

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : February 11, 2015

1. CRA-S No.1753 SB of 2003 (O&M)

Labh Singh vs State of Punjab

2. CRM-M No.24782 of 2004

Jasvir Kaur vs Labh Singh

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Naresh Jain, Advocate
for the appellant.

Mr. Parminder Singh-I, Advocate
for the petitioner in CRM-M No.24782 of 2004.

Mr. Deepak Garg, AAG Punjab

1. **Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J (Oral)

This order shall dispose of both the appeal filed by the accused against his conviction/sentence, as well as the petition filed by the prosecutrix against the accused for compensation.

The appeal has been filed by the accused/appellant against the judgment/order dated 16.7.2003, vide which he has been convicted under Sections 376/450 of the IPC, and sentenced to undergo RI for ten years and to pay a fine of ₹ 2,000/- under Section 376 of the IPC, in default of payment of fine to undergo further RI for one month; and to undergo RI for

three years and to pay a fine of ₹ 1000/- under Section 450 of the IPC, in default of payment of fine to undergo further RI for 20 days.

The allegations were that on 15.9.2000, when the 26 years old, mother of two, prosecutrix was doing her house-hold chores, at about 10 am she went to the outer house to look after the cattle and when she bent down to change the iron chain of the buffalo, the appellant who lived near her house jumped over the wall, grabbed her from the back, dragged her about 10 to 15 feet inside, threw her on the ground, tore her clothes, and raped her. On her raising alarm, the appellant fled away from the spot. Due to humiliation and shame, she did not inform any body till late evening when her husband came back from the fields whom she informed. The FIR was lodged on the next morning and the appellant was arrested after 5 days. He was sent up for trial and having been convicted/sentenced, he is before this Court.

The first argument raised by counsel for the appellant is based on Modi's medical jurisprudence particularly 23rd edition at page 938, which is to the following effect :-

“ (i) Can a Healthy Adult Female be violated against her Will ?

Under ordinary circumstances, it is not possible for a single man to hold sexual intercourse with a healthy adult female in full possession of her senses against her will, unless she is taken unawares, thrown accidentally on the ground and placed in such a position as to render her completely helpless, or unless she faints from fright or exhaustion after a long resistance. The act may be accomplished in a gang rape, if more than one man is concerned with the crime, or if the woman is too feeble to resist. In giving a definite opinion, it is necessary to take into consideration the relative strength of the parties and the community to which the victim belongs. It is obvious that a woman belonging to a labouring class, who is accustomed to hard and rough work, will be able to offer a good deal of resistance and to deal blows on her assailant, and will thus succeed in frustrating his

attempts at violation. On the contrary, a woman belonging to a middle class or rich family, might not be able to resist for long, and might soon faint or be rendered powerless from fright or exhaustion.”

He has argued that even if this opinion is not taken as the gospel truth, and even if it is held that it is not impossible for an unarmed single man to rape a woman, the same cannot be unaccompanied by injuries on the wrist, the inner thighs, the pubic area and the face, and if a healthy woman puts up resistance, injuries have to be present on the assailant also. He has drawn the attention of this Court to the medical evidence, wherein the injuries on the prosecutrix are described as follows :-

- “ 1. There was a bruise about 3x4 cm, reddish blue on left shoulder with abrasion about 3x.5 cm. There was a scab present reddish in colour.
2. Bluish diffused bruise on lumbar region 12cm above hip joint 6x5 cm, 7 cm from midline.
3. Bluish bruise 5x6 cm on right hip posterior; lateral aspect.
4. 7cmx5cm bulise bruish on lateral aspect of left thigh just above knee joint.
5. 10x8 cm bluish bruish on posterior lateral aspect of left leg 3cm below the knee joint.
6. 1x1cm bluish bruise on right knee in front.
7. Sub conjunctival haemorrhage red in colour.”

As per the learned counsel, the injuries shown above are not suggestive or not corroborative of violent rape. He has further argued that in these circumstances, the trial Court has convicted the appellant on the sole testimony of the prosecutrix wrongly. As per the prosecutrix, during struggle her bangles were broken but there is no reference thereto in the police investigation and, on the contrary, the Investigating Officer stated that he did not see any bangles on the spot. He has also argued that the prosecutrix accepted that the houses of Ruldu Singh and Balwant Singh are at a distance of 7 karams from her outer house. However, it was strange that despite her raising alarm, none of her neighbourers were attracted to the

spot despite it being mid-morning. He has pointed out to that portion of her cross-examination where she admits that she did not attempt to inflict any injury on the appellant. He has, thus, argued that the trial Court erred in convicting the appellant and prayed that he should be acquitted of the charge framed against him.

Counsel for the complainant, as also counsel for the State of Punjab have, however, emphasized that in the absence of any substantial reason advanced for false implication, there was no reason for the prosecutrix to have made such serious allegations against the appellant, and at-least regarding the actual occurrence, the prosecutrix withstood the searching cross-examination with great fortitude. Consequently, they have argued that the conviction of the appellant is absolutely legal. It is for this reason that the prosecutrix has also filed a petition under Section 357 of the Cr.P.C for the grant of compensation.

In my opinion, the arguments of both the sides are too extreme but not entirely meritless. There is a great weight in the arguments of counsel for the appellant based on the opinion of Dr. Modi extracted above and it is hard for this Court to resist the argument that even if a single unarmed man rapes a healthy woman, there have to be much more substantial injuries on both sides. The argument that if the incident had occurred in the manner that was alleged, at-least some neighbours would have attracted by the noise made by the prosecutrix, can also not be wished away. The fact that the Investigating Officer did not find any broken bangles at the spot, and the admission that the prosecutrix did not try to cause any injury to the appellant also put a dent on the story of the prosecution. This, however, is not the end of it.

This Court also has to accept that without there being any substantial reason for false implication, there was no occasion for the prosecutrix to have made such serious allegations which, as is well known, also attract opprobrium to every such complainant in our society. Apart therefrom, it is not the case that there are no injuries. They may not corroborate rape but do point to some struggle, as if some body tried to rape but was beaten back.

In the circumstances, even though this Court has come to the conclusion that the allegations of rape against the appellant have not been proved beyond any reasonable doubt, however, what has proved is that the appellant tried to rape the prosecutrix, and when she resisted, he desisted. Consequently, the appellant is held guilty of offences under Section 450 read with Section 511 of the IPC.

Counsel for the State of Punjab has stated that the appellant has undergone 2 years 7 months and 7 days of actual sentence. It cannot be ignored that he has faced these proceedings for the last one and a half decades. In my considered opinion, this is adequate sentence for the appellant. Consequently, this appeal is partly allowed, the conviction is altered to Section 450 read with Section 511 of the IPC, and the appellant is sentenced to the imprisonment already undergone by him.

Resultantly, CRM-M No.24782 of 2004 is also allowed and the prosecutrix is awarded ₹ 50,000/- as compensation and in the event of default by the appellant, he would have to undergo RI for 6 months.

(AJAY TEWARI)
JUDGE

February 11, 2015
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