

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-481-SB of 2003

Date of Decision : May 13, 2015

Surinder and another

....Appellants

VERSUS

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellants.

Mr. A.K. Yadav, Additional Advocate General, Haryana.

T.P.S. MANN, J.

The appellants, namely, Surinder son of Panna Singh and Pala Ram son of Datta Ram, residents of village Patti Kalyana, District Panipat were tried for committing offences punishable under Sections 376(2)(g) and 506 IPC. Vide judgment and order dated 5/8.2.2003, learned Additional Sessions Judge, Panipat convicted them for the offence under Section 376(2)(g) IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo rigorous imprisonment for one month. They were also convicted under Section 506 IPC and sentenced to undergo rigorous imprisonment for one year each. Both the substantive sentences were ordered to run concurrently.

According to the prosecution, on 9.3.2002, the prosecutrix,
aged 24 years and married to Raju, resident of village Khojkipur was going

alongwith her father to Police Station Bapoli when she met SI Dalbir Singh at Bhallour turn, Bapoli and made statement which reads as under :-

"Stated that I am daughter of village Patti Kalyana and married in village Khojkipur with Raju s/o Chander caste Gujjar about eight years back. I have a son aged about five years. On 29.1.2002, Tuesday, in the morning my husband had gone to UP to the house of my aunt and my son Ashu had gone to school at Samalkha. I was all alone in my house in village Khojkipur. On that day at about 11.00 a.m., Surinder @ Saindu s/o Panna Master caste Gujjar and Pala s/o Datta caste Gujjar rs/o Patti Kalyana who have also relation in village Khojkipur had come to my house. I asked them to take tea. Both of them sat on a cot in the courtyard and I had gone inside the room to fetch sugar for preparing tea. Saindu and Pala both followed me in the room and Saindu bolted the door from inside, which was objected to by me. At this Pala gagged my mouth and put me forcibly on a cot. Saindu broke open the string of my salwar. After that, first of all, Saindu and then Pala committed rape on me. I told them that I will disclose about this incident to my uncle, upon which they threatened me that in case I disclosed about the incident to any one, they would kill my family members. Both of them fled away. I did not disclose the above said fact to anyone out of fear. Today, my mother Siksha and my father Lakhi Ram had come to village Khojkipur and enquired about my well being and they found me depressed. My mother repeatedly asked me the reason of my depression. Thereafter, I narrated the whole incident to them, while weeping. Saindu and Pala mentioned above had committed rape on me and they also gave a threat to finish the family. Legal action be taken against them. I alongwith my father was going to the police station for

information when you met us at Bhallour turn, Bapoli, where I made my statement. Heard, which is correct.

Attested
RTI Prosecutrix

Sd/-
Dalbir Singh SI/SHO,
P.S. Bapoli
dated 9.3.2002."

As the aforementioned statement made by the prosecutrix revealed commission of cognizable offences, SI Dalbir Singh forwarded it to Police Station Bapoli, where on its basis FIR No.17 dated 9.3.2002 under Sections 376, 506 and 34 IPC came to be registered against the appellants.

During the investigation of the case, SI Dalbir Singh visited the spot alongwith the prosecutrix, inspected the same, prepared rough site plan and recorded the statements of the witnesses. On 10.3.2002, he got the prosecutrix medico-legally examined from Dr. Meena Kalra and took into possession the sealed parcels handed over by the doctor to him. On 23.3.3002, he arrested Surinder appellant and got him medico-legally examined on 24.3.2002. He also arrested Pala Ram appellant on 27.3.2002 and on the next day, got him medico-legally examined. After completion of investigation and presentation of final report under Section 173 Cr.P.C. followed by commitment of the case, the appellants were charged for the offences under Sections 376(2)(g) and 506 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as nine witnesses.

PW1 Dr. Y.P. Singhmar, Medical Officer, General Hospital, Panipat deposed that on 28.3.2002, he medico-legally examined Pala Ram and opined that there were no reasons to suggest that he could not

perform sexual intercourse.

PW2 Dr. Meena Kalra, Medical Officer, Civil Hospital, Panipat testified that on 10.3.2002, she medico-legally examined the prosecutrix, aged 24 years and observed as under :-

“No fresh injury or marks stain was seen on the whole body. Secondary sexual characteristics were well developed, breast, areollas, nipples, were well developed. Pubic hair were well developed. There was a history of first full term normal delivery of a male child, aged about five years and the period of LMP was 26.11.2001. On examination of abdomen, stria gravidara was present, uterus was 14 weeks size palpable, and foetal heart sound was present. There was no rigidity of the abdomen. There was no pain in the abdomen. No discharge on the vagina was seen at the time of examination. On examination of vagina no fresh injury was seen, no stains, no discharge were present. There was no injury to labia majora and labia minora.”

PW3 Head Constable Jagat Singh and PW4 Head Constable Dhanpat Singh tendered in evidence their affidavits Ex.PC and Ex.PD, respectively.

PW5 Constable Rajesh Kumar, testified that on 3.4.2002, he visited the spot and prepared scaled site plan Ex.PE.

PW6 Dr. S.K. Gupta, Medical Officer, General Hospital, Panipat testified that on 24.3.2002, he medico-legally examined Surinder and in his opinion there was no evidence to suggest that he was not able to perform sexual intercourse.

The prosecutrix was examined as PW7 and she deposed on the same and similar lines as was her statement made before SI Dalbir Singh on 9.3.2002.

PW8 HC Azad Singh testified that on 9.3.2002, he handed over the special reports to the Ilqa Magistrate and other higher officers.

PW9 SI Dalbir Singh deposed about the investigation conducted by him culminating in the preparation of report under Section 173 Cr.P.C., which bore his signatures.

Before closing the evidence of prosecution, learned Public Prosecutor tendered in evidence report Ex.PM of Forensic Science Laboratory.

When examined under Section 313 Cr.P.c. both the appellants pleaded that they were innocent and falsely implicated out of political rivalry. In the last assembly election, there was a dispute between their families and the family of the prosecutrix. Both of them and one Pala had sustained multiple injuries at the hands of opposite party, which included father of the prosecutrix, who threatened to implicate them in a false case. It is also stated that prior to 29.1.2002, the prosecutrix, alongwith her husband was present in her native village. They also stated that they never visited the village Khojkipur nor committed rape with the prosecutrix. The prosecutrix remained present in village Patti Kalyana ever since 25.1.2002.

In their defence, the appellants examined four witnesses.

DW1 Pala Ram son of Puran Singh, resident of village Patti Kalyana, District Panipat deposed that he and the appellants belonged to

Congress Party whereas the prosecutrix's father belonged to Bhadana group.

DW2 Balbir Singh testified that he was resident of village Khojkipur and on 29.1.2002, the prosecutrix was present in Patti Kalyana.

DW3 Roshan, resident of village Khojkipur and a neighbour of the prosecutrix, deposed that the house of the prosecutrix was visible from his house and he never saw the accused visiting her house. Further, the prosecutrix was in her parental home for the last one year.

DW4 MHC Krishan Pal testified that FIR No.53 dated 22.2.2000, under Sections 323/324/148/149/506 IPC was registered on the basis of telephonic information received from Jai Singh, President, in which the first party was Sanjay son of Shugan Singh, resident of Patti etc. and the second party was Pala Ram, Ram Kishan, Roshan, Naresh and Suresh, residents of village Patti Kalyana. Later on, Section 307 IPC was also added. He proved photocopy Ex.DA of the said FIR.

After hearing learned counsel for the parties and on going through the entire evidence available on the file, the trial Court accepted the prosecution case and convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has submitted that though the occurrence was said to have taken place on 29.1.2002 in the matrimonial home of the prosecutrix yet she reported the matter to the police on 9.3.2002. No satisfactory explanation had been given by the prosecutrix for not reporting the matter to the police at the earliest.

The prosecutrix, while appearing as PW7, had stated that the appellants had extended threat to her not to disclose the incident to any person and in case she disclosed it to anyone, her family members would be killed. She told her mother about the incident when she came to her matrimonial home and found her in depression. The parents of the prosecutrix had come to her matrimonial home on 9.3.2002 and after she apprised them about the incident her father accompanied her for lodging a report with the police. Both the appellants belonged to village Patti Kalyana, District Panipat and the prosecutrix might be apprehending danger to her life at the hands of the appellants in case she dared to lodge report against them with the police. However, when she met her father she felt comfortable and safe and then proceeded for the Police Station but on the way they came across SI Dalbir Singh to whom she lodged the report. The delay in lodging of the FIR is, thus, satisfactorily explained.

It is next contended by learned counsel for the appellants that due to political rivalry between the families of the appellants on the one hand and that of the prosecutrix on the other that the appellants have been falsely implicated in the case. In this regard, reference has been made to copy of FIR No.53 dated 22.2.2000 (Ex.DA) lodged by Pala Ram appellant. In the said FIR, it was mentioned that the family members of the appellants were agents of Congress Party, whereas father of the prosecutrix belonged to Bhadana group and it was because of the said FIR that the prosecutrix had come up with the false and fabricated version against the appellants.

It was the case of the prosecutrix before the trial Court that she belonged to village Patti Kalyana and about eight years back she was married in village Khojkipur. She had one son aged five years. On the day

of occurrence, i.e 29.1.2002 her husband was away to Uttar Pradesh, whereas her son was attending the school at Samalkha. She was all alone in her house. At about 11.00 a.m., both the appellants came to her house and as they belonged to her parental village, she made them sit in the courtyard and offered tea. When she went inside the room to bring sugar, the appellants followed her. Surinder appellant bolted the room from inside. When she asked them as to why the door had been bolted, Pala Ram appellant gagged her mouth and made her lie on a cot, Surinder appellant broke the string of her salwar and committed rape on her. Pala Ram appellant did not lag behind and also committed rape on her. In her cross-examination, she testified that the appellants were known to her since child-hood. However, they were neither related to her nor on visiting terms with her parental family. However, she had been treating them as her brothers as they belonged to her native village. She further stated that the appellants remained in her house for about 15/20 minutes and that her courtyard was not visible from the roofs of adjoining houses. She could not raise any alarm as her mouth was gagged. She could not resist as she was over-powered by the two appellants. The rape was committed upon her in a room which had been bolted by Surinder from inside. Therefore, whatever resistance had been offered by her, would not have attracted her neighbours. Merely because there have been some quarrel between the families of the appellants on the one hand and the family of the prosecutrix on the other is no ground to hold that the prosecutrix would have come up with a false version. In case she was to come up with a false case, she was to put her reputation and that of her parents at stake. Similarly, the stand of the defence that the prosecutrix was not present in village Khojkipur on

29.1.2002, whereas she was present in her parental village Patti Kalyana, is not sufficient to reject the prosecution case. With regard to the presence of the prosecutrix at her parental village from 25.1.2002, the defence has not brought any material on the record. On the other hand, only oral statements have been made by DW2 Balbir Singh and DW3 Roshan, besides the appellants during their examination under Section 313 Cr.P.C. As regards the testimony of DW3 Roshan that the house of the prosecutrix was visible from his house and he had not seen the appellants visiting her house on 29.1.2002, it may be worthwhile to refer to the testimony of PW9 SI Dalbir Singh, who deposed that the wall in between the house of Kanwar Singh and the prosecutrix was 7 feet high. Even in the site plan Ex.PE prepared by PW5 Constable Rajesh Kumar, point 'A' has been shown as the place where rape was committed but it is not shown to be visible from the adjoining houses. The defence did not challenge the testimony of PW5 Constable Rajesh Kumar in this regard.

It is next submitted by learned counsel for the appellants that the prosecution is always under a duty to prove its case beyond reasonable doubt and this applied equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully. In this regard reliance has been placed upon the judgment of the Hon'ble Supreme Court in 'Abbas Ahmad Choudhary Vs. State of Assam, (2010) 12 SCC 115 and 'Tameezuddin @ Tammu Vs. State of (NCT) of Delhi, (2009) 15 SCC 566.

In the case of Abbas Ahmad Choudhary (supra), despite the fact that the prosecutrix in her statement in Court had attributed rape to Abbas Ahmad Choudhary as well but in her statement recorded during the

investigation, she had not come up with any such allegation. For that reason, the Hon'ble Supreme Court came to the conclusion that the prosecutrix had not told entire story truthfully while appearing before the Court. However, in the case in hand, the prosecutrix had consistently stated that it were the appellants who had come to her house and subjected her to rape.

In the case of Tameezuddin @ Tammu (supra) the Hon'ble Supreme Court after going through the version of the prosecutrix came to the conclusion that her story was indeed improbable. On the other hand, by no stretch of imagination it can be said that the version propounded by the prosecutrix was improbable.

It is further submitted that though the prosecutrix was said to have been subjected to rape by two persons but when she was medico-legally examined, no scratch was found on her person. It was also made out from the medical evidence that the prosecutrix was habituated to intercourse for long. Therefore, the conviction of the appellants is liable to be set aside. In this regard reliance has been placed upon the judgment of the Hon'ble Supreme Court in Rajoo and others Vs. State of M.P., AIR 2009 SC 858.

The facts in the aforementioned case are not at all same or similar as of the present case. In the case in hand, the prosecutrix, who was a married lady and also delivered a child, was medico-legally examined after about seven weeks of the occurrence. At the time of the incident, she was pinned down by two persons. Whatever injuries or marks may have been received on her person, would have disappeared by the time she was

medico-legally examined.

While referring to Pandurang Sitaram Bhagwat Vs. State of Maharashtra, AIR 2005 Supreme Court 643, learned counsel for the appellants has submitted that though it may not be wrong that a lady ordinarily would not put her character at stake but it cannot be applied universally.

It is true that the prosecutrix would not put her character at stake by coming up with false allegations but where she is found to be a truthful and reliable witness, her testimony of having been subjected to rape by the appellants deserves to be accepted.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

May 13, 2015
satish

(T.P.S. MANN)
JUDGE