

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

Criminal Appeal No.3993-SB of 2013

Date of Decision : 25.08.2015

Vikas @ Sonu and another

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Akshay Bhan, Sr. Advocate,
with Mr. R.A. Sheoran, Advocate,
and Mr. Gurinder S. Sandhu, Advocate,
for the appellant.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

Assailed in the present criminal appeal is the judgment of conviction dated 21.10.2013, and the order of sentence dated 23.10.2013 (hereinafter referred to as 'the impugned judgment'), passed by the learned Additional Sessions Judge, Bhiwani, (for short, 'the trial Court'), thereby, convicting and sentencing the accused-appellants for the offences and terms as under:-

Offence	Sentence	Fine	In default
376(2)(g) IPC	RI for ten years	Rs.8,000/- (each)	SI for two months

120-B	RI for ten years	Rs.8,000/- (each)	SI for two months
363/34 IPC	RI for three years	Rs.2,000/- (each)	SI for fifteen days
366-A/34 IPC	RI for five years	Rs.4,000/- (each)	SI for one month
506/34 IPC	RI for two years	Rs.2,000/- (each)	SI for fifteen days

However, all the sentences were ordered to run concurrently.

Briefly stated, the facts of the present case, as recorded in para 2 of the impugned judgment, are as under:-

“2. *Brief facts of the case of prosecution are that on 16.8.2012 ASI Toofan Singh along with Constable Bijender Singh reached Phawara Chowk, Dadri. Prosecutrix daughter of Ramesh along with her mother Smt. Krishna, father Ramesh and number of other persons were present. An application was presented written by the prosecutrix that she was resident of village Dhani-Phogat. She was student of Eleventh class. Seema daughter of Balbir Singh was also studying with her. She was her friend. On 11.8.2012 at around 12.30 PM Seema came to her house and asked her to accompany her as she wanted to do her home work. She started with Seema. She took her to*

Chatris (a placed in the village). Sonu son of Harpal and Talli son of Mani Ram who were belonging to her village were already present there. Seems left the place on the pretext of answering the call of nature. Sonu dragged her inside the Chattris and committed rape upon her. When noise was raised by her both of them threatened her with dire consequences of life. When it had grown dark Sonu and Talli took her to the fields of Sonu where a room was constructed. At that place both of them committed rape upon her turn by turn. At around 4.00 AM both of them dropped her in front of their old house. She was threatened with dire consequences if the matter was disclosed to anyone. Due to fear she did not narrate the incident to her family members. Both of them had again started threatening her. In this eventuality the incident of 11.8.2012 was narrated by her to her mother and father. On 16.8.2012, on the basis of said application case under Section 363/366/120-B/376(2)(g) and Sections 3 & 4 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been registered.

Investigation was set into motion. Prosecutrix was got medico legally examined. Place of occurrence was inspected. Statement of the prosecutrix was got recorded through Shri Yogesh Chaudhary, the then learned Judicial Magistrate 1st Class, Bhiwani in which the contents of the application were reiterated by her. Report regarding age of the prosecutrix was obtained from General Hospital, Dadri. Accused Vikas alias Sonu & Dayakisan alias Talli were arrested on 8.10.2012. Accused were got medico-legally examined. Pulandas were sent to FSL, Madhuban for their scientific examination. On completion of the investigation, challan was presented before the Court.”

Charge under Sections 120-B/376(2)(g)/363/366/506/34 IPC, was framed against the accused-appellants, to which they pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, the prosecution examined seventeen witnesses, viz., PW1-Dr. Anita Gulia; PW2-Dr. Chanderbhan; PW3-ASI Toofan Singh; PW4-

Dharmender Singh Draftsman; PW5-EHC Zile Singh; PW6-Dr. Vinod Panwar; PW-7 Dr. Manish Sheoran; PW8-SI Leela Ram; PW9-EASI Rajbir Singh; PW10-SI Krishan Kumar; PW11-HC Zora Singh; PW12-SI Amar Singh; PW13-the prosecutrix; PW14-Ramesh Kumar, the father of the prosecutrix; PW15-Shrin Yogesh Chaudhary, Sub Divisional Judicial Magistrate, Charkhi-Dadri; PW16-ACP Suresh Kumar, the then DSP, Charkhi-Dadri; PW17-Jai Karan, Assistant Education Board, Bhiwani. PWs Krishna wife of Ramesh Kumar, the mother of the prosecutrix; Dr. Anil Sharma, Director, FSL, Madhuban; HC Vijender Singh; Dr. S.S. Dhankhar; and LC Babita were given up being unnecessary.

PW1-Dr. Anita Gulia, who medico-legally examined the prosecutrix on 16.08.2012, deposed that at the time of examination, the patient was conscious, well oriented to person, place and time. On general examination, she was found averagely built and averagely nourished female around 17 years of age. Her clothes were not torn. There was no fresh external mark of injury on her body at the time of examination. Hymen was present in the form of small tags of tissues, vaginal introitus admitted two fingers. There was no fresh injury of vaginal walls and cervix. Uterus was retroverted and retroflexed. On the basis of the FSL report, Ex.P1 and in the light of the MLR of the prosecutrix, she opined that the possibility of a recent sexual assault cannot be ruled out. PW6-Dr. Vinod Panwar, Dental Surgeon, stated

that on 24.08.2012, on the instructions of P.M.O. General Hospital, Bhiwani, a Board was constituted for x-rays age profile of the prosecutrix on the police request. As per his opinion, Ex.P13, the dental age of the prosecutrix was above 17 years. PW7-Dr. Manish Sheoran, Ortho Surgeon, also gave his opinion, Ex.P14, being a member of the Board that the age of the prosecutrix was above 18 years and below 22 years. PW-13, the prosecutrix stated that she was studying in Tenth Class. Her date of birth was 16.12.1995. Seema daughter of Balbir Singh was her friend, who on 11.08.2012, at around 12.30 PM, when she was at her home, came and told her that school work was to be done and requested the prosecutrix to accompany her. She took the prosecutrix to Chhatris where accused Sonu and Talli, present in Court, who belonged to her village were already present, who committed rape upon her. When she raised noise, both of them threatened her with dire consequences. Thereafter, when it was dark, both of them took her to the fields of Sonu, wherein, one old room was constructed. Both the accused committed rape upon her turn by turn. In the morning at around 4.00 AM both of them left her at her old house in the village. Since she was threatened she did not disclose the incident to her parents. On 16.8.2012, she narrated the incident to her parents and complaint Ex.P8 was moved to the police. Her medical examination was conducted. Her statement was recorded before the learned

Magistrate. During examination of this witness a sealed parcel has been opened and statement under Section 164 Cr.P.C. was taken out. The prosecutrix has stated that it was statement Ex.P22, which was given by her to the learned Illaqa Magistrate and she has also identified her signatures on the same. PW14-Ramesh, the father of the prosecutrix, stated that the date of birth of the prosecutrix was 16.12.1995. On 11.08.2012, one girl, namely, Seema, who was residing in their neighbourhood came to his house and asked his daughter, the prosecutrix, to accompany her for doing the school work. The prosecutrix went with her at around 12.30 PM. After having his meal, he went for work and came back at around 7.30 PM. His wife told him that their daughter had not come back after which he went to his nephew and both of them searched the prosecutrix and when she could not be traced, he went to the house of the Sarpanch, who advised him that if the prosecutrix was not found, the matter would be reported to the police next morning. On the next day at around 4.00 PM, his daughter came back home but she did not tell anything. On 16.08.2012, when the prosecutrix was probably again threatened by the accused, she narrated the entire incident to him and his wife. PW15-Shri Yogesh Chaudhary, the then Judicial Magistrate, Charkhi Dadri, stated that on 17.08.2012, DSP Charkhi-Dadri, moved an application, Ex.P23, for recording the statement of the prosecutrix under Section 164 Cr.P.C. She was given one hour to

re-think before recording her statement. He passed order Ex.P24. Statement of the prosecutrix, Ex.P22 was recorded by him. He gave certificate, Ex.P25 below the statement of the prosecutrix.

When examined under Section 313 Cr.P.C., the accused-appellants denied all the allegations of the prosecution case under Sections 120-B/376(2)(g)/363/366/305/34 IPC and pleaded false implication. In defence, they examined Santosh, the sister of accused/appellant Daya Kishan as DW1.

The learned trial Court, after hearing both the parties, convicted and sentenced the accused-appellants as noticed at the outset of the judgment. Hence the present appeal, which was admitted by this Court on 22.11.2013.

The learned counsel for the appellant contends that in the present case, no rape was committed upon the prosecutrix. He refers to the deposition of Dr. Anita Gulia, PW1, wherein, she has stated that no injury, external or internal, was noticed on the person of the prosecutrix. Even in the FSL report, Ex.P1, no semen was detected on any of the exhibits. Despite the above factual position, , this witness has given the opinion that the prosecutrix was subjected to recent intercourse, without any basis. The learned counsel further refers to the statements of Dr. Vinod Panwar, PW6, Dental Surgeon, and Dr. Manish Sheoran, PW7, Ortho Surgeon, General Hospital, Bhiwani, to contend that the prosecutrix was more than 18 years of

age at the time of the alleged occurrence. It is further argued that there is an unexplained and inordinate delay in lodging the FIR. As per the prosecution story, the prosecutrix went missing on 11.08.2012 at 12.30 PM, whereas, she returned back at 4.00 AM the next morning. The instant FIR came to be registered after five days of the occurrence. No plausible reason has come forth to explain this huge delay. It is further contended that there are material improvements in the statements of the prosecutrix. In the FIR and in the statement recorded under Section 164 Cr.P.C., the prosecutrix has stated that one of the accused, namely, Sonu, had committed rape upon her under the canopy (Chhatris), wherein, she did not name, the co-accused, Daya Kisan alias Talli as one of the perpetrators of crime. However, in the statement recorded before the trial Court, she has stated that both the accused committed rape upon her. It is further argued that the prosecution version is highly improbable. The alleged place of occurrence is adjoining the main road. The prosecutrix has admitted that Chhatri is about 100 steps from her house. She also stated that she was carrying school books and note books with her but nothing was recovered from the spot. The appellants have been implicated in the present case on account of previous enmity with the Sarpanch, at whose instance, the FIR was lodged, whose family members were involved in the murder of brother of appellant No.2, and thereby a criminal case was registered against them in which, appellant No.2 stood as a witness.

On the other hand, the learned State counsel argued that the prosecution has proved its case against the accused-appellants beyond reasonable doubt. It is further argued that as per the Secondary Examination certificate, the date of birth of the prosecutrix is 16.12.1995, therefore, she was minor and less than 17 years of age at the time of the alleged incident, whereas, the accused were major. The prosecutrix was subjected to a lengthy cross-examination, however, she withstood the same and no material discrepancy could be noticed.

I have heard the learned counsel for the parties and carefully perused the record.

As far as the age of the prosecutrix is concerned, the learned counsel for the appellant has relied upon the statement of PW6, Dr. Vinod Panwar, Dental Surgeon. This witness, vide his opinion, Ex.P13, has opined that the age of the prosecutrix was 17 years at the time of examination. Further, Dr. Manish Sheoran, PW7, opined that the age of the prosecutrix was above 18 years and below 22 years. His opinion is also on record as Ex.P14. The father of the prosecutrix, PW14, was examined who deposed that his daughter's date of birth was 16.12.1995. The prosecution also examined Jai Karan, Assistant, Education Board, Bhiwani, as PW17. He proved the certified copy of Result Sheet as Ex.P29. As per Ex.P29, the date of birth of the prosecutrix was recorded as 16.12.1995. However, the opinions of the dental surgeon or the radiologist are mere opinions

and they cannot tell the exact age of a person. The Courts of law rely upon the opinions formed by the medical experts in those cases, where no other cogent evidence is produced. However, this evidence cannot substitute the school record. The prosecution examined Jai Karan, Assistant, Education Board, Bhiwani, as PW17, who proved the certified copy of result sheet of Secondary Examination of the Prosecutrix as Ex.P29, wherein, the date of birth of the prosecutrix is recorded as 16.12.1995. The alleged incident took place on 11.08.2012. The father of the prosecutrix, Ramesh, while appearing as PW14, has also stated that the date of birth of the prosecutrix is 16.12.1995. Being father, he is the best witness to prove the age of the prosecutrix. Therefore, the prosecutrix has rightly been held as less than 17 years of age as on the date of occurrence.

The prosecution has examined Dr. Anita Gulia, PW1, medico-legally examined the prosecutrix on 16.08.2012. At the time of examination, she found the patient conscious, well oriented to person, place and time. On general examination, she was found averagely built and averagely nourished female around 17 years of age. Her clothes were not torn. There was no fresh external mark of injury on her body at the time of examination. Hymen was present in the form of small tags of tissues, vaginal introitus admitted two fingers. There was no fresh injury of vaginal walls and cervix. Uterus was retroverted and retroflexed. On the basis of the FSL report, Ex.P1 and in the light of the MLR of the prosecutrix, she

opined that the possibility of a recent sexual assault cannot be ruled out. It has been argued on behalf of the appellants that in the absence of any mark of injury on the person of the prosecutrix, coupled with the fact that no semen was detected on any of the Exhibits sent for examination, the rape itself could not be proved in this case. This contention has been noticed only to be rejected. It is apparent from the record that the prosecutrix was medically examined after five days of the occurrence on 16.08.2012, whereas, the appellants were examined only on 08.10.2012. During the interregnum period, the prosecutrix as well as the appellants must have taken bath and changed clothes. This explains the missing signs of the offence. However, the evidence of the prosecutrix in the form of her version Ex.P8, recorded in the FIR, the 164 Cr.P.C. statement, Ex.P22 and the testimony before the Court being consistent, cogent and trustworthy, are sufficient to prove the case of the prosecution. In ***Dinesh @ Buddha Vs. State of Rajasthan, AIR 2006 SC 1267***, Hon'ble the Supreme Court has observed as under:-

“12. In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever

occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in the rape case....”

As far as the delay in lodging the FIR is concerned, it has been sufficiently explained in the present case. The prosecutrix has categorically stated in her application, Ex.P8, that she being frightened, could not disclose the incident to her parents. She has further stated that both the accused persons had again threatened her with dire consequences. Thus, she reported the matter to her parents only on 16.08.2012. While appearing in the witness box as PW13, same explanation has been offered by her which keeping in view the age and circumstances of the prosecutrix, is a convincing explanation.

The defence taken by the appellants that they have been implicated in the present case on account of the enmity also deserves to be repelled. There is no evidence on record that the complainant, father of the prosecutrix, was under the influence of the Sarpanch or any co-villager to the extent that he would oblige him to use her minor daughter to settle his issue with the appellant. No direct enmity has been proved between the parties. In the Indian context, this explanation of false implication deserves to be rejected outrightly. In the present case, it appears to be an effort to malign and consequently discourage the family of the prosecutrix to defend against the aggression of the perpetrator of the crime.

It has been strenuously argued by the learned Senior counsel that the story put forth by the prosecution is highly improbable inasmuch as when the prosecutrix came back to her house on the next morning at 4.00 AM, the father of the prosecutrix did not enquire as to her whereabouts for the whole night. It is further argued that fact that the father of the prosecutrix did not make any effort to trace his daughter and approach Seema, and that the father would not see his daughter being dropped by the appellants in front of his house, is also unbelievable. In this regard, the consistent stand of the prosecutrix in the statement Ex.P8, on the basis of which the FIR was lodged, the statement recorded under section 164 Cr.P.C., Ex.P22 as well as her testimony before the trial Court while being examined as PW-13 is that the accused dropped her in the morning of 12.08.2012 at around

4.00 AM in front of her old house. Therefore, there was no occasion for the complainant to see the appellants dropping the prosecutrix in front of his house. The complainant came to know about the entire incident only on 16.08.2012, when it was disclosed by the prosecutrix. Till then, he had no knowledge that she had been taken away by Seema on the pretext of doing home work. Thus, the discrepancies, if any, in the prosecution version, being trivial and not material are liable to be ignored.

In view of the above discussion, this Court feels that the prosecution has been successful in bringing home the guilt against the accused-appellants beyond a shadow of reasonable doubt.

Accordingly, the present appeal is dismissed.

(JITENDRA CHAUHAN)

JUDGE

25.08.2015

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Note: Whether to be referred to reporter ? Yes/No