

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

CRA No.S-33-SB-2004 (O&M)
Date of decision:8th January, 2016

Raj Kumar @ Kalu

...Appellant

Versus

State of Haryana

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

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

Present: Mr. Gorakh Nath, Advocate for the appellant.

Mr. Anil Mehta, AAG, Haryana.

P.B. Bajanthri, J.

The appellant and Abhey Singh were prosecuted under Section 376/354 IPC in FIR No.71 dated 19.03.2002, Police Station Civil Lines, Bhiwani by the Judicial Magistrate Ist Class, Bhiwani, on 31.07.2002 committed to Sessions Court for trial. Abhey Singh was acquitted from the charge under Section 376 IPC. Appellant was convicted and sentenced to rigorous imprisonment for a period of 7 years and also directed to pay fine of Rs.400 for the offence punishable under Section 376 IPC in default of payment of fine the convict shall further undergo simple imprisonment for a period of 4 months on 31.10.2003 by the Additional Sessions Judge (Fast

Track Court), Bhiwani.

2. The appellant aggrieved by the judgment dated 31.10.2003, presented this appeal. Brief prosecution story is that on 18.03.2002 a medical rukka along with MLR of Suman daughter of Raghbir was received from General Hospital, Bhiwani. On receiving the medical rukka, ASI Miya Singh reached General Hospital Bhiwani for recording the statement of Suman daughter of Raghbir. He sought opinion of the doctor as to whether Suman was fit to make the statement. The doctor opined Suman unfit to make the statement. On 19.03.2002, SI Sher Singh again went to General Hospital, Bhiwani for recording the statement of Suman and obtained opinion of the doctor. The doctor opined her fit to make the statement. SI Sher Singh moved an application for seeking permission to record the statement under Section 164 Cr.P.C. of Suman, upon which the statement under Section 164 Cr.P.C. was recorded by Mrs. Shalini Singh, learned Chief Judicial Magistrate, Bhiwani. In her statement, Suman has stated that few days back Kalu son of Karan Singh, who was related to her as maternal uncle, had forcibly taken her away and had committed sexual intercourse with her. The matter was compromised. Kalu had come to her house 3/4 times for kidnapping her. On Sunday, she along with her sister was going to serve water to their cattle. Kalu caught hold of her by her hand. Sunita, her sister ran away. Kalu fell her down. One cyclist rescued her. On that day, her father was not at home. Feeling embarrassed and ashamed, she consumed insecticide. Kalu had also committed rape upon her 10/12 days ago. One more person who was Saini by caste was also with him. He had also consumed liquor and committed sexual intercourse with her.

Statements of witnesses were recorded. Rukka was sent to the police Station on the basis of which, formal FIR was registered. Further investigation was then carried out. The accused were arrested. After completion of necessary investigations, the challan was put up in the Court of Illaqa Magistrate, who after resorting to necessary formalities regarding supply of copies etc. committed to the court of Sessions for trial of the accused under Sections 376/354 IPC vide commitment order dated 31.07.2002. Appellant and another were charge sheeted under Section 376 IPC on 03.10.2002. The accused did not plead guilty to the charge and claimed trial.

3. The prosecution in support of the case, examined prosecutrix as PW1, Raghbir -PW2, Constable Hazari Lal as PW3, Lady Constable Neelam as PW4, Rajbir Singh, Head Teacher as PW5, Kanwarpal Draftsman as PW6, Constable Rajinder Singh as PW7, Smt. Guddi as PW8, HC Ram Kumar as PW9, HC Jagmal Singh as PW10, EHC Ravinder Kumar as PW11, Dr. Suman Bhaskar as PW12, Dr. K.K.Girdhar as PW13, Dr. M.K.Garg as PW14, Dr. N.K.Chaudhary as PW15, Dr. Dara Singh as PW16, Mrs. Shalini Singh, learned CJM Bhiwani as PW17, Dr. M.K.Goel as PW18, Inspector Sheetaj Singh as PW19, SI Sube Singh as PW20, ASI Maha Singh as PW21, SI Sher Singh as PW22, Sunita as PW23 and Constable Ram Singh as PW24 in oral evidence.

4. The prosecution relied on documentary evidence Ex.PA to Ex.PGG. Statement of accused under Section 313 were recorded wherein all the material evidence was put forth to them but they have denied all the allegations levelled against them. The appellant in defence have examined DW1-Ratiram and DW2-Santosh Rani. The trial Court considered the

following points:-

- i) Whether on 06/08.03.2002 in the area of Bhiwani the accused Raj Kumar had committed rape upon Suman daughter of Raghbir and thereby has committed an offence punishable under Section 376 IPC?
- ii) Whether on the same date, time and place, accused Abhey Singh also committed rape upon Suman daughter of Raghbir and thereby has committed an offence punishable under Section 376 IPC?
- iii) Whether both the accused are liable to be convicted under Section 376 IPC?

5. Prosecution has examined 24 witnesses including PW1-Prosecutrix. The relevant witnesses in support of prosecution are that PW1-Prosecutrix, PW13-Dr. K.K.Girdhar who had medico-legally examined appellant and the MLR has been proved as Ex.PR and material evidence proved as Ex.PS. Similarly, PW14-Dr. N.K.Garg examined Abhey Singh as Ex.P5 and material evidence as Ex.P6. PW15-Dr. N.K.Chaudhary has examined prosecutrix on 19.03.2002. He has given opinion that prosecutrix is fit to give her statement. Accordingly, her statement was recorded. PW16-Dr. Dara Singh examined the prosecutrix on 18.03.2002. MLR has been proved as Ex.PU. He has also stated in his report that she was in semi conscious of conditions and smell of phenyle with insecticides with kerosene oil was coming out from her mouth. PW17-Mrs. Shalini Singh, Chief Judicial Magistrate, Bhiwani has recorded statement of prosecutrix under Section 164 Cr.P.C. on an application moved by Sub-Inspector Sher Singh.

PW18-Mr. M.K.Garg, Assistant Director, FSL, Madhuwan had tendered a report as Ex.PP. The aforesaid material evidence as well as statement made by them against the appellant has been taken into consideration along with other evidences including DW1 and DW2 for want of circumstantial evidence Abhey Singh has been acquitted. One of the main reason assigned is that prosecutrix did not identify Abhey Singh. However, she has identified the appellant. Thus, the trial court convicted the appellant.

6. Learned counsel for the appellant contended that the prosecution had failed to lead weighty, cogent, convincing and reliable evidence in order to prove the charges against the appellant beyond the shadow of a reasonable doubt. There is an inordinate and unexplained delay in lodging the FIR with the police. The appellant and co-accused were falsely implicated and the trial Court has acquitted Abhey Singh-co-accused whereas, the appellant has been convicted in the absence of evidence. It was also contended that prosecution has failed to establish that the prosecutrix was aged less than 16 years at the time of the alleged incident. No other point was argued.

7. On the other hand, learned State counsel vehemently contended that the appellant repeatedly raped the prosecutrix on different dates. The prosecutrix was hesitated to give complaint or disclose the conduct of the appellant to her parents. Thereafter, when the facts were known to their parents, the matter was compromised and thereafter, when the appellant and another repeatedly raped the prosecutrix, the prosecutrix unable to bear the mental agony, tried to commit suicide by consuming insecticides. The appellant raped prosecutrix on number of occasions and made her an attempt

to commit suicide. The same has been proved by prosecution by leading both oral and documentary evidences.

8. Heard learned counsel for the parties.

9. Learned counsel for the appellant has not pointed out any error in the trial Court judgment. The contentions are all very vague which are not appreciable. The one and only point that can be looked into is regarding inordinate and unexplained delay in filing FIR. Having regard to the dates and events it is evident that the appellant committed rape on the prosecutrix more than one time on different dates. Consequently, the prosecutrix was unable to bear the mental agony. She had taken extreme step of committing suicide by taking insecticides and the medical reports as well as evidence adduced by the author of the medical reports are sufficient to hold that there is no delay in filing FIR. Learned counsel for the appellant has not pointed out any discrepancy in the evidence adduced by the witnesses. Therefore, the prosecution has proved the charge against the appellant. The Appellant has not made out case so as to interfere with trial court judgment.

10. The Supreme Court in the case of ***Prahalad versus State of Haryana*** reported in (2015)8SCC 688 has upheld as follows:-

“17. It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Everyone in any civilised society has to show respect for the other individual and no individual has any right to invade on physical frame of another in any manner. It is not only an offence but such an act creates a scar in the marrows of the mind of the victim. Anyone who indulges in a

crime of such nature not only does he violate the penal provision of the [IPC](#) but also right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment. The Constitution of India, an organic document, confers rights. It does not condescend or confer any allowance or grant. It recognises rights and the rights are strongly entrenched in the constitutional framework, its ethos and philosophy, subject to certain limitations. Dignity of every citizen flows from the fundamental precepts of the equality clause engrafted under Articles 14 and right to life under [Article 21](#) of the Constitution, for they are the “fons juris” of our Constitution. The said rights are constitutionally secured.

11. In the case of ***Vasant Sampat Dupare Versus State of Maharashtra*** reported in SLP (Crl.) No.330-331 of 2013, the Supreme Court has held that:-

“In the said case, while describing the rape on an eight year old girl, the Court observed:

“Almost for the last three decades, this court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that “child is a gift of the providence” enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience,

an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers.”

13. In view of the constitutional right of a girl prosecutrix is entitled for victim compensation. The legal service authorities are directed to give compensation of Rs.1 Lac to the victim within a period of 6 months from today.

14. The accused/appellant is on bail, therefore, bail bond stand cancelled. He shall surrender within 30 days from the date of this judgment before the CJM, Bhiwani, failing which CJM, Bhiwani shall take coercive steps to secure his presence and send him to jail to undergo the remaining sentence.

Dismissed.

08-01-2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**