

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-131-SB-2003 (O&M)

Date of Decision: June 29, 2015

Dalbir Singh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.K.S.Dhaliwal, Advocate
for the appellant.

Mr.Ram Tilak Redhu, DAG, Haryana
for the respondent.

Mr.Sunil Kaushik, Advocate for
Mr.Vikram Sheoran, Advocate
for the informant.

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1. ***Whether Reporters of local papers may be allowed to see the judgment ? yes***
2. ***To be referred to the Reporters or not ?yes***
3. ***Whether the judgment should be reported in the Digest?yes***

Naresh Kumar Sanghi, J.

The present appeal has been filed by Dalbir Singh, challenging the judgment of conviction and order of sentence dated 05.12.2002 and 7.12.2002 respectively passed by learned Additional Sessions Judge, Jind, whereby the appellant was held guilty for commission of the offences punishable under Sections 342, 376(2)(d) and 506, IPC, and ordered the appellant to undergo the following sentences:-

Under Sections	Sentence (RI)	Fine (in ₹)	In default (RI)
U/s 342, IPC	Six months	-	-
U/s 376(2)(d),IPC	Ten years	₹5,000/-	Six months
U/s 506, IPC	Six months	-	-

All the sentences were ordered to run concurrently.

The prosecutrix/informant (PW9), aged about 12 years, was a student of 8th Class. On 29.07.1999, she was suffering from stomach ache and, as such, she along with her grand-mother, Smt. Shanti Devi (not examined) went to Primary Health Centre (for brevity, 'PHC'), Dhamtan, for taking medicines. Appellant Dalbir Singh was found present in the said PHC and he administered some medicines and injected an injection to the prosecutrix and advised her that one more injection was to be injected on the next day. On 30.07.1999 at about 10.15 a.m., the prosecutrix, all alone, went to the PHC, Dhamtan, for taking medicines. Appellant Dalbir Singh took her to a room and bolted the door from inside; removed her *salwar* and committed rape on her. After committing rape, an injection was injected to the prosecutrix by the appellant. Despite cries of the prosecutrix, no one came to help her. She was threatened not to disclose the factum of rape to anyone. After coming back to her house, the prosecutrix narrated the whole incident to her grand-mother Smt.Shanti, who, in turn, informed Baljit (PW10),

uncle of the prosecutrix with regard to the incident of rape. Thereafter the prosecutrix in the company of her grand-mother Smt.Shanti Devi, grand-father Desh Raj, and Krishan Kumar, Sarpanch of her village Dhamtan went to Jind and appeared before the Deputy Superintendent of Police, Jind. Sub Inspector Balbir Singh (PW11) was summoned in his Office by the Deputy Superintendent of Police and directed him to arrange for medical examination of the prosecutrix. She was medicolegally examined by a lady Medical Officer, Dr.Renu Aggarwal (PW4). After medicolegal examination, the prosecutrix along with her uncle Baljit (PW10) went to Police Station, Garhi and suffered her statement, on the basis of which, FIR No.157 dated 30.07.1999 for the offences punishable under Sections 342, 376 and 506, IPC, was registered at Police Station, Garhi, District Jind. Investigation was carried out by Sub Inspector Shiv Dhan Singh (PW12) and he took into possession duly sealed parcel, copy of MLR and police request (Ex.PF), produced by Baljit (PW10). The statements under Section 161, Cr.P.C., of the witnesses were recorded. Sub Inspector Shiv Dhan Singh (PW12) visited the place of occurrence and found that PHC, Dhamtan was closed. On 31.07.1999, appellant was arrested from village Kanha Khera. Sub Inspector Shiv Dhan Singh (PW12) once again visited the

place of occurrence and prepared a rough site plan, Ex.PN. The appellant was produced before Dr. B.R. Kayat (PW6), Medical Officer, Civil Hospital, Narwana, where he was medicolegally examined vide MLR Ex.PC. The undergarments of the appellant and that of the prosecutrix were sent to FSL, Madhuban.

After completion of the investigation the charge-sheet (report under Section 173, Cr.P.C.) was presented before learned Area Judicial Magistrate, for prosecution of the appellant.

The necessary documents were supplied free of cost to the appellant. Since the offence punishable under Section 376, IPC, was exclusively triable by the Court of Session, the case was committed to the said Court vide order dated 26.10.1999 passed by the learned Area Judicial Magistrate.

After hearing the learned counsel for the parties, learned Sessions Judge/trial Court framed the charges for the offences punishable under Sections 342, 376D and 506, IPC. Later on the charge-sheet was amended and the appellant was charge-sheeted for the offences punishable under Sections 376(2)(d), 342 and 506, IPC, to which the appellant pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution

examined the following witnesses:-

PW-1 Kuldeep Gupta, Draftsman, deposed that on 06.08.1999, he prepared a scaled site plan Ex. PA on the demarcation of the prosecutrix (PW9)

PW-2 Constable Suraj Mal: He tendered his affidavit Ex.PB to be read in evidence.

PW-3 Constable Jai Karan: He tendered his affidavit Ex.PC to be read in evidence.

PW-4 Dr.Renu Aggarwal had medicolegally examined the prosecutrix on 30.07.1999 at 7.15 p.m. vide medicolegal report Ex.PD at police request Ex.PE. Copy of MLR, vial containing two vaginal swabs, *salwar* of the prosecutrix, sample seal and a forwarding letter were handed over to the police. During her examination-in-chief before the Court, she expressed her opinion that the prosecutrix was subjected to sexual intercourse.

PW-5 Dr.G.D.Gupta had radiologically examined the prosecutrix vide report Ex.PG and declared that the age of the prosecutrix was between 10 to 12 years. He also proved on record the X-ray films Exs.P2 to P5.

PW-6 Dr. B.R. Kayat had medicolegally examined the appellant vide MLR Ex.PC at police request Ex.PH. The witness

was of the opinion that there was nothing to suggest that the appellant was incapable of performing sexual intercourse. The underwear of the appellant was handed over to the police by the witness.

PW-7 Constable Vir Bhan had handed over the special report Ex.PK to the Area Judicial Magistrate without any delay.

PW-8 Giria Ram, Headmaster, who, on the basis of the school record deposed that the prosecutrix was admitted in class 7th in his school on 11.08.1998. As per the certificate, Ex.PL, the date of birth of the prosecutrix was 09.09.1986.

PW-9 is the prosecutrix (name withheld as per the provisions of the Criminal Procedure Code). She disclosed the entire incident of rape which has already been mentioned in the initial part of the judgment.

PW-10 Baljit, uncle of the prosecutrix, deposed that on 30.07.1999, his mother told him about the incident of rape on the prosecutrix by the appellant and thereafter he himself enquired from the prosecutrix, who narrated the entire incident of rape committed by the appellant on her. Thereafter he(witness) along with prosecutrix, Smt.Shanti Devi, Desh Raj and Krishan Kumar came to Jind to meet the Superintendent of Police but he was not available in his Office, therefore, they met the Deputy

Superintendent of Police, Jind. Sub Inspector Balbir Singh (PW11) was summoned in the Office and he on the direction of Deputy Superintendent of Police took the prosecutrix to Civil Hospital, Jind, where her (prosecutrix) medicolegal examination was conducted. Doctor handed over the parcel containing *salwar* of the prosecutrix to Sub Insepctor Balbir Singh, which was taken into possession vide recovery memo Ex.PL. On the directions of Sub Inspector Balbir Singh (PW11), they went to Police Station, Garhi, and reported the matter to Station House Officer/Sub Inspector Shiv Dhan Siingh (PW12).

PW-11 Balbir Singh deposed that on 30.07.1999 while he was posted in CIA Staff, Jind, he was summoned by the Deputy Superintendent of Police (Headquarters), Jind and under his instructions he (witness) got conducted the medicolegal examination of the prosecutrix from Dr.Renu Aggarwal (PW4) at Civil Hospital, Jind.

PW-12 Sub Inspector Shiv Dhan Singh had investigated the case. He deposed that on 30.07.1999 he recorded the statement Ex.PK of the prosecutrix, made endorsement Ex.PK/1 and on the said basis FIR was registered. The parcel and the papers produced by BaljIt (PW10) were taken into possession vide recovery memo Ex.PM. The statements of

the witnesses in terms of Section 161, Cr.P.C., were recorded. The appellant was arrested on 31.07.1999 at 5.00 a.m.. He visited the place of occurrence and prepared the rough site plan Ex.PN. The medicolegal examination of the appellant was arranged. The school certificate containing date of birth of the prosecutrix was taken into police possession. After completing the investigation, report under Section 173, Cr.P.C., was prepared by him.

After completion of the prosecution evidence, the statement of the appellant in terms of Section 313, Cr.P.C., was recorded. All the incriminating material was put to him. The appellant pleaded false implication in the case in hand.

In defence evidence, Rati Ram was examined as DW1. He deposed that on 30.07.1999 at about 8.30 p.m. the appellant was taken away by the police on the pretext that he was summoned by the Superintendent of Police, Jind. On the same day at about 9.00 p.m., Dalel Singh, Advocate, brother of the accused was informed regarding the arrest of the appellant.

After hearing the learned counsel for the parties and going through the material available on record, learned trial Court held the appellant guilty for the offences punishable under Sections 342, 376(2)(d) and 506, IPC, and ordered him to

undergo terms of imprisonment and of fine, as enshrined in the initial part of the judgment.

Learned counsel for the appellant submitted that there was inordinate delay of more than ten hours in reporting the matter to the police, which is fatal to the prosecution case; as per prosecution version, the rape was committed at village Dhamtan, Tehsil Narwana and admittedly, there was a police post at village Dhamtan and while going to Jind from Dhamtan, Police Stations, Garhi and Narwana fall on the way but the matter was neither reported to the police at Police Post Dhamtan or at Police Stations, Garhi or Narwana; the Deputy Superintendent of Police has its office at Narwana but the incident of rape was not brought to his notice rather the family members of the prosecutrix opted to approach the Deputy Superintendent of Police, Jind, which creates a lot of suspicion with regard to the veracity of the prosecution case; neither the Deputy Superintendent of Police, Jind, nor Sub Inspector Balbir Singh (PW11) recorded first version of the prosecutrix regarding the commission of rape on her, rather each one of them referred the matter to yet another police officer; Sub Inspector Balbir Singh (PW11) directed the prosecutrix and the person accompanying her to go to Police Station, Garhi, for reporting the matter to the police and

thereafter the Station House Officer, Shiv Dhan Singh, (PW12) of Police Station, Garhi, recorded the statement of the prosecutrix, which also creates doubt with regard to the correctness of the prosecution version; as per prosecution case, the prosecutrix was aged about 13 years while the appellant was aged about 40 years at the time of the occurrence; if the appellant had committed forcible rape on the prosecutrix, then there must be some sort of injuries on the person of prosecutrix or the appellant; the *salwar* belonging to the prosecutrix was allegedly taken into possession by Dr.Renu Aggarwal (PW4) and handed over Sub Inspector Balbir Singh (PW11) and he further handed over the said parcel containing *salwar* to Baljit (PW10), which also creates doubt regarding the said fact; there was no clinching scientific report that the male discharge found on the underwear of the appellant and on the underwear of the prosecutrix was of the same origin and hence, there was a clear cut dent in the link connecting the appellant with the commission of sexual intercourse with the prosecutrix by the appellant; there was no cogent evidence that prosecutrix was 13 years old only; Giria Ram, Headmaster, who proved the birth certificate, Ex.PL, during his cross-examination, admitted that there might be yet another girl of the same name as that of the prosecutrix and, as such, the

birth certificate Ex.PL, had lost its sanctity and that the ossification test, allegedly conducted by Dr.G.D.Gupta (PW5) cannot be said to be a surer test.

In support of his contentions, the learned counsel for the appellant has placed reliance on **K.Venkateshwarlu vs The State of Andhra Pradesh**, 2012(3) RCR (Criminal) 990; **Krishan Kumar Malik vs State of Haryana**, 2011(3) RCR (Criminal) 589; **Alamelu and another vs State rep.by Inspector of Police**, 2011(1) RCR (Criminal) 498; **Satpal Singh vs State of Haryana**, 2010(3) RCR (Criminal) 777; **Tameezuddin @ Tammu vs State of (NCT) of Delhi**, 2009(4) RCR (Criminal) 345; **Aasu vs. State of Haryana**, 2011(2) RCR (Criminal) 512; **Arshad vs State of Haryana**, 2011(1) RCR (Criminal) 111; and **Kaptan vs State of Haryana**, 2011(1) RCR (Criminal) 113.

On the other hand the learned counsel for the State assisted by Mr.Sunil Kaushik, proxy counsel for the informant, submitted that there was no reason for a minor girl to level such a serious allegation on the appellant; there was no delay in reporting the matter to the police; the time consumed after the occurrence and before reporting the matter to the police has very well been explained during trial; learned trial Court has assigned cogent reasons for returning the verdict of guilt against

the appellant and, as such, there was no force in the appeal and the same is liable to be dismissed. In support of their contentions, reliance has been placed upon **State of Rajasthan vs Om Prakash**, 2002 SCC (Criminal) 1210; **Rinku Deka vs State of Assam** 2010 (7) RCR (Criminal) 1803; **Sube Singh vs The State of Haryana**, 2010(1) RCR (Criminal) 202; **State of U.P. vs Pappu alias Yunus and another**, 2005(1) RCR (Criminal) 404; **State of Rajasthan vs N.K.**, 2000(2) RCR (Criminal) 471; and **State of Punjab vs Gurmit Singh**, 1996(1) RCR (Criminal) 533.

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

Before advertng to the facts of the case, it is appropriate to recapitulate the authorities cited by the learned counsel for the parties.

In the matter of **K.Venkateshwarlu** (supra), Hon'ble the Supreme Court held that crime may be heinous, morally repulsive and extremely shocking, but moral considerations cannot be a substitute for legal evidence and accused cannot be convicted on moral considerations.

In the matter of **Krishan Kumar Malik** (supra), it was held by Hon'ble the Supreme Court that while reporting the

matter, the prosecutrix did not state name of the accused who committed rape, though she knew the name of the said accused was a million dollar question.

In the matter of **Alamelu and another** (supra), Hon'ble the Supreme Court set aside the conviction of the accused on the premise that the prosecutrix remained in the Company of the accused for six days at different places but she (prosecutrix) did not lodge the complaint to anyone nor tried to run away despite opportunities.

In the matter of **Satpal Singh** (supra), it was ruled by Hon'ble the Apex Court that a register maintained by Chowkidar or public servant, who is illiterate and has to depend on somebody else to make the entry, does not come within the purview of Section 35 of the Evidence Act.

In the matter of **Tameezuddin & Tammu** (supra), it was held by Hon'ble the Supreme Court that vaginal swabs and *salwar* had semen stains would at best be evidence of the commission of sexual intercourse but not of rape. Blood sample of the accused was not taken to co-relate with the semen found on the articles was held to be fatal. It was further held that the evidence of the prosecutrix must be given pre-dominant consideration, but it cannot be held that her evidence has to be

accepted even if story is improbable and belies logic.

In the matter of **Aasu**(supra), this Court held that delay of 20 days in lodging the first information report was fatal to the case of the prosecution. During that interregnum, there might be some consultations/deliberations confabulation to twist the real story.

In the matter of **Arshad** (supra), it has been held that in the light of the report of the Radiologist, the birth certificate can be ignored.

In the matter of **State of Rajasthan**(supra), Hon'ble the Supreme Court held that on the sole testimony of victim of rape, conviction for offence punishable under Section 376, IPC, can be based unless there are compelling reasons which necessitate looking for corroboration of her statement. It was further held that delay of 26 hours in reporting the matter to the police in a rape case would itself be not fatal to the prosecution case. It was also held that cases involving sexual molestation and assault require a different approach.

In the matter of **Rinku Deka** (supra), Hon'ble the Gauhati High Court ruled that evidence of victim is enough to record conviction if her evidence is found trustworthy. It was further concluded that conclusion of trial Court based on

material evidence on record cannot be reversed lightly.

In the matter of **Sube Singh** (supra), this Court ruled that where the rape was committed by the Sarpanch of the village of a minor girl aged 11 years and the matter was reported to the police after 11 days would not be fatal to the prosecution case.

In the matter of **State of U.P. vs Pappu alias Yunus and another** (supra), Hon'ble the Supreme Court held that there was no rule of law that the testimony of the prosecutrix cannot be acted upon without corroboration in material particulars since she stands at a higher pedestal than an injured witness.

In the matter of **State of Rajasthan vs N.K.** (supra), it was held by Hon'ble the Supreme Court that absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of allegation or evidence of consent. In the said case the accused was an able bodied, young man and full of energy while the prosecutrix had just crossed 16 years.

In the matter of **State of Punjab vs Gurmit Singh** (supra), it was held by Hon'ble the Supreme Court that despite the fact that there was some litigation, a father will not put forth his daughter to make wild allegations with a view to take revenge since it defies human probability.

The material available on record would reveal that the incident of rape had taken place on 29.07.1999 at 10.30 a.m. at village Dhamtan. After the occurrence, the prosecutrix went to her house and disclosed the whole version to her grand-mother, Smt.Shanti Devi. The grand-mother immediately repeated the version to her son, i.e. uncle of the prosecutrix, Baljit (PW10). Baljit (PW10) himself enquired regarding the incident of rape from the prosecutrix and thereafter informed Krishan Kumar Sarpanch of the village. The prosecutrix along with her grand-mother, Smt.Shanti Devi, one Desh Raj and Krishan Kumar went to Jind to report the matter to the Superintendent of Police, Jind. Since the Superintendent of Police was not available in his office, therefore, the prosecutrix along with the accompanying persons went to the Deputy Superintendent of Police, Jind. After hearing the woeful story of the prosecutrix, the Deputy Superintendent of Police, Jind, summoned SI Balbir Singh (PW11) and directed him to take the prosecutrix to the lady Medical Officer for her medicolegal examination. After said examination, the prosecutrix and the accompanying persons were advised to go to Police Station, Garhi, Tehsil Narwana, to report the matter and, as such, the first information report was registered at Police Station, Garhi by SI Shiv Dhan Singh (PW12). Sequence of events

narrated hereinabove would clearly spell out that the informant was in hurry to report the matter to the police and there was no deliberate delay on her part in lodging the first information report. In the matter of **Sube Singh** (supra), it was held by this Court that delay of 11 days in reporting the matter to the police was not fatal in the facts and circumstances of the said case. This Court is also of the considered view that there was no deliberate delay in reporting the matter to the police and, as such, the appellant cannot derive any benefit from this argument.

The submission of the learned counsel for the appellant that despite the fact that there was a police post at village Dhamtan, and for going to Jind one has to cross the jurisdiction of Police Stations Garhi and Narwana, respectively. Even a Deputy Superintendent of Police was also available at Narwana and, as such, the prosecution version cannot be accepted, has no legs to stand. In the deposition of Baljit (PW10) it has come on record that the informant had decided to inform the Superintendent of Police, Jind, and, as such, they straightaway went to the office of the Superintendent of Police, Jind, and when he was not found available, they met the Deputy Superintendent of Police (Headquarters), Jind. The conduct of the informant side does not appear to be abnormal. Where a minor girl, aged about

12-13 years has been ravished by a doctor at PHC, in those circumstances, it was natural for the victim and her near ones to report the matter to the higher police officer so that appropriate proceedings are initiated against the culprit. It is also apposite to mention that the victim was a minor and the honour of the family was at stake, therefore, the informant party might have thought appropriate to go to Jind to report the matter to the District Police Head instead of approaching the local police.

The next submission of the learned counsel for the appellant that neither the Deputy Superintendent of Police (Headquarters) nor SI Balbir Singh (PW11) recorded the statement of the prosecutrix would create doubt with regard to its veracity cannot be attached any importance. As per the material available on record, Deputy Superintendent of Police (Headquarters) immediately summoned SI Balbir Singh (PW11) and directed him to take the prosecutrix to the hospital for her medicolegal examination. After medicolegal examination of the prosecutrix, the Sub Inspector directed the informant side to go to Police Station, Garhi, within whose jurisdiction the incident of rape had occurred. This was not an abnormal circumstance on the basis of which such a grave suspicion can be raised that the whole case of the prosecution can be thrown.

Further argument of the learned counsel for the appellant that the prosecutrix was aged about 13 years and the appellant, who was aged about 40 years, if had a forcible intercourse with the prosecutrix the same would result into certain injuries on their persons, cannot be attached any importance.

While sitting in a room, it cannot be exactly imagined the trauma of a minor girl, who faced such a horrible moment and the circumstances in which she was ravished. It is not always correct that as and when there is an incident of rape then either the prosecutrix or the accused shall suffer the injury.

The argument of the learned counsel for the appellant that the prosecution has failed to prove that the prosecutrix was aged about 13 years and, as such, the benefit should be extended to the accused does not weigh with this Court. During her testimony the prosecutrix as well as her uncle Baljit (PW10) did state that the prosecutrix was 13 years old at the time of the incident. The Radiologist, Dr. G.D.Gupta (PW5) on the basis of X-ray reports was of the definite opinion that the age of the prosecutrix was between 10 to 12 years. Shri Giria Ram Headmaster (PW8) on the basis of the official record deposed that the date of birth of the prosecutrix was 09.09.1986. To prove

the age of the prosecutrix, the prosecution has led not only the oral evidence but has also placed reliance on medical as well as the documentary evidence. All the material available on record would substantially prove that at the time of incident of rape, the prosecutrix was about 13 years of age.

At the cost of repetition, if the testimony of the prosecutrix is appraised, then it would clearly spell out that the appellant did commit rape on her. There was no occasion for this Court to disbelieve or throw away her testimony on the basis of minor contradictions etc.. The medical evidence and the report of Forensic Science Laboratory, Ex.P6, would lend support that the prosecutrix was subjected to sexual intercourse and if it was so then why the prosecutrix would falsely implicate the appellant and give free hand to the real culprit. From the testimony of the prosecutrix it was also proved that she was illegally detained and after commission of rape she was threatened by the appellant not to disclose the incident to anyone.

The law cited by learned counsel for the appellant is not applicable to the facts and circumstances of the case in hand and, as such, the appellant cannot be extended the benefit on that score.

The findings of the learned trial Court holding the appellant guilty for the offences punishable under Sections 342, 376(2)(d) and 506, IPC are well based and, as such, this Court finds no merit in the appeal and the same is hereby dismissed.

June 29, 2015
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(NARESH KUMAR SANGHI)
JUDGE