

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

1. CRA-S No. 936-SB of 2010(O&M)
Date of Decision: June 5 , 2015.

Randhir Singh @ Kala APPELLANT (s)

Versus

State of Haryana RESPONDENT (s)

2. CRA-S No. 1348-SB of 2010(O&M)

Sonu @ Lambu APPELLANT (s)

Versus

State of Haryana RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Aditi Girdhar, Amicus Curiae,
Mr. J.S.Cooner, Advocate and
Mr. Suneel Ranga, Advocate for
Mr. G.S.Hooda, Advocate
for the appellants.

Mr. Vivek Saini, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This judgment shall dispose of Crl. Appeal-S No.936-SB of 2010
(Randhir Singh @ Kala v. State of Haryana) and Crl. Appeal-S No.1348-SB of
2013 (Sonu @ Lambu v. State of Haryana). Both the appeals stem from the
judgment of conviction dated 24.02.2010 and order of sentence dated

26.02.2010, hence are taken up together for hearing.

Appellants Randhir Singh @ Kala and Sonu @ Lambu have been convicted for the offences punishable under Section 376(2)(g) and 450 IPC and sentenced to undergo rigorous imprisonment for ten years each, besides, pay a fine of ₹2,000/- each and in default thereof, to undergo rigorous imprisonment for one month for the offence punishable under Section 376(2)(g) IPC vide judgment of conviction dated 24.02.2010 and order of sentence dated 26.02.2010 passed by the learned Sessions Judge, Kurukshetra. Appellants were further sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of ₹5,000/- and in default thereof, to undergo rigorous imprisonment for seven days for the offence under Section 450 IPC.

In Crl.Appeal-S No.936-SB of 2010, sentence imposed upon the appellant-accused Randhir Singh @ Kala was suspended by this Court on 01.09.2014 in CRM No.9809 of 2014. When these appeals came up for hearing on 18.02.2015, none had put in appearance on behalf of the appellant Randhir Singh @ Kala. The case was adjourned to 25.02.2015 and registry was directed to inform the counsel for the appellant of the next date fixed in this case i.e., 25.02.2015. As per report of the registry, counsel for the appellant was duly served and informed about the date fixed. However, none came present on behalf of the appellant Randhir Singh @ Kala on 25.02.2015 and the case was adjourned to 18.03.2015. Registry was again directed to intimate the counsel concerned, who was again informed telephonically about this matter. When the appeal was taken up on 22.04.2015, there was still no representation on behalf of appellant Randhir Singh @ Kala despite specific intimation by the Registry of

this Court of the date fixed. In these circumstances, Ms. Aditi Girdhar, Advocate was appointed as Amicus Curiae on 22.04.2015 for assisting this Court in this case. Paperbook of this case was supplied to her.

In CRA-S No.1348-SB of 2010, application for suspension of sentence of appellant – Sonu @ Lambu was dismissed on 27.10.2014 and the appeal was directed to be listed for hearing keeping in view the period of custody undergone by him.

Briefly stated, facts are that the prosecutrix aged 17 years came to Police Post Gumthala Garhu and recorded statement (Ex.P11) on 30.10.2008 before SI Som Nath, Incharge of the Police Post to the effect that she is resident of village Helwa and student of Class 10th. She had gone to the fields for harvest of paddy crop with her mother on 29.10.2008 while her father Sewa Gir had gone to Pehowa for some household work. Her mother sent her to their house for bringing tea. When she was lifting firewood in her house at about 2.30 p.m. appellants-accused Randhir Singh and Sonu, a servant of Baba Balley Gir came to her house and upon finding her alone caught hold of her. They forcibly took her to a room meant for cattle belonging to Baba Balley Gir. She was gagged by appellant-accused Randhir Singh when she tried to raise an alarm. Appellant-accused Sonu committed rape upon her and appellant-accused Randhir Singh took photographs of this act on his mobile phone. Thereafter, appellant-accused Randhir Singh committed rape upon her. When she raised alarm, her nephew Gurpreet Gir came there. But accused Sonu ran after Gurpreet to catch hold of him. Upon which Gurpreet Gir, aged about twelve (12) years ran away. She managed to escape from the clutches of Randhir Singh in the meanwhile.

Appellant Randhir Singh threatened her that in case she would disclose this occurrence to anybody, she would be defamed by making public the photographs taken by him which would invite insult to her. She did not disclose this incident to anybody else and waited for her mother to come back home in the evening from the fields to whom the entire incident was narrated by the prosecutrix. They both waited for the arrival of prosecutrix's father and on his arrival, all the facts were narrated to him. Thereafter, they approached the police on the next day i.e., on 30.10.2008. On the basis of this statement (Ex.P11), a formal FIR No.302 dated 30.10.2008 (Ex.P12) was registered. Prosecutrix was medico-legally examined by PW4 Dr.Anupama Singh, Medical Officer, LNJP Hospital, Kurukshetra on 30.10.2008. Accused Randhir Singh and Sonu were also medico-legally examined. Their medico-legal reports are Ex.P15 and Ex.P16, respectively. As per the doctor's opinion, there was nothing to suggest that appellants-accused were unable to perform sexual intercourse.

On completion of investigation Challan/report under section 173 Cr.P.C. was presented. Charge was framed against the accused on 30.01.2009 for the offences punishable under Sections 376(2)(g) and 450 IPC. They pleaded innocence and claimed trial.

Prosecution examined twelve (12) witnesses to prove its case.

Appellants-accused while denying the incriminating material put to them claimed innocence and false implication in their statements recorded under Section 313 Cr.P.C. Three witnesses were examined in defence.

Learned trial court after taking into consideration all the facts, circumstances and the evidence on record concluded that the prosecution has

proved its case beyond reasonable doubt against the accused for offences punishable under Sections 376(2)(g) and 450 IPC thereby, convicting them thereunder. Sentence as mentioned above was awarded to both the accused. Aggrieved therefrom, appellants-accused have preferred the present appeals.

Learned counsel for the appellants submit that the evidence on record is woefully insufficient to convict the appellants-accused for the offences as alleged. It is submitted that there is a colossal delay in lodging of the FIR inasmuch as the alleged incident had taken place on 29.10.2008 at 2.30 p.m. whereas, the FIR is registered on 30.10.2008 at 11.05 a.m. This delay is unexplained and impinges on the prosecution version. It is further submitted that prosecutrix was more than 19 years of age at the time of alleged incident. Her birth certificate (Ex.D2) has been proved on record by DW1 Daya Nand, Civil Registration Assistant and her date of birth is proved to be 02.01.1989. It is further contended that alleged eye-witness Gurpreet Gir has not been examined. Thus, best evidence having been withheld, an adverse inference has to be drawn against the prosecution.

It is vehemently contended on behalf of the appellants that medical evidence does not corroborate the ocular version. No injuries were found on the person of prosecutrix. It is opposed to normal probability that in case rape is committed upon a young girl by two persons there would be no injuries on her. It is also pointed out that there are discrepancies in the statements of witnesses. Prosecutrix's statement before the court is contrary to her statement recorded under Section 164 Cr.PC inasmuch as she has revealed in her statement under Section 164 Cr.P.C. that it was accused Sonu who caught hold of her from behind

when she was picking up firewood and he took her to a room which is meant for stacking hay (Turi) whereas, in her deposition before the court she has stated that both accused Randhir Singh and Sonu caught hold of her and took her to a room in the house of Baba Balley Gir meant for keeping hay/fodder.

It is contended that accused Randhir Singh was demanding ₹8,500/- which had been taken from him by the complainant-party at that time and it is due to this reason that he has been falsely implicated in this case. Though this stand is nowhere visible in the statement under Section 313 Cr.P.C. of the accused, it is sought to be indicated that accused Randhir Singh @ Kala had spent a sum of ₹8,500/- on the medical treatment of prosecutrix's mother about a year and half prior to the occurrence. Reference is made to the statement of prosecutrix's mother PW10 Sheela Devi wherein she has admitted that she had fallen sick about a year prior to the occurrence and was treated at Patiala.

On behalf of appellant-accused Sonu, it is submitted that the prosecutrix and her mother Sheela Devi used to steal chaff belonging to Baba Balley Gir and accused Sonu used to stop them. It was on this count that appellant Sonu has been falsely implicated in this case. Reference is made to the statement of DW3 Lakhwinder Singh. Thus, it is prayed that the conviction and sentence imposed upon the appellants be set aside.

Learned counsel for the State, on the contrary, submits that there is overwhelming and sufficient evidence on record to prove the commission of this heinous offence by appellants-accused. Prosecutrix has given a graphic account of the commission of offence. Her statement under Section 164 Cr.P.C. was duly recorded and she has given a consistent version before the court which could not

be shaken despite a lengthy cross-examination. Medical evidence corroborates her version. Thus, he prays for upholding the conviction and sentence imposed upon the appellants-accused vide the impugned judgment and order.

I have heard learned counsel for the parties and gone through the record minutely with their able assistance.

In regard to the question of age as is sought to be contended by the learned counsel for appellants that the prosecutrix was over 19 years of age at the time of occurrence, is not relevant in the facts and circumstances of the case. It is not as if the appellants are projecting a case of consent on behalf of the prosecutrix. This is neither their case nor has it been argued. Therefore, the question of age pales into insignificance in the present facts and circumstances of the case.

It is a matter of record that prosecutrix, a young unmarried girl, has given the complete details of the commission of offence by both the accused. Her statement under Section 164 Cr.P.C. was recorded by the Sub Division Judicial Magistrate. Reference to a note by the Sub Divisional Judicial Magistrate that the prosecutrix was accompanied by her parents and seemed to be under their influence is of no avail to the accused. This is so in view of the specific observations subsequently that she was allowed to sit alone in the court to ensure that her statement would be without any pressure or influence. She was duly asked whether she was under any kind of pressure before her statement was recorded subsequently. Sub Divisional Judicial Magistrate has recorded her statement after being duly satisfied in this respect.

Prosecutrix has duly supported the initial version given by her before the trial court. There is no material discrepancy in her statement as is

sought to be projected on behalf of the appellants. She has duly inculpated both the appellants-accused. Reference to accused Sonu being taken before the police on 29.10.2008 itself by her parents and herself, cannot improve the case of the appellants-accused in any manner. If at all, it can only reflect shoddy investigation conducted by the investigating agency which cannot afford any benefit to the accused.

Contention of the learned counsel for appellants that medical evidence does not corroborate the version set forth by the prosecutrix, is not tenable. PW4 Dr. Anupama Singh has testified as under:-

“On 30.10.2008 I medico-legally examined Rani Devi daughter of Sewa Gir, 17 years female, resident of village Helwa on police request Ex.P4. The patient was conscious, oriented, vital signs were normal. She was wearing green printed salwar, red shirt, blackish underwear which were taken for chemical examination. No external injury was seen on the body. Menarche was attained four years back and date of last menstrual period was 11.10.2008. There was history of bleeding after the incident. Breast were hemispherical and had no mark of injury. She complained of pain over the lateral end of right eyebrow, slight swelling and tenderness was present.

Local examination:- Pubic hair were present and were taken for chemical examination. Labia majora and minora were developed and healthy and had no mark of injury were developed and healthy and had no mark of injury. Hymen had one healed tear at 3 O'clock and one tear at 9 O'clock whose margins were red and did not bleed to touch. Reddish abrasion 1/2 x 1/4 cm. was present at the midline fourchette. Two swabs and two slides were prepared from posterior vaginal fornix and the finger was stained with blood after examination. The vagina admitted two fingers tightly.

The possibility that she has been subjected to sexual intercourse cannot be ruled out. However, the slides and swabs were

sent for chemical examination. Ex.P5 is the carbon copy of the MLR of Rani Devi. On the request of P.P., one sealed parcel containing the clothes of the prosecutrix Rani Devi opened in the court, which found to contain shirt, salwar and underwear, slides and swabs. I have seen the clothes. Ex.P6 is the shirt, Ex.P7 is salwar and Ex.P8 is the underwear. I have seen the report of F.S.L., Madhuban Ex.P9. Since semen was detected on all these articles, hence possibility of sexual intercourse prior to medical examination is there.

Xx xxx by Sh.J.S.Waraich, Adv. for the accused.

The injury present over the right eye brow could be suffered by fall on hard and blunt surface. It is correct that if prosecutrix was ravished by two persons after one after the other forcibly she would sustain injuries like abrasion, laceration and swelling in the vaginal part. It is incorrect to suggest that I had prepared false M.L.R. on the asking of the police.”

A futile attempt has been made on behalf of the appellants to urge that no case is made out against the appellants on the basis of observations of the doctor in her cross-examination that the prosecutrix would sustain injuries like abrasion, laceration and swelling in the vaginal part if she was ravished by two persons. A close scrutiny of the medical examination indeed reveals violation of the young girl. It is pertinent to note that occurrence took place at the end of October i.e., winter season and the place of occurrence is the room where fodder was kept. Therefore, mere absence of external injuries except on the right eyebrow is not material in the given fact scenario wherein PW4 Dr. Anupama Singh has specifically noted, “Hymen had one healed tear at 3 O'clock and one tear at 9 O'clock whose margins were red and did not bleed to touch. Reddish abrasion 1/2 x 1/4 cm. was present at the midline fourchette. Two swabs and two

slides were prepared from posterior vaginal fornix and the finger was stained with blood after examination. The vagina admitted two fingers tightly.”

Equally untenable is the contention that there is unexplained delay which vitiates the proceedings. In the facts and circumstances of the case, it cannot be said that there is any delay in lodging of the FIR. Incident is of 29.10.2008 at 2.30 p.m. and FIR was lodged on 30.10.2008 at 11.05 a.m. It is duly explained by the prosecution. The young girl being scared did not reveal this fact to anybody else except to her mother in the evening on 29.10.2008. They then waited for prosecutrix's father. It is thereafter on revealing facts to her father that action was taken the very next morning.

It has been held by Hon'ble Supreme Court in **Satpal Singh v. State of Haryana**, (2010) 8 SCC 714 that a different yardstick has to be adopted while dealing with the question of delay in such like offences. In the present case, sufficient explanation has come forth to explain the circumstances therefore, it cannot be said that there is inexplicable delay in the lodging of FIR.

Contention on behalf of the appellants that non-examination of the alleged eye-witness Gurpreet Gir is fatal to the prosecution case, is completely unjustified and untenable. It is an admitted case that prosecutrix had stated that both the appellants-accused committed rape upon her and when she raised alarm, a twelve years old child Gurpreet came. Appellant-accused Sonu ran after him to catch hold of him and on account of fear he ran away. Non-examination of the child of tender age cannot be fatal to the prosecution case in view of the positive and specific stand of the prosecutrix and other witnesses as well as other evidence on record. There is nothing on record which creates a doubt upon the testimony of the prosecutrix duly corroborated by the medical evidence.

Argument that accused Randhir Singh @ Kala has been falsely implicated as he was demanding the money (₹8,500/-) he had spent on the treatment of prosecutrix's mother about a year and half prior to the occurrence, is without any basis. First and foremost, it is unbelievable that any parent would subject their young daughter to such a trauma for a sum of ₹8,500/-. Though it is admitted by the prosecutrix's mother PW10 Sheela Devi that she had fallen ill about a year prior to the occurrence and she was admitted in the Rajindra Hospital, Patiala and thereafter treated at Sanjiv Nursing Home, Patiala and accused Randhir Singh had taken her to the hospital for treatment, there is nothing on record to show that a sum of ₹8,500/- was spent by appellant-accused Randhir Singh on her treatment.

Similarly, averment that the prosecutrix and her mother Sheela Devi used to steal chaff belonging to Baba Balley Gir and it was appellant Sonu who used to stop them upon which he was implicated in this case, is a completely fallacious and futile attempt on behalf of the appellants without any evidence to substantiate the same. Reliance has been placed on the statement of DW3 Lakhwinder Singh to try and prove the said theft. Credibility of this witness is clearly suspect. He has stated in examination-in-chief that the accused had been falsely implicated as there was dispute between the complainant party and the accused about payment of an amount taken by the family of the prosecutrix and the appellant used to stop the complainant party from stealing chaff belonging to Baba Balley Gir. However, in his cross-examination he admits that Baba Balley Gir had never ever made any complaint regarding theft of his chaff by members of the complainant family neither has accused Sonu made any complaint in this

regard. There is no evidence of any Panchayat having been held in regard to the theft or the dispute regarding money allegedly given by appellant Randhir Singh. DW3 Lakhwinder Singh otherwise was not a summoned witness.

Keeping in view the facts and circumstances of the case, prosecution has indeed succeeded in proving its case beyond reasonable doubt qua both the appellants-accused. They have been rightly convicted and sentenced, as mentioned above, by the learned Sessions Judge, Kurukshetra vide impugned judgment of conviction dated 24.02.2010 and order of sentence dated 26.02.2010. There is no ground which warrants interference by this Court in their conviction and sentence.

No other point has been argued.

Consequently, both the appeals are dismissed.

Bail bonds and surety bonds of appellant-Randhir Singh @ Kala stand cancelled.

Copy of the judgment be sent to learned Chief Judicial Magistrate, Kurukshetra, who shall take necessary steps to take the appellants in custody to serve rest of the sentence imposed upon them.

June 5 , 2015.
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(LISA GILL)
JUDGE