

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

**Crl. Appeal No.2106 -SB of 2003 (O&M)
Date of Decision: July 22, 2015.**

Satbir

..Appellant(s)

Versus

State of Haryana

...Respondent(s)

with

Crl. Revision No.234 of 2005 (O&M)

Balwan Singh

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
- 2. To be referred to the Reporters or not? Yes/No
- 3. Whether the judgment should be reported in the digest? No

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellant in CRA No.S-2106-SB of 2003 and
for respondent no. 2 in CRR No.234 of 2005.

Mr. S.N. Pillania, Advocate
for the petitioner in CRR No.234 of 2005 and
for the complainant in CRA No.2106-SB of 2003.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ANITA CHAUDHRY, J.

1. Appellant Satbir had faced trial in FIR No.70 dated 10.05.1999 registered under Sections 323, 376/511 IPC at Police Station Badhra. Satbir was sentenced to undergo rigorous imprisonment for a period of 5 years along with a fine of Rs.400/- for commission of offence under Section 376 read with Section 511 IPC. In default of payment of fine, he was to further undergo simple imprisonment for a period of 4 months. He was also sentenced to undergo rigorous imprisonment for a period of 6 months and a fine of Rs.100/- under Section 323 IPC. In default of payment of fine, he was to further undergo simple imprisonment for a period of 1 month.

2. Aggrieved by the conviction and sentence an appeal has been preferred by the accused. The complainant Balwan Singh is also dis-satisfied with the judgment and had preferred a revision seeking enhancement of the sentence and seeks compensation. Both the cases arise out of the same FIR and are being disposed of together.

3. Balwan Singh, husband of the prosecutrix made a complaint to the police containing the allegations that his wife was mentally weak and had left the house at 9:00 PM to answer the call of nature on 09.05.1999, after dinner. When she did not return, he took a torch and went in search. He failed to find her and called his brother Hawa Singh. Both of them went in search of her. After covering some distance,

they found that there were signs of drag marks. They followed the foot prints and found Satbir grappling with his wife. The complainant raised alarm. The persons working in the nearby fields reached the spot. On seeing several persons, Satbir fled. The victim had sustained injuries on her body. There were bite marks, the salwar was also untied. The prosecutrix fell unconscious and was shifted to PHC Badhra by the complainant and his sister-in-law. After first aid she was referred to General Hospital, Bhiwani. The FIR was registered the next evening. On completion of investigation, challan was presented under Section 376/511/323 IPC. Appellant Satbir pleaded not guilty and claimed trial.

4. The prosecution examined as many as 15 witnesses including the Medical Officer who had examined the prosecutrix and the accused. The Medical Officer had also found injuries on the accused.

5. The prosecutrix was produced for her statement but she was unable to depose. The Medical Officer had found the victim to be suffering from Schizophrenia. Hawa Singh, brother of the complainant was given up.

6. In defence, the accused had examined the Ex-Sarpanch of the village who had deposed that the complainant's wife was in the habit of fighting with passerbys and this matter was taken up by the Panchayat the next morning and it was found that no such incident had taken place.

7. The trial Court accepted the statement of the complainant and held it to be a case of attempt to rape and convicted the appellant to the sentence mentioned aforesaid.

8. Learned counsel for the appellant strongly contested the finding of guilt returned by the trial Court and had contended that the incident occurred at 9:30 PM and the complainant had gone to the police station at 8:00 AM, the next morning but he did not report the incident. Giving the time line, it was urged that the MLR is at 9:30 AM while the second MLR is at 5:00 PM and the FIR was registered at 9:40 PM, the next evening. It was urged that the special report reached the Magistrate on 11.05.1999. It was contended that Hawa Singh was not examined in the Court and there is delay in lodging the first information and in the first instance the accused was stated to be grappling with the prosecutrix. It was urged that the complainant did not refer to any allegations of sexual intercourse in his complaint but during trial, he gave an exaggerated account and completely changed the story. It was urged that the victim was mentally not alert and was not able to make statement and the prosecution does not dispute about her mental condition. It was urged that beside the complainant, the prosecution had examined Ranbir, nephew of the complainant who was previously accused of ravishing the wife of one of the collaterals. It was urged that the accused was not examined to find whether he could perform, meaning thereby at no

point, the allegations by the prosecution were of rape. It was contended that at the trial, Balwan Singh PW2 and Ranbir Singh PW14 both deposed that the accused had committed rape. It was urged that the Medical Officer who had examined the prosecutrix had examined the accused and injuries were found on his body which have not been explained. It was urged that the defence taken by the accused was that the prosecutrix was mentally unstable and used to attack people and several persons in the village had been beaten and she had attacked the accused and had caused injuries and it was in defence that injuries were suffered by the prosecutrix. It was urged that the presence of Ranbir is doubtful as his field is not there and the incident occurred near Dharampal's field and he was not examined. It was urged that if the wife had a unstable mind, the family would not have allowed her to leave the house alone. It was urged that there is a delay in lodging the FIR. It was urged that at the most, it would be a case under Section 354 and 323 IPC and the appellant had remained in custody for 1 year, 4 months and a lenient view be taken with respect to the sentence. Reliance was placed upon ***Ujjagar Singh Vs. State of Punjab 2008(1) RCR (Crl.) 305, Virendra Singh Vs. State of Rajasthan 2014(8) RCR (Crl.) 1061 and Subli Hajam Vs. State 2003(1) RCR (Criminal).***

9. The submission on behalf of the complainant and the State was that injury nos.7 & 8 are on the private parts and the Medical Officer had spoken about the torn Salwar and the accused had made preparations and had committed the

heinous crime. It was urged that unfortunately the prosecutrix was not able to make a statement because of her medical condition but the medical report gives us the trauma of the victim's experience. It was urged that the defence has tried to project that the prosecutrix had been attacking people but not one person came forward to state that he had been attacked. It was urged that semen was found in the FSL report and delay had been explained by the complainant.

10. The accused was charged under Section 376 read with Section 511 IPC and under Section 323 IPC. In the complaint made by the husband, the words used by the complainant were that he had found the accused hugging his wife. He had used the words 'Gutham-Gutha' which means grappling/clinging. The prosecution does not dispute that the victim was a patient of Schizophrenia and was not able to relate the incident to the police. She was unable to make a statement in the Court and the prosecution case solely rests on the testimony of the complainant's husband and his nephew Ranbir and the medical evidence.

11. The counsel for the appellant has strongly contested the finding and the main submission was that there were contradictions and exaggerations. The argument also was that the defence has been deprived of the statement of the prosecutrix and they did not have the opportunity to nail the falsity of the case. It had been urged that it was necessary to examine the medical evidence with care since

there was delay in lodging the FIR and there were no allegations of rape even till the time the challan was filed.

12. Balwan Singh PW2 is the main witness for the prosecution. He had stated that his wife had gone to the outer side of the village to ease herself at 9:00 PM. He waited for half an hour and when she did not return, he took a torch and went out and could not find her till the Phirni and took his elder brother from his house and both of them went towards the Phirni and found foot prints and following the lead which took them to the fields. They found Satbir grappling with his wife. He stated that accused was raping her. The complainant raised alarm which caught attention of Ranbir, a resident of the same village. He stated that the accused wore his clothes and fled. He had found his wife naked. The salwar was down to the knees and there were scratch marks on her face. He stated that the accused had left his shoes behind. Balwan Singh PW2 admitted that Ranbir was related to him. He stated that he had not shown the place of occurrence to the Patwari or to the Draftsman. He stated that he had seen the accused from a distance of 5 paces and it was a dark night. According to him, the occurrence took place in the field of Dharampal and there was no electric connection in his fields. The complainant had denied the suggestions that his wife was in the habit of grappling with passerbys or that she had caused injuries to the accused or that the accused in order to save himself had inflicted injuries upon the prosecutrix.

Dr. Amrita Bhardwaj PW6 had medically examined the prosecutrix at 5:00 PM on 10.05.1999. The hymen was found to be old and ruptured. Medical Officer had referred the patient for psychiatric opinion as she was not talking properly and was unfit to make a statement. Her mental status was recorded to be disturbed.

Dr. Parveen Goel PW10 had examined the prosecutrix and had noted the following injuries:-

1. Contusion on the right cheek, circular in shape, 2.5 x 2.5 cm in diameter, violet in colour.
2. Laceration on the nose on the tip, irregular in shape, blood clot was present on the nose. X-ray skull was advised for this injury.
3. Contusion around the right eye, bluish discoloration was present.
4. Contusion on the left hand just below the shoulder joint on the anterior aspect bluish in colour.
5. Abrasion on the left index finger at base irregular in size.
6. Abrasion on the right foot on the lateral aspect of the ankle joint, irregular in shape.
7. Contusion on the left breast on the medial inferior quadrant, circular in shape, bluish discoloration was present.
8. Abrasion on the right thigh on the anterior aspect just below the groin, bluish in colour.
9. Blood stains present on the clothes on both the arm and around the neck area.

All the injuries were simple in nature. The medical Officer had also examined Satbir and had noted the following injuries:-

1. Contusion on the left side of cheek circular in size about 2 cm x 2 cm in diameter, bluish black in colour.
2. Lacerated wound on the lower lip on the left side, blood clot was present on the lower lip.

3. Laceration on the right hand on the palmer aspect on lateral side about 2.5 cm x 2.5 cm in size and circular in shape.
4. Abrasion on the right hand on the palmer aspect in the medial side, irregular in size, bluish black in colour.
5. Laceration on the left ring finger on the first digit size was 1 cm x 0.5 cm.
6. Abrasion on the neck and chest irregular in shape and size bluish in colour.

He stated that he had not examined the accused from the angle if he could perform sexual intercourse.

Sube Singh, Sarpanch was given as un-necessary.

ASI Rameshwar Dass PW12 deposed that he had received Ruka Ex.PL and he had gone to the hospital but the prosecutrix had been referred to General Hospital, Bhiwani and he came to General Hospital at Bhiwani and moved application Ex.PQ for recording the statement of the prosecutrix but the doctor gave an opinion Ex.PO that the prosecutrix was unable to make a statement. He stated that thereafter, he recorded the statement of Balwan Singh, husband of the prosecutrix.

Anil Kumar, Patwari PW13 had prepared the scaled site plan on the pointing out of Balwan Singh.

Ranbir Singh PW14 deposed that he was irrigating his fields when he heard some noise and went to the adjoining field of Satbir and saw the accused committing rape on the prosecutrix and on seeing him and others, the accused fled towards his house. He stated that apart from him, Hawa Singh and Balwan reached the spot and they found Ramrati in semi-conscious condition and she was bleeding profusely on

the face. In the cross-examination, he admitted that Dhair was married to Singh Ram and Gharsi, Raje Ram and Chugh Lal were born to her from the wedlock. He admitted that Gharsi was the father of Balwan Singh complainant whereas Satbir accused was son of Chugh Lal. He stated that no dispute regarding the passage was going on between him and Raje Ram and Chugh Lal on the other side. He admitted that Dharam Singh was real brother of Satbir and Chander Bhan was the real brother of Balwan. He denied the suggestions that he was seen in a compromising position with Bala by Dharam Singh or that the matter was reported to the police or that the matter was later compromised. He denied that the brother of the accused was a witness against him. He stated that there were three houses between his house and Balwan. He stated that he did not see the prosecutrix when he returned from the fields and did not visit her house and met her after 7 – 8 days of the incident at the hospital. He stated that when he heard the noise, he was at a distance of 30 - 35 paces and he had seen the accused from a distance of 5 paces. He admitted that it was the dark night but stated that Balwan was carrying a torch. Speaking about the mental condition of the prosecutrix, he stated that she was well but after the incident her mental condition had deteriorated. He denied that the prosecutrix had caused injuries to her mother-in-law two years ago or to Batehri wife of Manfool, a year prior to the incident.

The trial Court had ordered the medical examination of the prosecutrix by the Board. They had given their opinion Ex.PBB. The Board had observed that the patient was talking irrelevantly and was incoherent; she lacked insight and she was taking treatment from PGI, Rohtak for schizophrenia and was unable to depose in the Court.

The prosecutrix was brought to the witness box. To test her ability to make a statement, the Court had put some questions but had declared her to be incompetent to make a statement.

13. In the statement under Section 313 Cr.P.C., the accused pleaded false implication.

14. In defence, he had examined Sube Singh who was a former Sarpanch. He gave the names of the people who had been beaten by the prosecutrix. He stated that he on his own had made an inquiry and a Panchayat was convened and it was found that no incident had taken place.

15. The entire foundation to bring home the charges rested on the prosecution and they were to prove that it was a case of attempt of rape. It needs no elaboration that a conviction can be based even on the un-corroborated statement of the prosecutrix, if the same inspires confidence. In the present case, the prosecutrix was unable to depose on account of her mental condition. She was an old case of schizophrenia. The case of the prosecution rests solely on the testimony of the husband and Ranbir, a distant relative of the complainant.

16. Though in the revision filed at the instance of the complainant, an attempt was made to urge that it was a case of rape but the complainant side was unable to refer to any evidence which could prove that it was a case which would fall under Section 376 IPC. Both the witnesses, though at the trial did depose that they had found the accused raping the prosecutrix but that testimony was rejected by the trial Court and conviction had been recorded under Section 376/511 IPC.

17. When the evidence of PW1 and PW14 is tested, it is found that both the witnesses had completely changed their version and had given exaggerated account of the incident. There was a delay of over about 20 hours in reporting the matter to the police, therefore, the testimony of the witnesses has to be examined with utmost sensitivity and care. The Court was deprived of the statement of the prosecutrix for reasons given aforesaid and therefore, it becomes more difficult to find out the truth. We have to fall back on the medical evidence.

18. The prosecutrix was examined the next evening and Dr. Parveen Goel PW10 had found 9 injuries. The counsel appearing for the revisionist had urged that injury nos.7 and 8 was on the private parts and the salwar was found torn and it would be a case of attempt of rape. It had been urged that semen was detected in the vaginal swabs.

19. So far as the presence of semen is concerned, the prosecutrix was married, she was not taken directly to the

hospital. She was in the company of her husband that night and had gone to the hospital the next evening and therefore, the presence of the semen alone was not enough. No further tests were carried. The accused was not medically examined to test his ability to perform the sexual act. The reasons are obvious as no allegations of rape were leveled when the matter was reported to the police. It was later that the version had changed.

20. The injuries were not around the vagina. Injury no.8 was on the right thigh just below the groin. The counsel for the appellant has referred to the shape of the contusion on the cheek and had referred to injury no.7. He had urged that the injury was circular in shape. A perusal of the MLR reveals that there was contusion on the right cheek which was circular in shape. Similarly, the injuries which were found on the accused i.e. on left side of his cheek was also circular in shape. Counsel for the appellant has urged that the prosecutrix was in the habit of attacking people and it could be that in order to ward off the attack, the accused had beaten.

21. Schizophrenia does not develop in hours or in a day or a week. Ranbir's statement is thus to be rejected. He had stated that the victim was not mad before the incident. The prosecutrix was not in a condition to make a statement even after 24 hours of the incident. The Medical Board had given its opinion that she was an old patient of schizophrenia.

22. In the first statement of the complainant, he had disclosed that his wife was "Kuch Bholi Hai", meaning thereby that she lacked the ability to understand. The question would be if that was the case, why would the husband allow the wife to leave home at 9 o'clock all alone. The prosecutrix had crossed the Phirni. It was after about 45 minutes that the husband went out and took his brother Hawa Singh along. Hawa Singh was not examined by the prosecution. The reasons are obvious, he would not have supported the complainant or was not able to face the questions that would have been thrown at him. The words used by the complainant were that he had found the accused clinging and grappling with his wife. He had mentioned that "she had been given fist blows and had been beaten and the salwar was open". It is at the later stage that the salwar presented to the medical officer was said to be torn. There was a delay of almost 20 hours in reporting the incident. It appears that it is with great deliberation that the matter was reported. Obviously a lot of thinking would have gone into and how the matter should be presented to the police. There is no explanation at all from the side of the complainant as to why he did not go to the police the same night or even the next morning.

23. Commission of an offence under Section 376 read with Section 511 IPC certainly requires some evidence with regard to the acts committed by the accused to establish the ingredients of the offence. I find that those are lacking in this

case. The complainant side had lot of things to hide and the statements made by the complainant and so called eye witness does not inspire confidence. The charge under Section 376/511 IPC could not be proved. It is, however, proved that an incident did take place in which the accused was involved and he had suffered injuries. The law does not expect the accused to speak. The entire burden is upon the prosecution and they have to lead evidence which should be consistent and convincing.

24. The presence of Ranbir PW14 appears to be doubtful. No person from the nearby field had arrived on the spot. Had they been there, the accused could not have escaped. The Medical Officers had found injuries on the body of the prosecutrix. There were injuries also upon the accused, therefore, the version which was given to the police at the first moment was the correct one. It could be that the prosecutrix had left the house without anyone coming to know of it and therefore, had travelled far. There were bite marks on the body of the prosecutrix. There were bite marks also on the body of the accused which lends support to the first version that the accused was found grappling. The case would fall under Section 354 and 323 IPC. The order passed by the trial Court requires modification. The appellant is convicted under Section 354 and 323 IPC.

25. The appellant had prayed for a lenient view as the incident was 16 years old. The custody certificate shows that

the petitioner had remained in custody for 1 year, 4 months and 21 days. The incident is of 1999. I feel that the interest of justice would be met if the sentence is reduced to the period already undergone. It is ordered accordingly.

The appeal filed by Satbir is partly allowed. The revision is dismissed. Lower Court record be remitted.

**(ANITA CHAUDHRY)
JUDGE**

July 22, 2015
sunil