

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-175-B of 2003

Date of Decision:21.1.2015

Deepak Kumar

---Appellant

versus

State of Punjab

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Pardeep Rajput, Advocate
for the appellant**

**Mr. Ankur Jain,AAG, Punjab
for the respondent-State**

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

REKHA MITTAL, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 23.12.2002 whereby the appellant has been convicted and sentenced for commission of offence punishable under Sections 376, 342 of the Indian Penal Code (in short “IPC”) in respect of Sessions case No. 103 of 2002 pertaining to FIR No. 104/2000 registered at Police Station, Sadar Amritsar, extracted hereinbelow:-

<i>Under Section 376 IPC</i>	<i>To undergo rigorous imprisonment for seven years and to pay fine of Rs. 1000/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.</i>
<i>Under Section 342 IPC</i>	<i>To undergo rigorous imprisonment for six months and to pay fine of Rs. 200/-. In default of payment of fine, to further undergo rigorous imprisonment for one month.</i>

The facts noticed from the judgment of the trial court are that on 18.4.2000 at about 1-00 p.m., the prosecutrix (name kept secret) alongwith her sister was present in her house and her parents were away. Deepak Kumar accused residing nearby her house came and told her that she is being called by his mother. She went to his house along with him where his mother was not present. Three other boys namely Rajiv Kumar @ Sonu, Rakesh Kumar son of Balwinder Singh and Harinder Singh @ Banti were present there. On asking by the prosecutrix, Deepak Kumar told that his mother was in the back room. The prosecutrix did not find mother of Deepak Kumar there. However, a double bed was lying in the room. Deepak Kumar pushed and threw her on the bed. Harinder Singh @ Banti caught her from her arms and Rajive Kumar @ Sonu bolted the door from inside. Deepak Kumar asked Rakesh Kumar to stand guard on the gate of the house so that no one could come in. Deepak Kumar forcibly opened string of her *salwar*, removed his pajama and thereafter committed rape upon her against her wishes. She raised noise but nobody heard her rescue calls. Sonu went away after opening the door saying that his mother was calling him. In the meanwhile, Seema her sister arrived there and at that time, she was weeping. All the accused committed rape upon her forcibly against her wishes. She went alongwith her sister to her house. She

narrated the story to her mother in presence of Seema. They did not approach anyone due to fear as the accused were giving threats.

On 23.4.2000, the prosecutrix along with her mother got recorded her statement Ex. PA on the basis whereof, FIR Ex. PA/2 was recorded. Site plan Ex. PC of the place of occurrence was prepared. The prosecutrix was got medico legally examined, statements of the witnesses were recorded; accused were arrested and on completion of investigation, challan was presented in the Court.

The accused were charged for committing offence punishable under Sections 376(g), 342 IPC to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as 06 witnesses namely, Dr. Jaswinder Kuar PW1, the prosecutrix PW2, Constable Harpal Singh PW3, Dr. Arvinderjit Singh PW4, Seema PW5 and SI Randhir Singh PW6.

Statements of the accused under Section 313 of the Code of Criminal Procedure (in short "Cr.P.C.") were recorded and they denied incriminating circumstances appearing in evidence against them and pleaded their false implication on account of ill will as mother of the prosecutrix had dispute with her husband and family of Deepak Kumar was helping father of the prosecutrix. Vipan Kumar DW1 was examined in defence. They also tendered into evidence documents Ex. DA to DC.

The learned trial court, on appreciation of evidence adduced by the parties and rival submissions made by their respective counsels, held Deepak Kumar guilty of committing offence punishable under Sections 376,

342 IPC whereas co-accused namely, Rakesh Sodhi @ Rajbir Singh was acquitted of the offence.

To express his grievance against judgment of the trial court, the appeal was preferred by Deepak Kumar in the year 2003 which has now matured for hearing.

Counsel for the appellant argues that the learned trial court seriously erred in holding him guilty of the offence. He has assailed the prosecution case and judgment of the learned trial court on few counts.

The first submission made by counsel is that neither any injury was found on person of the prosecutrix nor any sperms were noticed by the chemical examiner during analysis of swabs taken from private parts of the victim. Neither clothes of the prosecutrix nor the bed sheet were taken into possession or sent for analysis.

Another submission made by counsel is that father of the prosecutrix filed a civil suit against his wife wherein he alleged that the defendant has been playing in the hands of some other persons who are indulging in blackmailing residents of Amritsar city by wrongly involving them in rape cases by bringing ahead daughters of the defendant. The plaintiff has tried to stop the defendant and his daughters for committing the aforesaid illegal activities but she refused to listen to the plaintiff as she has become habitual of leading an immoral life. Counsel would submit that there are differences between parents of the prosecutrix and as family of the appellant had been helping her father being good neighbours, the appellant has been falsely indicted in the crime.

It is argued that statement of Vipin Kumar DW1 corroborates

version of the accused that a false case has been registered against him as a measure of vengeance and exploitation. In addition, it is submitted that the learned trial court acquitted co-accused Rakesh Sodhi @ Rajbir Singh by holding that possibility of false implication is not ruled out, therefore, once the court has entertained version of the prosecutrix with doubt, the same cannot be relied upon to record conviction of the appellant.

Counsel for the State has supported the judgment with the submissions that there is nothing on record to suggest that the prosecutrix or her mother is leading an immoral life much less any other case has been got registered by them with allegations of subjecting them to sexual assault. As father of the prosecutrix wanted to escape his liability to provide maintenance to his wife and other family members, he filed a false suit for restraining the defendant from alienating the property subject matter of the suit wherein he had gone to the extent of assassinating character of his wife and daughters. The testimony of Vipin Kumar is no rebuttal to the statement of the prosecutrix who has reiterated her version given to the police and the defence counsel failed to challenge her veracity or shake her credibility.

I have heard counsel for the parties and perused the records.

Before dealing with rival submissions made by counsel for the parties, it is appropriate to recount that rape leaves a permanent scar and has a serious psychological impact on the victim and her family members, therefore, no one would normally concoct a story of rape just to falsely implicate a person. In Indian societal set up, a girl or a woman would not make an allegation of rape as she is fully aware of repercussions flowing

therefrom. For an unmarried girl, it would be difficult to find a suitable groom. Equally true is that testimony of prosecutrix stands at par with that of an injured victim. It is really not necessary to insist for corroboration if evidence of the prosecutrix inspires confidence and appears to be credible. In this context, reference can be made to judgment of the Hon'ble Supreme court of India ***Rameshwar vs. State of Rajasthan AIR 1952 SC 54***. The relevant observations in the judgment are quoted thus:-

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge....”

Counsel for the appellant has not pointed out any contradiction, discrepancy or flaw much less a serious one in testimony of the prosecutrix and she has successfully withstood test of cross examination at the hands of an experienced lawyer. Non-presence of injury on person of the victim or non-availability of sperms on swabs taken by the doctor for analysis is neither an evidence of consent nor can be taken as a circumstance to falsify statement of the victim that she was subject to rape. The occurrence in question took place on 18.4.2000 but statement was recorded by the prosecutrix on 23.4.2000 and she was medico legally examined on 24.4.2000. The prosecutrix in her testimony has deposed that she sustained injuries on her cheeks on account of biting by the accused and marks on her arms due to violence. She further deposed that she did not show injuries suffered on her face and other parts to the doctor when she was medically

examined. However, Dr. Jaswinder Kaur PW1 had noticed an abrasion (linear) 3 cm in length on right side of neck with scab formation. As the victim was medically examined 06 days after the occurrence, there is nothing unnatural that the doctor did not notice any injury on her arms and cheeks. This apart, it is not plea of the accused that the prosecutrix was a consenting party to the rape. The non-presence of injuries otherwise loses its relevance as soon as version of the accused that he has been falsely implicated gets falsified and belied.

The appellant has exhibited in evidence copy of the plaint of civil suit instituted by father of the victim against his wife. In the said suit, Balkishan plaintiff prayed for grant of injunction restraining the defendant from selling or alienating half share from the property measuring 54 square yards. He has levelled serious allegations against his wife and daughters including the prosecutrix by alleging that his wife is a lady of loose character and dragging her daughters in the business of prostitution. Nothing has been proved on record as to what was the fate of that suit which was instituted by Balkishan few months after the alleged occurrence in April 2000. Even otherwise, no such fact has been elicited during cross examination of the prosecutrix that she or her sister or mother has launched any prosecution against any person in respect of attacking their honour and dignity much less sexual assault. Vipin Kumar, one of the residents of the locality was examined by the accused. It has nowhere been stated by the witness that Janak Rani or her daughters are indulging in any such illegal activities. He simply stated that relations of Janak Rani, mother of the prosecutrix were not cordial with her husband. In this view of the matter,

the appellant cannot seek any aid to his contention from the allegations set up by Balkishan in the civil suit. Balkishan had not been examined in the case to state as to on what basis he levelled such serious allegations against his wife and daughters. The prosecutrix was not confronted with the contents of the said suit to know her side of the story as to the circumstances under which her father could go to the extent of assassinating the character of his wife as well as daughters.

The appellant has tried to draw some mileage from the statement of Vipin Kumar DW1 to substantiate his plea that he has been falsely indicted in the crime. Vipin Kumar has claimed himself to be president of the locality but did not produce any document in support of the said plea. He even did not know who resides adjoining to the house of Janak Rani on left or right side. He was not aware of house number of Janak Rani. He did not approach any authority to express grievance in regard to false implication of the accused. The testimony of Vipin Kumar, by no stretch of imagination, can be used to advantage of the accused to record a finding that he has been falsely indicted in the crime. This apart, none of the members of family of Deepak Kumar had appeared to state on oath as to how they were helping Balkishan which could be the reason for Janak Rani or her daughters to nourish such a serious grievance against them and hence levelling allegations of rape against Deepak Kumar by putting honour and dignity of a young unmarried girl at stake. The contention of the appellant in regard to false implication is misconceived and merits rejection.

Counsel for the appellant has made a half hearted attempt to draw some benefit from the factum of co-accused being acquitted by the

trial court by holding that possibility of false implication is not ruled out. As neither the State has preferred appeal against acquittal of the co-accused nor the victim has filed a revision, it is not desirable to examine correctness and legality of the findings of the trial court holding in favour of the co-accused who admittedly is not indicted for committing rape upon the prosecutrix. The appellant, thus, cannot be allowed any benefit of acquittal of his co-accused particularly in view of the fact that the prosecution has successfully proved his culpability beyond the shadow of reasonable doubt.

The learned trial court has awarded sentence of rigorous imprisonment for a period of 07 years for committing offence of rape punishable under Section 376 IPC. The sentence awarded by the court is the minimum prescribed under Section 376 IPC, therefore, does not warrant intervention.

For the reasons aforesaid, the appeal filed by the appellant fails and is accordingly dismissed. The judgment of conviction and order of sentence passed by the trial court are affirmed. The appellant, if on bail, be taken into custody to suffer the remaining sentence.

(REKHA MITTAL)
JUDGE

21.1.2005
PARAMJIT