

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

CRA-S-274-SB-2001 (O&M)

Date of Decision: November 25, 2017

Kulwant Rai

...Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. H.S. Randhawa, Advocate
for the appellant.

Ms. Monika Jalota, DAG Punjab.

JAISHREE THAKUR, J.

The instant appeal has been preferred against the judgment of conviction/ order dated 09.01.2002 passed by Addl. Sessions Judge, Hoshiarpur.

2. In brief the facts of the case are that on 25.4.1997, Manjit Kaur daughter of Nanak Singh resident of Muradpur District Mukerian, aged about 22 years, boarded a passed from Mukerian for going to Jalandhar. Manjit Kaur alighted at the bus stop of village Cholang thinking she would board a bus from there to go to Jalandhar. No bus came to the bus stop at Cholang for going to Jalandhar till 8 p.m. At that time one Kiran (tailor) told her to spend the night in his house since it was late and assured Manjit Kaur that she would be sent to Jalandhar the next morning. She was taken to a room behind the bus stop where one Naveen Kumar from Delhi was

present. After some time one Dara and Lovely also joined in and she was raped by all. Next morning at about 9 a.m. accused Lovely and Naveen took Manjit Kaur to a tube well motor of Lovely and she was again raped turn by turn. On 27.04.1997, Kulbir Singh, Gurdev Singh alias Geba, Chain Singh and also Dalwinder Singh alias Koka and Jaspal Singh came there. Jaspal Singh was killed by Naveen Kumar. All these persons raped Manjit Kaur too, who kept quiet out of fear, in order to save herself. On the basis of statement Ex.PE before Inspector Jaswant Singh, the present FIR was registered against all the accused. Manjit Kaur the prosecutrix was also medically examined, as well as the accused, who were found fit to perform the act of sexual intercourse. The case was committed for trial before the Courts of Session and charges under sections 376/342/406 IPC were framed against the accused, to which the accused did not plead guilty and claimed trial.

3. In order to prove its case, the prosecution examined PW 1 Dr. Kewal Singh, PW2 Dr. Gurmail Singh, PW3 Dr.Kishore Kumar Raikhi, PW4 Manjit Kaur, PW5 ASI Surinder Kumar Sharma, PW6 lady Dr. Mandeep Kaur, PW7 Dr. O.P Arora, PW 8 Gurbachan Singh, PW9 Sh. Harkaran Singh, Judicial Magistrate 1st Class Dasuya, PW10 Inspector Jaswant Singh and the prosecution tendered into evidence report of the chemical examiner Ex.PH/1 and thereafter closed its evidence. The accused got their statement recorded under section 313 Cr.P.C. denying all allegations and in the defence examined DW1 Constable Amarjeet Singh and thereafter closed their evidence.

4. The Sessions Court, after appreciating the evidence came to the

conclusion that accused Naveen Kumar, Kulwant Rai alias Dara and Ashok Kumar alias Bittu alias Kiran were guilty of the offence under section 376/342 IPC and convicted them on 09.01.2001 to undergo sentence for a period of 5 years each along with fine of Rs.5,000/- . The other accused were exonerated on the ground that the prosecution failed to prove its case against them, as Manjit Kaur prosecutrix had nowhere stated that any of the accused had committed the offence of rape upon her.

5. Kulwant Rai aggrieved against the said order, preferred the instant appeal. An application for suspension of sentence was filed by way of CRM No.49737 of 2001, which was declined by an order dated 11.2.2002. However, the High Court noticed that the trial court had convicted the appellant and his co-accused under sections 376 IPC for a period of 5 years and imposed a fine of Rs. 5,000/- each by showing undue leniency. On this ground, *sou moto* notice was issued to the three accused i.e. Kulwant Rai, Naveen Kumar and Ashok Kumar, for enhancement of their sentence. It is in background that another appeal bearing No. **CRA-S-305-SB- 2002 Court on its Own Motion Vs. Kulwant Rai and Others** came to be registered.

6. After the passing of sentence, all the three accused were arrested and it was only Kulwant Rai who filed an appeal. The sentence of appellant Kulwant Rai was not suspended being a case of gang rape. All the three accused, after having undergone the sentence awarded by the Additional Session Judge, were subsequently released from jail as would be evident from the custody certificate filed in the case of Kulwant Rai.

7. Mr. H.S. Randhawa learned counsel on behalf of Kulwant Rai

does not press the instant appeal, as the appellant has already undergone the sentence awarded and has since been released.

8. In view of the above, the appeal in hand stands dismissed being not pressed.

November 25, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No