

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No. 2291-SB of 2003(O&M)

Date of Decision: 08.02.2017

Hira LalAppellant

VERSUS

State of HaryanaRespondent

CORAM: HON’BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepender Singh, Advocate for the appellant.
Mr. Amrik Narwal, DAG, Haryana.

REKHA MITTAL, J.

The present appeal has been filed against the judgment of conviction dated 15.11.2003 and order of sentence passed on 18.11.2003 whereby the appellant has been convicted and sentenced for commission of offence punishable under Section 376 of the Indian Penal Code, 1860 (in short ‘IPC’) extracted hereibelow:-

Name of Convict	Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
Hira Lal	376 IPC	7 years	1,000/-	6 months

The case of the prosecution is that on 21.02.2002 ASI Mahabir was present at Rajeev Chowk where Jagdish son of Ram Singh along with his wife submitted an application to the effect that on 20.02.2002, he had come to Gurgaon to meet his relative Sher Singh for the purpose of borrowing money. His wife and children were at the house.

At about 9 PM, when he came back to his house, he heard cries of his wife coming out from the room meant for tethering buffalo. He went there and saw that door of the room was closed from inside and light was on. The complainant peeped through the window and saw accused Hira Lal committing rape forcibly on his wife and she was crying. The complainant raised the noise. When Hira Lal tried to flee, the complainant caught hold of him. On hearing the noise, Sheela (bhabhi of the complainant), Gulshan and Rohtash, brothers of Hira Lal accused came at the spot. Brothers of Hira Lal rescued him and they ran away. On the next day, the complainant along with his wife came to Gurgaon and narrated the occurrence to his family members.

The prosecutrix was got medico legally examined. Statement of Sheela Devi was recorded. Accused Hira Lal was arrested on 24.02.2002. On completion of necessary formalities, challan was presented in the Court for commencement of trial.

As the offence under Section 376 IPC is triable exclusively by the Court of Sessions, the case was committed to the said Court by the Judicial Magistrate.

On finding a prima facie case, charge against the accused for commission of offence punishable under Sections 376, 452 and 323 IPC was framed to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution examined Dr. R.K. Sachdeva PW-1, ASI Subhash Chand PW-2, HC Mohd. Usman PW-3, Jagdish PW-4, prosecutrix PW-5 (name kept concealed), Constable Udham Singh PW-6, Constable Sarwan Kumar PW-7, HC Atma Ram PW-8, Sheela PW-9, Dr. N.K. Arora, PW-10, Constable Sanjeev Kumar PW-11 and ASI Mahabir Singh PW-12.

On evidence of the prosecution being closed, statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was recorded wherein he denied all the incriminating circumstances appearing against him and pleaded his innocence and false implication.

Having heard counsel for the parties and bestowing its thoughtful consideration to the entire materials on record, the trial Court held the accused guilty of committing offence punishable under Section 376 IPC and accordingly sentenced him for the said offence, noticed hereinbefore.

Feeling aggrieved by the verdict of the trial Court, the present appeal was filed in the year 2003. The same was admitted and has now matured for hearing.

Counsel for the appellant has submitted that the prosecutrix was married to complainant Jagdish 12 -15 years before the occurrence and the couple had three children born out of the wedlock. The sole submission made by counsel is that the present is clearly a case of consent by the prosecutrix for the alleged offence of rape committed by the accused. To bring home his contention, he has carried me through testimony of the prosecutrix recorded during trial.

Counsel representing State of Haryana has supported the judgment passed by the trial Court with the submission that neither any such plea of consent was raised by the accused in his statement recorded under Section 313 Cr.P.C. nor any such plea gets substantiated from testimony of the prosecutrix examined on 18.10.2002.

I have heard counsel for the parties, perused the paper-book and the records of the trial Court.

Before adverting to the submissions made by counsel for the parties, it is pertinent to note, at the outset, that counsel for the appellant has not disputed the occurrence dated 20.02.2002 with regard to the appellant having committed rape upon the prosecutrix. This apart, testimony of Jagdish PW-4 and the prosecutrix PW-5 when read together leaves no manner of doubt that the prosecutrix was subject to rape by the accused on the fateful day of 20.02.2002.

I have carefully and meticulously examined testimony of the prosecutrix but find it difficult to accept plea of the appellant that the prosecutrix was a consenting party. During cross examination of the prosecutrix, counsel for the accused brought certain facts on record that the prosecutrix had some grievance to express against her husband for not permitting her to do the job and not giving money for meeting the household expenses etc. However, it is difficult to spell out even by way of an inference that there was physical relationship between the accused and the prosecutrix prior to the occurrence on 20.02.2002. The very fact that the prosecutrix was screaming due to which the husband rushed to the place of occurrence is sufficient to falsify and belie plea of the accused that the prosecutrix was a consenting party. The matter would have been different had the prosecutrix not created any commotion and accused and the prosecutrix would have been caught in a compromising position. In this view of the matter, plea raised by the accused that the prosecutrix was a consenting party does not get substantiated from the materials on record, thus, untenable.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. The judgment of

conviction and order of sentence passed by the Court below are affirmed.

The appellant is on bail. He be taken into custody to suffer the remaining sentence imposed by the trial Court.

FEBRUARY 8, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no