

CRA-S-2301-SB-2003

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

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Judgment Reserved on :06.05.2015

Date of Decision : 21.05.2015

Charan Singh

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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

Argued by : Mr. S.C.Chhabra, Advocate,
for the appellant.

Mr. S.S.Chandumajra, DAG, Punjab.

PARAMJEET SINGH, J.

This appeal arises from the judgment of conviction and order of sentence dated 19.11.2003 passed by the Additional Sessions Judge, Fast Track Court, Ferozepur whereby appellant-accused has been convicted under Section 376 of the Indian Penal Code (in short, 'IPC') and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

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The factual matrix of the case is that on 24.07.2002, prosecutrix (name withheld), aged 30 years, resident of village Kotha Thagni, went to the sugarcane fields of Jagsir Singh son of Mukhtiar Singh for taking grass at about 5.00 P.M. alongwith her small children. When she was cutting grass in the fields, appellant came there and caught her from her arms. He dragged her, torn her clothes and laid her on the ground. The appellant committed rape on the person of the prosecutrix against her consent. She raised alarm which attracted her husband's elder brother (*Jeth*), Chiman Singh, resident of Kotha Thagni to the spot. On seeing him, the appellant ran away from the spot. The prosecutrix along with Chiman Singh returned to her house and disclosed the occurrence to her family members. They waited for arrival of Ex-Sarpanch Darshan Singh, who had gone out of station and, therefore, did not lodge report till 26.07.2002. On 26.07.2002, Darshan Singh arrived. The occurrence was narrated to him by the prosecutrix. When the prosecutrix along with Sarpanch Darshan Singh and her husband Prem Singh were going to lodge the report with the police, ASI Jatinder Pal met them on the link road of Suresh Wala, who recorded her statement. Thereafter, ASI Jatinder Pal sent ruqa to the police station and formal F.I.R. under Section 376 IPC was lodged against the accused. ASI Jatinder Pal took the prosecutrix on 27.07.2002 to Civil Hospital, Fazilka where her medical examination was conducted by Dr. Sarita Kamra. Dr. Sarita Kamra took vaginal swabs from the vagina of the prosecutrix and handed over the same along with letter of request to the

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police for sending the same to the office of Chemical Examiner, Patiala, who confirmed the presence of semen and spermatozoa. On 26.07.2002, ASI Jatinder Pal visited the place of occurrence and prepared site plan. He also recovered broken bangles and one string of Salwar (trouser) of the prosecutrix from the place of occurrence. *Kamij* (shirt) and *Salwar* (trouser) of the prosecutrix were also taken into possession. On 03.08.2002, the prosecutrix was produced before the Sub Divisional Judicial Magistrate, Fazilka and her statement under Section 164 Cr.P.C. was recorded. On 10.08.2002, one Gurdip Singh, Member Panchayat, produced the appellant in the police station. The appellant was medico-legally examined on 12.08.2002. After completion of investigation, challan was presented under Section 376 IPC in the Court of Sub Divisional Judicial Magistrate, Fazilka on 09.11.2002, who vide order dated 04.01.2003, committed the case to the Court of Sessions. Thereafter, the case was entrusted to learned Additional Sessions Judge, Fast Track Court, Ferozepur, who framed charge under Section 376 IPC, to which the appellant did not 'plead guilty' and claimed trial.

To prove its case, prosecution examined PW 1 ASI Kundan Singh, PW 2 Mangat Ram, Patwari, PW 3 MHC Brij Lal, PW 4 prosecutrix, PW 5 Chiman Lal, PW 6 Dr. Sarita Kamra, PW 7 Dr. Yash Paul, PW 8 ASI Manjit Singh, PW 9 Constable Shabeg Singh and PW 10 ASI Jatinder Pal Singh. In documentary evidence, the prosecution relied upon Ex.P1 recovery memo vide which vaginal swaps and envelope containing documents were taken into possession, Ex.P2 scale site plan

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prepared by Mangat Ram Patwari, Ex.P3 affidavit, Ex.P4 statement of prosecutrix recorded by the police, Ex.P5 statement of prosecutrix recorded under Section 164 of the Code of Criminal Procedure (in short, 'Cr.P.C.'), Ex.P6 medico-legal report, Ex.P7/A endorsement made by the doctor, Ex.P8 letter, Ex.P9 report of chemical examiner, Ex.P10 medico-legal report of the appellant, Ex.P11 recovery memo vide which bangles and string were taken into possession, Ex.P12 recovery memo vide which clothes of prosecutrix were taken into possession, Ex.P13 personal search memo, Ex.P14 arrest memo, Ex.P4/A endorsement, Ex.P4/B FIR, Ex.P16 site plan, Ex.P17 application, Ex.P18 application, Ex.P19 application and Ex.P20 information memo.

Statement of the appellant was recorded under Section 313 Cr.P.C. The appellant denied all the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent. However, no evidence in defence was led by the appellant.

The trial Court after conclusion of trial convicted and sentenced the appellant as aforesaid. Hence, this appeal.

It is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder:

- (i) PW 4 prosecutrix stated that on 24.07.2002, she went to the fields of Jagsir Singh son of Mukhtiar Singh to cut fodder. Her two children, aged 3 years and 4 years, also accompanied her. When she was cutting the

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grass, appellant present in Court came there. He caught her arms and laid her down on the ground. He torn her clothes and also forcibly broke the string of her Salwar. Her bangles were also broken by him. He forcibly raped upon her against her consent. She kept on requesting the appellant to leave her as well as raising noise, but he did not leave her. On her raising noise, her *Jeth*-Chiman Singh reached at the spot as he had also come to collect animal fodder. On seeing Chiman Singh, the appellant left her and ran away. Chiman Singh brought her and her children to her house. She narrated the incident to her husband. They met Sarpanch Darshan Singh on 26.07.2002. Prior to the same, they tried to approach Sarpanch Darshan Singh, but he was not available. They narrated the occurrence to Sarpanch. She along with her husband, Chiman Singh and Sarpanch Darshan Singh was going to report the matter with the police, but the police official met them on the turning point of village Suresh Wala. She got her statement recorded to the

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police which is Ex.P4. On the following day of her making statement, the police took her to Civil Hospital, Fazilka where her medical examination was conducted. She also got her statement recorded before the Magistrate which is Ex.P5.

- (ii) PW 5 Chiman Singh stated that on 24.07.2002, he went to the fields of Jagsir Singh to bring fodder which was being already cut by the prosecutrix. He heard the noise of the prosecutrix. He went inside the sugarcane fields of Jagsir Singh and found that appellant was raping the prosecutrix. On seeing him, the appellant ran away. The clothes of prosecutrix were already torn. The prosecutrix narrated the entire incident to him and he brought her to the house. Thereafter, they went to Ex.Sarpanch Darshan Singh, who was not available. He met them on 26.07.2002. He along with prosecutrix, Prem Singh, Darshan Singh was going to report the matter to the police, but the police official met them on the turning point of Suresh Wala where the statement of

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prosecutrix was recorded. He also got his statement recorded to the police.

(iii) PW 6 Dr. Sarita Kamra deposed that on 27.07.2002, she medico-legally examined the prosecutrix, who was brought by the police at about 11.30 A.M. On examination, there was no mark of external violence on any part of the body. Secondary sexual characteristics well developed. The hymen was all torned. Vagina laxly admitted two fingers easily. No bleeding was present. Two vaginal swabs were taken and sent to the Chemical Examiner, Patiala for confirmation of presence of spermatozoa. She prepared medico-legal report of the prosecutrix and carbon copy of the same is Ex.P6.

(iv) PW 10 ASI Jatinder Pal Singh, investigating officer of the present case, deposed that he along with other police officials was present on the Link Road Sureshwala where the prosecutrix along with Chiman Singh and Sarpanch Darshan Singh met him. The prosecutrix made statement Ex.P4 to him.

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He made endorsement Ex.P4/A and sent ruqua to police station on the basis of which formal FIR Ex.P-4/B was recorded against the appellant. He visited the spot and prepared site plan Ex.P16. He took into possession broken bangles and one string of Salwar vide recovery memo Ex.P-11 after preparing parcel. The parcel was sealed by him with his seal 'JS'. Salwar and Kamij were handed over to him by the prosecutrix which were also taken into possession vide recovery memo Ex.P-12. On 27.07.2002, he took the prosecutrix to Civil hospital, Fazilka and he moved application Ex.P7 for her medical examination. After examination, the doctor handed over to him vaginal swabs contained in a viol along with envelope which were taken into possession vide recovery memo Ex.P1. On 03.08.2002, statement of prosecutrix under Section 164 Cr.P.C. was recorded. On 10.08.2002, one Gurdip Singh, Member Panchayat, produced the appellant before him. The appellant was arrested and search memo Ex.P13 was

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prepared. After completion of investigation, the appellant was challaned by SHO Jaswinder Singh.

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

As a first limb of his arguments, learned counsel for the appellant vociferously contended that findings recorded by the trial Court are patently erroneous to the facts of record. The trial Court has failed to appreciate various glaring lacunae existed in the testimonies of prosecution witnesses. The prosecution story is highly improbable as alleged place of occurrence i.e. field of sugarcane is nearer to the village abadi. The prosecutrix was accompanied by her children. The prosecutrix was subjected to rape in the alleged fashion at a scene of occurrence hardly a few *karams* away from the village where people are residing, this is highly doubtful. If the prosecutrix would have raised a hue and cry, it would have definitely invited the attention of residents of village and this circumstance leads to inference that no hue and cry was made by her. In fact, the prosecutrix was found by the appellant in compromising position with one Chiman Lal, *Jeth* of the prosecutrix and the appellant has been falsely implicated in the present case.

Second limb of argument of learned counsel for the appellant is that there is a delay of two days in lodging the FIR. The alleged occurrence took place on 24.07.2002, at about 5.00 P.M whereas the FIR was got registered on 26.07.2002. The delay of two days in lodging

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the FIR has not been explained by the prosecution. Only on this ground, the prosecution story falls flat. There is every likelihood of concoction of story with due deliberation and consultation to implicate the appellant. The delay of two days in lodging the matter is fatal to the case of prosecution.

Next plank of his argument is that ocular version of the prosecutrix is highly contradictory to the medical evidence. There is no external injury on any part of body of the prosecutrix despite her alleged resistance. The same cannot be reconciled in any manner. The prosecution is required to prove its case beyond the shadow of reasonable doubt. The weakness, if any, exists in the case of appellant, cannot be utilized against him. The report of chemical examiner does not support the prosecution version. The alleged recovery of bangles and string does not connect the appellant with the present case in any manner specifically when no DNA examination was carried out with regard to alleged semen on the Salwar. The probable defence version has not been taken into consideration by the trial Court.

At the end, on the totality of the conspectus of the evidence and circumstances of the case, learned counsel for the appellant contended that credibility of testimony of prosecutrix cannot be ruled out as it lacks corroboration and the appellant has been erroneously convicted by the trial Court acting upon the same.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the appellant and contended that on

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the totality of the evidence and material on record, the trial Court has rightly held the appellant guilty for the commission of offence under Section 376 IPC. The statement of prosecutrix has been fully corroborated by the evidence of PW 5 Chiman Singh, who reached the spot immediately after hearing the noise and on seeing him, the appellant ran away from the spot. There is full corroboration to the testimony of prosecutrix. The medical report also clearly indicates that semen available on the Salwar of the prosecutrix was positive in nature.

I have considered the rival contentions of learned counsel for the parties and with their help perused the entire evidence of the trial Court.

From the arguments of learned counsel for the parties, following points arise for consideration by this Court:

- (i) *Whether delay in lodging the FIR to police in the present case of rape is fatal to the case of prosecution?*
- (ii) *Whether case of prosecution can be thrown out on the ground of non-availability of external injury either on the person of prosecutrix or appellant although she alleged to have been sexually assaulted in the fields of sugarcane and she resisted the rape?*
- (iii) *Whether the appellant has been falsely implicated on the ground that he had seen the prosecutrix and her Jeth in a compromising position?*

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Point No.(i):

Admittedly, there is delay of two days in reporting the matter to the police. The alleged occurrence took place on 24.07.2002 and the matter was reported to the police on 26.07.2002. The delay in reporting the matter to the police is fatal because the same leads to concoction of story, however, if the delay is explained to the satisfaction of the court, no benefit can be drawn by the accused. The prosecution has set up the case that the prosecutrix and her family belong to poor strata of the society and they waited for the arrival of Ex-Sarpanch Darshan Singh as he was not available in the village. Darshan Singh came in the village on 26.07.2002 and the incident was disclosed to him and thereafter on the same day, the matter was reported to the police. The delay has been fully explained by the prosecution, therefore, no adverse inference can be drawn against the prosecution for delay in reporting the matter. It is common that firstly, villagers approach village headman for redressal of their grievance and thereafter they report the matter to the police. The prosecutrix belongs to conservative society and the family of prosecutrix must have been very much reluctant in reporting the matter to the police. Before approaching the police, they must have made due deliberations with their close relatives. Such incident involves honour of the lady and prestige of the family.

In *Om Parkash vs. State of Haryana* 1999(1) Recent Criminal Reports 266 (Punjab and Haryana), it has been held that only after giving cool thought the complaint of sexual offence is generally

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lodged and delay in lodging the rape cases can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to police which concerns the prosecutrix and honour of the family. In the said case, there was a delay of 20 days when matter was reported to the police.

In view of the facts and circumstances discussed above, delay in lodging the FIR to police in the present case of rape is not fatal to the case of prosecution. Point No.(i) is answered accordingly.

Point No.(ii):

The prosecutrix has specifically stated that the appellant caught hold of her by arms; dragged her; torn her clothes; put her down and committed rape in the fields. Admittedly, there was no external mark of injury either on the person of the prosecutrix and appellant. Presence of the injuries on the person of prosecutrix is not always necessary to show resistance on her part. When all of sudden, a person forcibly attacks a lady, she is emotionally and physically unable to struggle as shock weighs heavily on her. The fear induced by serious threats may lead to non-availability of external injuries on the body of the prosecutrix. The broken bangles and string of Salwar of prosecutrix recovered from the place of occurrence clearly show the force used upon the prosecutrix by the appellant. The version of prosecution cannot be disbelieved only on the ground that the prosecutrix had no external mark of injuries on her body despite her resistance against the act of the appellant. In her statement, the prosecutrix did not utter that she had

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received any external mark of injury when was being raped by the accused, therefore, the contention of learned counsel for appellant that there was no external injury on the body of prosecutrix despite her resistance to the act of appellant, has no weightage. The version of prosecutrix (PW 4) is fully corroborated by the testimony of PW 5 Chiman Singh. The ocular version of prosecutrix (PW 4) and PW 5 Chiman is fully corroborated by the testimony of PW 6 Dr. Sarita Kamra, who medico-legally examined the prosecutrix. The report (Ex.P2) of chemical examiner clearly shows that semen was found on the vaginal swab of the prosecutrix. The presence of injury either on the body of prosecutrix or appellant is not a *sine qua non* to prove the charge of rape. Point No.(ii) is answered accordingly.

Point No.(iii)

The appellant has taken the defence that he has been falsely implicated by the appellant due to the reason that he had seen the prosecutrix and her *Jeth* in a compromising position. By taking this defence, the appellant admitted his presence at the spot at the time of occurrence. The appellant did not lead any positive evidence in this regard. Rape is an assault on the body, mind, privacy and entire fabric of the prosecutrix. It is often said that a woman who is raped, undergoes two crisis i.e. the rape and the subsequent trial in Court. Vulnerable and feeble victim of rape is humiliated and her dignity is got shredded in the society. Because of the societal stigma attached to the crime, the prosecutrix could not dare to falsely implicate the appellant by levelling

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such allegations. The defence propounded by the appellant cannot be believed. Point No.(iii) is answered accordingly.

Conclusion:

On a conspectus of the evidence and the findings of the trial Court and reasons stated above, I am satisfied that appellant's version has been correctly rejected by the trial Court. The conviction and sentence of the appellant are upheld. The appeal being devoid of merits is dismissed. The appellant-convict is stated to be on bail. His bail bonds stand cancelled and he is directed to surrender before the trial Court forthwith to undergo remaining part of sentence. In case, the appellant-accused does not surrender before the trial Court, it shall issue warrants of arrest of the appellant-convict.

21.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE