

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-638-SB of 2013**

DATE OF DECISION: JULY 15, 2015

VINOD KUMAR ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-952-SB of 2013**

DHARAMVEER ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

3. **CRA-S-302-SB of 2013**

RAJ KUMAR ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

4. **CRR-1300 of 2013**

ARTI RANI(MINOR) THROUGH HER FATHER ...PETITIONER

VERSUS

VINOD KUMAR AND OTHERS ...RESPONDENTS

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

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

PRESENT: MR. G.S.SIDHU, ADVOCATE FOR THE APPELLANTS
IN CRA-S-638-SB of 2013 & CRA-S-9522-SB of 2013.
AND FOR RESPONDENTS NO.1 & 2 IN CRR-1300 of 2013.

MR. N.S.SHEKHAWAT, ADVOCATE FOR THE APPELLANT
IN CRA-S-302-SB of 2013
AND FOR RESPONDENT NO.3 IN CRR-1300 of 2013.

NONE FOR THE PETITIONER IN CRR-1300 of 2013.

MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Vinod Kumar, Dharamveer and Raj Kumar have challenged individually the judgment passed by the trial Court vide which they were convicted under Section 328 read with Section 34 IPC and sentenced to undergo 5 years RI and to pay fine of ₹5000/- each and in default, to undergo a further period of 3 months SI; convicted under Section 363 read with Section 34 IPC and sentenced to undergo 5 years RI and to pay fine of ₹5000/- each and in default, to undergo a further period of 3 months SI; convicted under Section 366 read with Section 34 IPC and sentenced to undergo 7 years RI and to pay fine of ₹5000/- each and in default, to undergo a further period of 3 months SI and convicted under Section 376(2)(g) IPC and sentenced to undergo 10 years RI and to pay fine of ₹10,000/- each and in default, to undergo a further period of 3 months SI. All the sentences were ordered to run concurrently. The accused also were directed to pay ₹50,000/- each as compensation to the prosecutrix.

2. The prosecutrix through her father has preferred CRR No.1300 of 2013 praying for enhancement of punishment and compensation.

3. It is the case of the prosecution that PW4, the prosecutrix in this case, who was just 14 years old, was intercepted by all the three accused on 21.6.2011 at about 8.00 p.m. when she was proceeding to her aunt's house, and after having administered stupefying substance, kidnapped her and committed gang rape.

4. PW4, the prosecutrix in this case has testified that on 21.6.2011 at about 8.00 p.m. when she was proceeding to the house of her maternal aunt Krishna, accused Raj Kumar, Dharamveer and Vinod Kumar who were standing on the road intercepted her. Accused Raj Kumar caught hold of her hand and accused Dharamveer put a handkerchief on her mouth. She felt that some intoxicant was put on her nose to inhale. Thereafter, she became unconscious. She did not know where the accused took her and what did they do with her. On 22.6.2011, she regained consciousness and found herself at bus stand, Hisar. Two police officials reached over there. She narrated them the above detailed incident. They took her to the police station, Hisar. She did not know whether the police officials at Hisar recorded her statement or not. She furnished the telephone number of her father. She also disclosed the names of accused Dharamveer and Raj Kumar to the police, however, she forgot the name of accused Vinod Kumar at the time when her father alongwith her maternal aunt, grandfather and uncle reached police station Hisar. But when the prosecutrix was proceeding to Sirsa, she recalled and disclosed the name of accused Vinod Kumar to her maternal aunt. Thereafter, she proceeded alongwith her family members to police station Nathusari Chopta. She narrated the incident to the police. She did not know whether they recorded her statement or not. On 23.2.2011, she alongwith her family members proceeded to Sirsa Court and suffered a statement Ex.PF. She was subjected to medical examination. Only thereafter, did she come to know that she was subjected to sexual intercourse.

5. PW1 Sita Ram was the Headmaster Incharge of the

Government High School village Chaharwala. He brought the school records and based thereupon, he deposed that the prosecutrix as per the school records was born on 15.8.1997. The School Leaving Certificate was exhibited as Ex.PA.

6. PW3 Dr.Veerinderdeep Gill alongwith Dr.Supreet Kaur medico-legally examined the prosecutrix on 23.6.2011 at about 12.35 p.m. She testified that the prosecutrix informed her that she was made to inhale some unknown substance two days ago, when one of the accused caught hold of her. She became unconscious and she regained consciousness only a day earlier at bus stand, Hisar. On examination of the prosecutrix, she found that there was no external mark of fresh injury over the body of the prosecutrix. On an internal examination, she found old tears present in the hymen. Vagina admitted two fingers, but it was not loose. Bleeding was present as she was menstruating at that time. As per medical examination, the prosecutrix was subjected to sexual intercourse. She has further deposed that the old tears might be 6 months old or even 2-3 days old. But, no definite period as regards the age of the tear could be given by her.

7. PW10 Dr.Bharat Bhushan Mittal medico-legally examined accused Dharamveer and PW12 Dr.Honeydeep Joshi examined accused Vinod Kumar. Both the Doctors have opined that there was nothing to suggest that those accused could not perform sexual intercourse. It is to be noted that accused Raj Kumar was not subjected to medical examination by any Doctors as regards his capability to perform sexual intercourse, as the investigating official had found him innocent and as a result of which he was shown in column No.2 of the final report.

8. PW11 Inspector Dharamvir who got the first information report registered and investigated the case deposed that during investigation it was found that accused Raj Kumar was innocent and therefore, he was shown in column No.2 of the charge-sheet.

9. In the statement under Section 313 Cr.P.C., accused Vinod Kumar has stated that he was innocent, but a false case was foisted on him at the instance of Bhoop Singh, ex-Sarpanch who had inimical relations with him. Accused Dharamveer has stated that he was falsely implicated out of party faction in the village. Accused Raj Kumar has submitted that his brother Jagdish was murdered by Rajesh, Arun and others. His father was contesting Panchayati election against Bhoop Singh. The father of the prosecutrix was instigated by Bhoop Singh. His name was introduced only at his instance. The daughter-in-law of his brother Jai Singh had died a few days ago and therefore, he was busy in the ceremonies connected therewith. During investigation by the local police, he was found innocent. The investigation conducted by Assistant Superintendent of Police would reveal that he was innocent. A complaint was filed by the complainant party. That was also investigated and it was found that it was false.

10. On the side of the defence, 4 witnesses were examined. DW1 Nihal Singh, ASI brought the summoned record pertaining to FIR No.441 dated 6.9.1997. DW2 Jagraj Singh, EHC spoke about the true copy of the report Ex.D12 signed by the prosecutrix, Bhoop Singh and others. DW3 Zile Singh spoke about the election conducted for the post of Sarpanch in village Chaharwala Block Nathusari Chopta. DW4 Suresh Kumar deposed that the Panchayat election was contested on the one side by Ram Chander,

father of accused Raj Kumar and on the other side by Bhoop Singh.

11. The trial Court having relied upon the evidence of the prosecutrix, in the background of the medical evidence available on record, arrived at a conclusion that all the three accused have committed the aforesaid offence.

12. The prosecutrix who was examined as PW4 has categorically deposed without any trace of contradiction from that of the first information report launched by her that accused Raj Kumar, Dharamveer and Vinod Kumar waylaid her. Accused Raj Kumar caught hold of her hand while accused Dharamveer put handkerchief on her mouth. She became unconscious and she did not know what actually happened thereafter. At the time when she regained consciousness, she was at Hisar bus stand. She was subjected to medical examination.

13. PW3 Dr.Veerinderdeep Gill on medical examination of the prosecutrix found that there was some old tear in the hymen and the vagina admitted two fingers, but it was not loose. On the basis of the medical examination conducted by her, she deposed before the Court that the prosecutrix was subjected to sexual intercourse.

14. It is to be noted that PW3 Dr.Veerinderdeep Gill on examination of the prosecutrix disclosed that bleeding was present in the private part of the prosecutrix as she was menstruating at that time. This should be a potential reason why the prosecutrix was not even aware that she was subjected to sexual intercourse and she came to know that she was so subjected only on the basis of the examination conducted by PW3.

15. On the basis of the evidence of PW1 Sita Ram, there is no

difficulty to arrive at a conclusion that the prosecutrix who was born on 15.8.1997 was just 14 years old at the time when the occurrence took place on 21.6.2011. The evidence of PW10 Dr.Bharat Bhushan Mittal and PW12 Dr.Honeydeep Joshi would go to establish that the accused Dharamveer and Vinod Kumar who were subjected to medical examination were capable of performing sexual intercourse. Accused Raj Kumar was not subjected to medical examination as he was found innocent by the police during the course of investigation. At any rate, Raj Kumar cannot take advantage of the fact that he was not subjected to medical examination to prove that he was potential enough to perform sexual intercourse. It is pertinent to note that accused Raj Kumar never took up a defence that he was incapable of performing sexual intercourse.

16. The above evidence on record would go to establish that all the accused having intercepted the prosecutrix administered some stupefying substance through her nose and thereafter kidnapped her and committed gang rape upon her.

17. Learned counsel appearing for the appellants referring to Ex.D2, the narrative of the statement of SI Gopi Chand, P.S. City Hisar found in the diary maintained by PW10 and the statement Ex.D3 given in writing by said Gopi Chand, SI would submit that the prosecutrix had revealed in fact a different story when she was interrogated immediately on securing her from bus stand, Hisar. Therefore, he contended that the testimony of the prosecutrix who had come out with two different stories within two days of the occurrence cannot at all be relied upon by the Court.

Learned AAG, Haryana submitted that the prosecutrix had asserted that the

story found in the first information report was also disclosed verbatim to the police officials who rescued her from bus stand, Hisar.

18. It is found that the prosecutrix had not attained adulthood. She was still a child when the occurrence took place. In fact, she was studying in 8th standard at the time of unfortunate occurrence. She was already under the influence of stupefying substance administered by the accused. On regaining consciousness, she suddenly found that she was at an unknown place. She should have been in utter shock after receiving sexual assault at the hands of the accused. She had specifically referred to the names of accused Raj Kumar and Dharamveer. If they were not involved in the crime, there was no reason for the prosecutrix to furnish the names of those two persons to Hisar city police. A child aged 14 years would have simply supplied the name of her father if at all she had strayed from out of her parental care and protection. For the reasons best known to S.I. Gopi Chand of Hisar city police, a different story had been reduced into writing by him.

19. The statement Ex.D3 in writing allegedly given by SI Gopi Chand and the case diary Ex.D2 containing the above statement suffered by SI Gopi Chand are not at all admissible in evidence, inasmuch as the author of the statement, namely, SI Gopi Chand was not examined before the Court. SI Gopi Chand should have been examined by the defence in order to afford opportunity to the prosecution to subject him to cross-examination as regards the different story, which was not reportedly given by the prosecutrix, recorded by him. Further, the testimony of PW4 that she in fact disclosed the entire occurrence to the police officials who rescued her, is

found to be trustworthy. Therefore, a different story from that of the version found in the first information report based on the inadmissible statement Ex.D3 and the case diary Ex.D2 set up by the defence stands rejected.

20. Learned counsel appearing for the appellant Vinod Kumar submits that his name did not find a place in the original version of the prosecutrix recorded by SI Gopi Chand. The prosecutrix has very fairly deposed that at that time she could not recollect the name of accused Vinod Kumar. Therefore, she did not disclose his name at the Police Station, Hisar before the police official who rescued her. It was only when she was proceeding alongwith the relatives from Hisar that she recollected the name of accused Vinod Kumar and duly informed her aunt. Even otherwise, I have already held that Ex.D2 and Ex.D3 are inadmissible in evidence in the absence of examination of SI Gopi Chand. Therefore, based on Exs.D2 and D3, it cannot be contended that accused Vinod Kumar had no role to play in the gang rape alleged as against him.

21. Learned counsel appearing for the appellants submitted that there was some delay in lodging the first information report. True it is, the occurrence took place on 21.6.2011 at about 8.00 p.m. She was found at the bus stand, Hisar on 22.6.2011 at 8.00 a.m. The father of the prosecutrix was summoned to the police station. Thereafter, the prosecutrix had proceeded to the house alongwith her father and her relatives. Of course, the prosecutrix would depose that she in fact suffered a statement before the police on the night of 22.6.2011 in Police Station Nathusari Chopta. But the evidence of PW11 Inspector Dharamvir would go to establish that the statement of the prosecutrix was recorded only on 23.6.2011 at 12.15 p.m.

The Special Report had reached the Court of learned Duty/Chief Judicial Magistrate on the same day at 6.20 p.m.

22. Firstly, I find that there is no inordinate delay in lodging the first information report. Secondly, in a case of rape, the family members of the prosecutrix would take sufficiently long time to take an ultimate call to launch prosecution for the commission of rape. The reputation of the family is at stake. The enquiries that would follow after registration of the case and reporting of the matter in the print media and electronic media would bring humiliation to the family. The future of the prosecutrix will also be at stake. Therefore, in an Indian set up, some delay in lodging the first information report in a case of rape cannot be taken advantage of by the accused.

23. Of course, if the delay in lodging FIR had contributed for fabrication of the story of the prosecution, such a delay will definitely loom large. The prosecutrix had come out with the true episode before the police. She had revealed very fairly that she did not know what actually happened after stupefying substance was administered to her. Had the first information report been fabricated taking advantage of the delay, it would have reflected that these three accused committed gang rape. In view of the above, I find that the delay has been properly explained. Even otherwise, such a delay had not been misused for fabrication of the story of the prosecution.

24. Learned counsel appearing for the appellants referred to the evidence of the prosecutrix and the medical evidence on record and submitted that it was not a case of rape allegedly committed by the accused. The prosecutrix was very realistic in her approach to the episode. There

was no embellishment in her version. She actually did not know what transpired after she was administered stupefying substance and kidnapped by the accused. To top it all, there was bleeding in her vagina. The Doctor who examined her had opined that she was menstruating at the time when she was subjected to medical examination. Therefore, she could not come out with a straight story that she was subjected to sexual intercourse till the medical evidence alarmingly revealed that she was subjected to sexual intercourse. In my considered view, the evidence of the prosecutrix, supported by the medical evidence, establishes beyond reasonable doubt that she was subjected to sexual intercourse.

25. It was submitted by learned counsel appearing for the appellants that there was no scratch found on the private parts of the prosecutrix. Further, the prosecutrix would have revealed even before her medical examination that she was subjected to sexual intercourse, if at all there had been a gang rape.

26. It is in evidence that the prosecutrix remained unconscious for about 12 hours from 8.00 p.m. on 21.6.2011 to 8.00 a.m. on 22.6.2011. Therefore, she could not have resisted the rape being committed by the accused. There was bleeding in her private parts. She was menstruating at the time when she was immediately subjected to medical examination. Therefore, she could not have assertively said at the first instance beforever she was subjected to medical examination that she was subjected to intercourse.

27. It was further submitted by learned counsel appearing for appellant Raj Kumar referring to documents Exs.D5 to D7 signed by the

Assistant Superintendent of Police and Exs.D8 to D10 signed by the Superintendent of Police that investigation by various higher officials had led to the only conclusion that accused Raj Kumar was innocent.

28. The investigating agency, for the reasons best known, had arrived at such a conclusion and as a result of which accused Raj Kumar was shown in column No.2. But, it is found that the prosecutrix was very consistent in her statement that accused Raj Kumar also actively participated in the occurrence. That was the reason why accused Raj Kumar also was summoned under Section 319 Cr.P.C. to face trial. Further, the Assistant Superintendent of Police and the Superintendent of Police who arrived at such a conclusion as regards the innocence of accused Raj Kumar in Exs.D5 to D10 were not examined to afford an opportunity to the prosecution to challenge them as to how they had arrived at such a conclusion. Even otherwise, when material evidence is available on record to establish the case of the prosecution, there is no reason to give a clean chit to accused Raj Kumar, just based on the opinion expressed by the Assistant Superintendent of Police and the Superintendent of Police in Exs.D5 to D10, which are inadmissible in evidence.

29. Learned counsel appearing for accused Raj Kumar submitted that one Bhoop Singh who was an ex-Sarpanch instigated the father of the prosecutrix to implicate accused Raj Kumar, as the father of accused Raj Kumar remained inimical to Bhoop Singh.

30. The family of the prosecutrix would not have thought of sacrificing the family honour and the reputation of 14 years old prosecutrix,

just to help Bhoop Singh. The prosecutrix had originally referred to accused Raj Kumar in her first version before the police officials of Hisar. The allegation of rivalry of the father of accused Raj Kumar with Bhoop Singh had been shrewdly introduced by the defence in the hope of creating some doubt in the mind of the Court. I am not inclined to accept the story of the defence that accused Raj Kumar was implicated at the instance of Bhoop Singh.

31. The counsel for accused Raj Kumar further submitted that there was some condolence in the family in connection with the demise of his brother's daughter-in-law. The teachers from the school had come to condole the demise of his brother's daughter-in-law and that, therefore, accused Raj Kumar would not have been present at the scene of crime.

32. Scene of crime is not located far away from the residence of accused Raj Kumar. The cremation ground is located in the very same village. Further, it is not as if the daughter-in-law of brother of accused Raj Kumar died on the day of occurrence or few days prior to the occurrence. Therefore, I do not accept such a story of the defence.

33. Coming to the revision filed by the prosecutrix for enhancement of sentence and compensation, I find that an adequate sentence had been imposed on the appellant. But, at the same time, I find that only a sum of ₹50,000/- qua each of the accused-appellant has been awarded as compensation. In my considered view, the prosecutrix had not been adequately compensated.

34. In the above facts and circumstances, the judgement of

conviction and sentence passed by the trial Court is confirmed and all the three appeals stand dismissed. However, each of the accused-appellant is directed to pay a sum of ₹1 lac instead of ₹50,000/- as compensation to the prosecutrix under Section 357 Cr.P.C. Consequently, the revision petition stands partly allowed.

July 15, 2015
Gulati

(M. JEYAPPAUL)
JUDGE