

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

CRA-S-2874-SB-2010 (O&M)
Date of Decision: 19.02.2016

Kari Lal Dass

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. 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? Yes/No

Present: Mr. HPS Ishar Singh, Advocate
for the appellant.

Ms. Mahima Yashpal, A.A.G., Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellant herein was tried by the Additional Sessions Judge, Panchkula and was sentenced to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.2,000/- for commission of offence under Section 376(2)(f) IPC. In default of payment of fine he was to further undergo rigorous imprisonment for a period of 1 year.

2. In this unfortunate incident on 08.02.2010, the police while on patrol duty in Sector 25, Panchkula received information that two year old girl had been raped. The police reached the spot and recorded the statement of Ram Balak. The complainant had disclosed that Kari Lal Dass accused was residing near his hut and he used to come to his hut to play with his daughter and on that day, his wife had gone to fetch

water from a nearby well and he was sitting outside his hut when Kari Lal took his daughter in his lap as usual and went away. The complainant heard the cries of his daughter and when he reached there, he saw that his daughter was bleeding. The accused then fled from the spot. The complainant raised alarm and the neighbours caught him.

3. On the basis of this complaint, the FIR was registered. Investigations were carried out and challan was presented.

4. During trial, the prosecution examined 15 witnesses. The accused denied the incriminating evidence and claimed himself to be innocent but failed to lead any evidence. On appreciation of the material available on record both oral and documentary and on hearing both the sides, the Additional Sessions Judge found the accused guilty of rape under Section 376(2)(g) IPC and accordingly, convicted him to the sentence mentioned here-in-before.

5. Being aggrieved of the impugned conviction and sentence, the accused/appellant has preferred this appeal.

6. Assailing the judgment, the counsel for the appellant preferably referred to the statement made by complainant Ram Balak - PW2 and had urged that he did not witness the incident and he had only heard the cries and he had found the daughter in the hut of Rajni. It was urged that blood was found on the frock as disclosed by PW3 and semen was not detected and had there been a case of rape, there would have been injuries on the child. It was urged that it was Rajni who was trans-gender

who had violated the child and not the appellant. It was urged that for the act to be completed, there should have been penetration and at the most the case would fall under Section 354 IPC or Section 376/511 IPC. It was urged that the appellant was in custody for the last 6 years and 9 days and after remission, his total custody would over nine and a half years. Reliance was placed upon ***Bapu Dasu Ujgare Vs. State of Maharashtra 2011(1) Mh.LJ (Crl.) 408 and Md. Jamiruddin Ahmed Vs. State of Assam 2007(56) AIC 766.***

7. The submission on the other hand was that no doubt the complainant had not witnessed the occurrence but he was a witness to the fact that Kari Lal took the child from his hut as usual and on hearing her cries he had gone to get his daughter when he saw Kari Lal running away and the statement of the complainant gets support from the statement made by Rajni – PW3 and the medical evidence nails the accused. It was contended that the accused had been drinking and he was arrested the same day and the Medical Officer had found that he had consumed alcohol. It was urged that the hymen was torn and there was a tear of 2.5 cm which extended from the hymen to the posterior forchette and the child was bleeding and that was enough to record his conviction.

8. The victim in the present case was a child of two years. Kari Lal accused and the complainant used to live in the huts close by. Kari Lal was known to the complainant and there is no dispute about the identity. The complainant had deposed that Kari Lal had taken his daughter from his hut and after

some time he heard the cries and found his daughter bleeding and he also saw Kari Lal running away. Much had been said with respect to the statement made by Ram Balak – PW2 when he had stated that the complainant had found his daughter in the house of Rajni but is hardly relevant.

9. The main witnesses are the complainant who had deposed that Kari Lal had taken his daughter. Rajni – PW3 had stated that Kari Lal came to the compound and started playing with the girl and then lifted her and took her away and then she heard the cries of the child and then she went to the hut and found her covered with blood and Kari Lal fled from the spot and she took a lathi and ran after him and the accused was caught from Surajpur and he was handed over to the police. It was also stated that the accused was trying to wipe out the blood from the body of the child. Bindu – PW4, mother of the child had gone to fetch water. She had stated that Kari Lal used to stay close by and frequently used to visit their hut and used to play with her daughter and when she returned Ram Balak informed her that accused had raped her and fled on seeing her condition. She stated that the neighbours ran after him and Kari Lal was caught and was brought back and handed over to the police.

10. The medical evidence was thoroughly dealt with by the trial Court. The Medical Officer had noted a tear of 2.5 cm in size. He had also noted blood on the clothes of the victim. The accused was also medically examined. The Medical Officer had noted the injuries. These injuries were given by the

neighbourers. There was no explanation by the accused as to how he had received the injuries. There is no denial that the accused was caught on the same day and was handed over to the police and the trial Court had examined the evidence and had recorded the finding of conviction, which in my view was correct. The medical evidence also supported the version put forward by the prosecution. The finding is affirmed. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

19.02.2016
sunil