victim of rape. Her testimony was completely supported by PW1 and PW5. The medical evidence also supports the version of the prosecutrix.

12. The parents of PW2 and PW5 had convened a panchayat on reporting the incident to PW1. It was PW1 who had organized a panchayat. He had made an attempt to sort out the issue, but he could not succeed. The matter was not immediately reported to the police as the parents of the prosecutrix had made an attempt to find an amicable solution through the local panchayat.

13. In the Indian context, delay in lodging the first information report, complaining of rape, cannot be taken serious note of. The family of the victim is very much scared of the impact of such nature of occurrence. The adverse reaction of the society would also be in the uppermost mind of the family. The future of the victim is also the subject matter of discussion by the affected family. In the rural set up, the reality is that some amicable solution even for such a heinous crime is sought. For all these reasons, the delay in lodging the first information report in a case of rape cannot be posed as a solid ground to shake the foundation of the prosecution. At any

rate, in my view, the delay of 15 days in lodging the first information report has been explained by the prosecution through the testimony of PW1 Amarjit Singh, Sarpanch. Therefore, the case of the prosecution is not at all affected by the delay of 15 days in lodging the first information report.

14. It was further argued by learned counsel appearing for the appellant that there was some previous enmity between the family of the accused and the family of the victim. Therefore, there was every possibility of fabrication of this case due to the previous enmity.

15. Motive is a double edged weapon. Motive can either be a source for lodging a false case by the prosecution party or for an actual commission of crime by the accused party. But for a flimsy motive the family of the prosecutrix would not have chosen to sacrifice the reputation of the prosecutrix who was 14 years old studying in 8th standard in a school. Therefore, I am not inclined to buy the argument that PW2 was projected as a victim to wreak vengeance against the accused on account of previous motive.

16. Learned counsel appearing for the appellant would submit that the occurrence had allegedly taken place between 12.00 noon and 1.00 p.m. The victim had chosen not to inform her parents who were working in a field about 1 km. away from their house, immediately after the occurrence and so, it creates a doubt on the case of the prosecution, it was further submitted.

17. PW2 who was studying in 8th standard was raped by the accused. She came weeping and narrated the entire occurrence to PW5 who

was in the house. PW5 would have taken some time to pacify PW2. They would have been in an utter trauma on account of such untoward incident which had brought disrepute to the family. They had patiently waited for arrival of their parents to the house to disclose the entire incident to them.

18. There are cases where a victim had been toying with an idea to hide the occurrence on account of shame brought in by the occurrence. Further, in the instant case, I find that the parents had been working at a field away from their house. I do not find any abnormality in the conduct of PW2 and PW5 in waiting for their parents to arrive at 8.00 p.m.

19. It is the admitted case that the occurrence took place during summer vacation when some of the neighbours with their children would have been present in the village in their respective homes. PW2 has deposed that she made a hue and cry when the accused took her forcibly into his house. During the month of June, it would have been very hot and the children and the neighbours would not have ventured to come out in the open unless there was any necessity to do so. Further, the accused had raped the prosecutrix only after bolting the door from inside. Any amount of hue and cry raised by the victim would not have travelled outside the room.

20. Learned counsel appearing for the appellant referring to the forensic science report would submit that there was no indication that the accused or the victim sustained any injury. There was also no clue that the dress worn by the victim contained any semen.

21. The occurrence had taken place on 7.6.2009, whereas the FIR

was registered on 22.6.2009. PW2 was subjected to medical examination only after 15 long days. No wonder, there was no visible injury found on her body. PW9 Dr.Naveen Garg had subjected the accused to medical examination only on 30.6.2009 after the accused was arrested and brought before him by the police. There is no wonder that no visible injury was found on the person of the accused.

22. PW2 had categorically stated before PW4 Dr.Poonam Chaudhary that she had already washed the dress worn by her at the time of occurrence. The mother of PW2 had informed PW4 that the victim was wearing the very same underwear she had worn at the time when the occurrence took place. At any rate, when the clothes worn by the victim at the time of occurrence had already been washed, a positive report from the FSL cannot be expected.

23. A specific suggestion was put to PW1 Amarjit Singh that on 16.6.2009, a quarrel had taken place between the family of the complainant party and the accused party, and the parents of the prosecutrix caused head injury on the person of the accused. The above suggestion was admitted as correct by PW1 during the course of cross-examination. The attack launched by the parents of the prosecutrix on the head of the accused on 16.6.2009, about 9 days after the occurrence and 6 days prior to registration of the case would go to show that the parents of the prosecutrix, aggrieved by the act of the accused and the failure to find an amicable solution in the panchayat, picked up a quarrel and attacked the accused and caused injury on his head.

24. In the above facts and circumstances, I find that the prosecution

has established beyond reasonable doubt that the accused having wrongfully confined the prosecutrix in his house committed rape upon her. I do not find any infirmity in the well considered judgement passed by the trial Court.

25. Resultantly, the judgement of conviction and the order of sentence passed by the trial Court is confirmed and the appeal is dismissed.

March 9, 2015
Gulati

(M. JEYAPPAUL)
JUDGE