

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-51-SB-2013 (O&M)
Date of Decision: 27.07.2016

Raj Kumar

...Appellant(s)

Versus**State of Punjab**

...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: Ms. Punita Sethi, Advocate
for the appellant.

Mr. K.S. Aulakh, AAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

The appellant was convicted in FIR No.17 dated 18.02.2011 registered at Police Station Bhogpur, Jalandhar for raping a deaf & dumb girl. The Fast Track Court, Jalandhar convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of 10 years along with fine of Rs.25,000/- for commission of offence under Section 376 IPC. In default of payment of fine he was to further undergo rigorous imprisonment for another year.

The unfortunate incident took place on 16.02.2011. The mother had gone to purchase goods in the market. The husband a fruit vendor left home in the morning. The prosecutrix was alone at home. The parents returned home around 3:00 PM and found the appellant quickly wearing his trouser and rushing out of their house. When the parents entered the room they found their daughter lying on the bed weeping. Her salwar was open and she was bleeding. The mother

helped the child to wear her clothes. The incident was reported on 18.02.2011 and the medical was done.

Challan was presented and charge was framed under Section 376 IPC. The accused pleaded not guilty and claimed trial. The prosecution examined both the parents and the victim. The Presiding Officer recorded the statement of the victim after ascertaining as to whether she could understand the gestures and signs and was able to respond. Besides them the prosecution examined the Medical Officer and the police officials.

In his defence, the accused pleaded his innocence and stated that he has been falsely implicated and examined two witnesses. The trial Court accepted the statement of the prosecutrix and the father and recorded his conviction as mentioned above.

I have heard the counsels of both the sides.

Counsel for the appellant contends that the incident was reported after two days and the mother had not supported the prosecution at the trial and the Sessions Judge has failed to take the help of a interpreter to record the statement of the deaf & dumb child. It was urged that an amendment had been made in the Evidence Act in 2013 and the requirement is that if the witness is unable to communicate verbally then the Court shall take the assistance of a interpreter or a special dictator in recording the statement and the statement has to be videographed. It was urged that the trial Court failed to comply with the provisions contained in the Evidence Act. It was urged that the false case had been registered as there was a dispute and a sum of Rs.30,000/- had been lent to the complainant by the accused and when

he asked for his money back he refused and threatened to lodge a false case and two witnesses had supported him. It was urged that the accused was a married man with children and could not do such act.

The State counsel supported the judgment of the trial Court and urged that the accused had raped a deaf & dumb girl after entering their house when the parents were away and the medical evidence also supports the prosecution. It was urged that the complaint was given on 17.02.2011 but the FIR was registered the next day.

Dinesh Kumar – PW1, father of the victim disclosed that he was earlier married to Guddi and had three daughters. The victim was born to him from the first marriage. After the death of his wife in 1997 he married Umrawati. He stated that his daughter was deaf & dumb or may be hard of hearing and she was like this since birth. He stated that two of his daughters were away to school and the victim was alone at home and the wife had gone to the market and they returned around 2:30 PM. He stated that they were living on the first floor and on the ground floor there is a shop and the shutter was open to the height of two feet and he lifted the shutter to get inside and saw Raj Kumar running hurriedly from the shop and when he asked as to why he had come to his house he replied that he had come to get the pump and when he reached his room he saw his daughter in bad shape and was bleeding and his wife helped the daughter to put her clothes on. He stated that his daughter had completed 13 years and he had handed over the transfer certificate Mark-A to the police which was taken into possession vide recovery memo Ex.PA. A suggestion was given to Dinesh that he was having a old dispute with the accused which was

denied. No suggestion was given to him that he had taken any amount from the accused.

Umrawati – PW5 the second wife of Dinesh did not support the prosecution at the trial. She stated that the girl was mentally retarded and she was deaf & dumb from birth and was unable to understand anything and she used to look after her. She stated that she did not know the accused nor he had done any bad act with her daughter.

The victim – PW6 by way of gestures had explained the manner in which the incident had occurred.

Dr. Sarika Duggal – PW2 had noted the following :-

“Age of monarchy 13 years. Menstrual formula four 4 to 5/28 +- 7 days. Secondary sexual characters were well developed. Her LMP was 14th February 2011. On examination no external marks of injuries were found on external genitalia (labia majora labia minora valva) urethra, pariurethral area, perennial area, inner sides of thighs, perineum. No external mark of injury around mouth and cheeks, front of neck, breasts, arms and legs, whole body.

On digital examination of vagina, hymen was found to be ruptured with irregular margins, red and tender, no bleeding was present. Vagina admitted one finger, tight introits, no vaginal tear present, uterus normal size. ”

The Medical Officer after going through the Chemical Examiner Ex.P-5 deposed that spermatozoa was detected and therefore, sexual intercourse had taken place.

The father had seen the accused running out of his house. When the parents entered, they found their daughter bleeding. The salwar was open and the child was weeping. The transfer certificate available on record shows that the girl had gone to school up to the 3rd Class. The age of the child is not in dispute. The police had also got the radiological and dental opinion for age verification. The report is Ex.P4, according to which the age was between 14 to 15 years. The date of birth shown in the transfer certificate is 27.10.1997, according to which the girl was a little over 13 years.

The accused had taken the defence that the complainant had taken a sum of Rs.30,000/- and when he asked for his money back, the complainant had threatened him. This defence was not put to the complainant. It appears to be an afterthought and was rightly rejected by the Court below.

So far as the submission regarding the procedure adopted by the Court is concerned, the amendment in Section 119 of the Evidence Act was made in 2013. The statement of the prosecutrix was recorded in 2012, therefore, the argument has to be rejected.

The victim is deaf & dumb and not mentally retarded. The trial Judge after putting questions to the witness had concluded that she was a capable witness. A person who has sufficient capacity to testify can be examined if the witness is competent to testify. The father is a witness to the horrible incident. He had seen the accused running away from the room. The medical evidence supports the prosecution. The evidence discussed above when tested on the probability factor clearly proves that the victim was subjected to sexual assault by the accused

and accused had committed the offence of rape. The judgment of the trial Court is not visited with any illegality.

In the result, the appeal fails and is dismissed.

(ANITA CHAUDHRY)
JUDGE

27.07.2016
sunil

Whether speaking/reasoned : Yes

Whether reportable : Yes