

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

**Crl. Appeal No. S-444-SB of 2003
Date of decision : 15.07.2016**

Balwinder Thakur @ Sonu

... Appellant

versus

State of Punjab

... Respondent

with

Crl. Appeal No. S-500-SB of 2003

Parshant Pathak @ Micky

... Appellant

versus

State of Punjab

... Respondent

and

Crl. Appeal No. S-529-SB of 2003

Raj Kumar

.... Appellant

versus

State of Punjab

... Respondent

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. Rahul Sharma, Advocate
for appellant Balwinder Thakur @ Sonu.**

**Mr. Karan Pathak, Advocate
for appellant Parshant Pathak @ Micky**

**Ms. Aditi Girdhar, Advocate-amicus curiae
for appellant Raj Kumar.**

**Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

The appellants have preferred the aforesaid appeals against the

judgment dated 24.02.2003 passed by Addl. Sessions Judge, Hoshiapur vide which they were held guilty under Section 366 IPC and sentenced to undergo rigorous imprisonment for seven years. Each of them was directed to pay a fine of Rs.5000/-. In default of payment of fine, they were required to further undergo further rigorous imprisonment for three months. Their co-accused Rajinder Kumar (since deceased) was also convicted under Sections 376 and 366 IPC.

The facts leading to the institution of present appeal are being noticed first.

On 02.09.2001 prosecutrix got her statement Ex.PA/1 recorded. She was born on 17.11.1977 and used to do household work. On 04.08.2001, she had gone to village Purhiran where her elder sister was married. At about 3:30 p.m. she was standing at Phuglana bye-pass when a maruti van driven by a Sikh stopped. Rajinder Kumar, Balwinder Thakur and one Micky alighted therefrom. Rajinder Kumar pointed a pistol like object at her. When she screamed, Balwinder Thakur and Micky tied her mouth with a cloth and threw her in the car. She could identify the driver if brought before her. She further alleged that she was forcibly taken to a room in Chandigarh for the purpose of marrying her with Rajinder Kumar against her wishes. It was disclosed that Rajinder was already married and had four children. After leaving her and Rajinder Kumar there, the other three went away. Some ceremonies were performed by Bhajno and Dharampal, the parents of Rajinder Kumar who had also came there. Rajinder Kumar committed rape with her. She managed to escape and narrated the incident to her mother and sister and reported the matter to the police.

On the basis of aforesaid statement, FIR was registered at

Police Station, Mehtiana, District Hoshiarpur. Statement of prosecutrix under Section 164 Cr.P.C. was recorded. Her medical examination was done. Identity of driver of van was revealed as Raj Kumar and the person referred as Micky was Parshant Pathak. Accused were arrested. The investigating agency filed challan against Balwinder Thakur @ Sonu, Rajinder, Dharam Pal, Harbhajan Kaur, Parshant Pathak @ Micky and Rajinder.

Charge under Sections 366 and 368 IPC was framed against all the accused, while accused Balwinder Thakur, Rajinder Kumar and Parshant Pathak were charge-sheeted under Section 376(g) IPC, whereas accused Rajinder Kumar was also charge sheeted under Section 376 IPC.

During trial, the prosecution examined eight witnesses. PW1 the prosecutrix, PW2 Dr. Aruna had conducted the medical examination. PW3 Mr. M.S. Randhawa, Judicial Officer had recorded the statement of the prosecutrix under Section 164 Cr.P.C. PW4 Dr. Gurbachan Singh had medically examined Rajinder Kumar and Parshant Pathak. PW5 Kulwant Kaur, Clerk from the office of Transport, Hoshiapur proved the registration certificate of Maruti Van PB07-1555 which was in the name of Gurdeep Singh. PW6 Const. Amarjit Singh tendered his affidavit Ex.PJ. PW7 Surinder Kaur sister of prosecutrix narrated the story given to her by the prosecutrix. PW8 ASI Bhupinder Singh was the investigating officer of the case.

When examined under Section 313 Cr.P.C., the accused pleaded false implication. Accused Rajinder Kumar specifically took the stand that the prosecutrix was having an affair with him and she took him to different places and they remained together for a month. In Chandigarh they

were caught by the police at Maloya and their statements were recorded and they were handed over to the police and at that juncture no overt act was attributed, but later on the tutoring of her parents, she had got the case registered.

In defence, SI Kuldip Singh, Crime Branch, Chandigarh was examined as DW1 and SI Munish Kumar as DW2 proved FIR No. 237 dated 05.12.1997 (Ex.DA) wherein accused Balwinder Singh was an eye witness in the murder case and the accused therein were convicted.

On conclusion of trial, the Court concluded that there was no role of Dharam Pal and Harbhajan Kaur and acquitted them. The prosecutrix was disbelieved to the extent of allegations of rape by Balwinder Thakur, Parshant Pathak and Raj Kumar and they were acquitted of the charges under Section 376(g). However, the appellants and accused Rajinder Kumar were held guilty and sentenced under Section 366 IPC. Rajinder Kumar was also convicted under Section 376 IPC.

Dis-satisfied with their conviction and sentence, all the four accused filed separate appeals. Meanwhile, accused Rajinder Kumar had died during the pendency of the appeals and proceedings against him had abated.

I have heard learned counsel for the appellants and learned State counsel and have gone through the record carefully.

Learned counsel for the appellants had urged that the conviction of the appellants on the basis of uncorrobrated and unreliable testimony of prosecutrix was not sustainable. Elaborating their arguments, the counsel had reverted to the conduct of the prosecutrix. They had pointed out that the alleged occurrence was of 04.08.2001, but till 02.09.2001 no

missing report was lodged and it clearly reflects that she had gone on her own. Adverting to her conduct, they had pointed out that on 31.08.2001 prosecutrix was intercepted by the police of police post Maloya, Chandigarh along with Rajinder Kumar and DDR No.23 dated 31.08.2001 was entered at 7:30 p.m. but no allegations of kidnapping or rape were levelled by the prosecutrix but she turned around after two days and on 02.09.2001 she came up with the allegations of her kidnapping and rape by the accused. It was urged that the prosecutrix was around 24 years of age at the time of occurrence and had left the house with Rajinder Kumar with her consent and they being acquaintances of Rajinder Kumar were falsely implicated.

The appellants had been held guilty and sentenced under Section 366 IPC. The case of the prosecution has to be examined only to that extent as Rajinder Kumar who had been convicted for kidnapping and rape has died.

So far as allegations of kidnapping by the appellants is concerned we have only the statement of the prosecutrix. Her sister's statement is hearsay. She had given the version as told to her by the prosecutrix. In the circumstances, the statement of the prosecutrix has to be examined to see if it can be accepted when she had been disbelieved to the extent of allegations of rape against the appellants is concerned. It is not in dispute that the girl was a major and 24 years old on the date of occurrence.

In the present case the true genesis of the incident had been hidden by the prosecution but the prosecutrix blurted some facts which throw doubt on the whole case. She did not disclose in her statement initially that she and Rajinder Kumar were apprehended by the Chandigarh police. Neither in the FIR nor in the statement under Section 164 Cr.P.C.

she had disclosed that she along with Rajinder Kumar were apprehended by Chandigarh police and their custody was handed over to their parents vide DDR(Ex.DA) on 31.08.2001. The defence had summoned the DDR for cross-examination of the prosecutrix. The prosecutrix deposed that she had told the Chandigarh police regarding kidnapping and rape, but surprisingly no such statement had been produced on record. The investigating officer showed total ignorance about the fact that the prosecutrix was apprehended by the Chandigarh police along with Rajinder Kumar. The victim admitted that her father along with others had reached Chandigarh on 31.08.2001 and after obtaining their signatures, her custody was handed over to her parents. She admitted the signatures of her father, Balbir Ram, Shinder Pal and Dharanjit Singh, Sarpanch on Ex.P2 and Ex.P3 bore the signatures of Dharam Pal, Harbhajan Kaur and Balwinder Singh. The prosecution failed to examine the father of the prosecutrix to whom the custody was handed by the Chandigarh police. If she had been kidnapped or raped, she would have lodged the FIR soon after her recovery. The recovery was on 31.08.2001 but the report was lodged on 02.09.2001 that too with Hoshiarpur police. It was tried to be projected by the prosecutrix that on reaching the village she went to lodge the report with the police on 01.09.2001, but she was given severe beatings and the case was registered on 02.09.2001, but medical evidence belies her this stand as there was no injury on her body. Initially, she levelled allegations of kidnapping against the appellants, but later she alleged that appellants had raped her too. She was disbelieved by the trial Court to that extent.

The version given by the prosecutrix was that Rajinder Kumar along with the appellants had kidnapped her on 04.08.2001 at about 3:30

p.m. It is highly improbable that the appellants would execute the crime in broad day light and no one noticed. It has not been explained as to why the parents failed to report. The prosecutrix had admittedly travelled around 150 kms in a car and no attempt was made by her to attract attention. The prosecutrix remained with Rajinder Kumar till 31.08.2001 till they were intercepted by the police. She was living in a residential area and had not raised any protest. Her conduct speaks volume about the veracity of allegations levelled by her. The medical evidence belies her stand. Rather PW2 Dr. Aruna admitted that the patient had not given the history of forcible intercourse. It is clearly suggestive of the fact that she was not kidnapped and she of her own left the house and joined the company of Rajinder Kumar. The real facts were twisted and it was given the face of kidnapping and rape.

In a criminal case, the prosecution has to prove its case beyond reasonable doubt against the accused. In the instant case, the prosecution has failed to prove the complicity of the accused. There is not a shred of evidence against the appellants. The conviction and sentence of the appellants under Sections 366 IPC cannot be sustained and is set aside. The appeals are allowed. Appellants are acquitted of the charges.

July 15, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No