

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1469-SB-2004 (O&M)
Date of decision : 02.12.2017

Sat Pal
... Appellant(s)
Versus
State of Haryana
... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. S.K. Gupta, Advocate (Legal Aid Counsel),
for the appellant(s).

Ms. Dimple Jain, AAG, Haryana.

JITENDRA CHAUHAN. J.

The instant appeal is directed against judgment and order dated 05/06.04.2004, passed by learned Additional Sessions Judge, Kurukshetra, whereby, the appellant was convicted and sentenced as under:-

Sr. No.	Conviction u/s	Sentence	In default
1.	363 IPC	RI for 03 years and fine of Rs.500/-	RI for 03 months
2.	366 IPC	RI for 05 years and fine of Rs.1,000/-	RI for 06 months
3.	376 IPC	RI for 07 years and fine of Rs.1,000/-	RI for 01 year

However, all the substantive sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“2. Brief facts of the prosecution case are that on 3.6.2003, Assistant Sub Inspector Pritam Singh alongwith EHC Balwan Singh and Constable Dharam Pal was present at Pipli Chowk in connection with routine patrolling and detecting crime where complainant Gulab Singh son of Sawan Singh resident of Umri met him and got his statement recorded, which was to the effect that he earns his livelihood by doing labour work and he has three children. The eldest one is his son namely Sandeep and younger to him is Kuldip Singh. His daughter XXXXXXXX (hereinafter to be referred as 'prosecutrix') aged 16 years is youngest one. In the night of 31.5.2003 he and his family members slept in the house and at about 3.00 a.m. on 1.6.2003 he got up and found his aforesaid daughter missing. He searched for her but in vain. He expressed his doubt on Sat Pal @ Satta son of Mukhtiara, resident of village Umri. On the basis of his statement, formal FIR was registered. Investigation was set into motion. Accused alongwith prosecutrix was apprehended at Pipli Bus stand. Accused Sat Pal @ Satta suffered his statement before the police to the effect that he had committed rape on the person of the prosecutrix in the night of 1.6.2003 in his residential house against her wishes. The prosecutrix also suffered a similar statement before the police to this effect. Sat Pal also took the prosecutrix to the house of Kali Ram son of Chhitru Ram, who gave shelter to them. Offences under Section 368 and 376 of the Indian Penal Code were also added. Upon completion of necessary investigation, challan was prepared and put in the Court for trial of the accused”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charges under Sections 363, 366 and 376 of the IPC were framed against appellant-Sat Pal, whereas, co-accused Kali Ram @ Kaliyan was charged under Section 368 read with Section 120-B of the IPC, to which they pleaded not guilty and claimed trial.

In order to prove, its case, the prosecution examined

PW1-Dr. G.D. Mittal, Medical Officer; PW2-Vijay Laxmi (Teacher of Govt. Girls Middle School, Umri); PW3-ASI Amar Singh, PW4-Constable Rishi Pal (Draftsman); PW5-Constable Ramesh Kumar; PW6-MHC Balwinder Singh; PW7-Constable Mahender Singh; PW8-Lady Constable Naresh Kumari; PW9-Prem Lata (Head Mistress, Govt. Girls Middle School, Umri); PW10-ASI Baljit Singh; PW11-Dr. Madhu Sharma (Medical Officer LNJP Hospital, Kurukshetra); PW12-Dr. S.C. Grover (Medical Officer); PW13-Gulab Singh (complainant), father of the prosecutrix; PW14-XXXXXX (the prosecutrix); and PW15-ASI Pritam Singh.

The statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which they denied and pleaded false implication. However, no evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court vide impugned judgment and order dated 05/06.04.2004, convicted and sentenced the appellant, as narrated above, whereas, co-accused/non-appellant was convicted under Section 368 of the IPC and sentenced to undergo RI for 04 years and fine of Rs.500/-, with default clause.

Hence, the instant appeal on behalf of appellant-Sat Pal @ Satta.

It is contended that there is an inordinate and unexplained delay of four days in lodging the instant FIR. The alleged occurrence took place on the intervening night of 31.5.2003/01.06.2003, whereas, the FIR

came to be registered on 03.06.2003. It is further argued that the prosecutrix was a consenting party. As per the prosecution story, she was forcible taken away by the appellant to his house, where rape was committed upon her against her wishes. The appellant and the prosecutrix were apprehended at Pipli Bus Stand on 03.06.2003. During this period, she never made any attempt to make any complaint to the police or any other person. This shows that she had gone with the appellant out of her own free will and there was no force whatsoever on the part of the appellant. The fact of the prosecutrix being a consenting party is corroborated by the medical evidence. PW11, Dr. Madhu Sharma has deposed that there were no signs of any force having been applied upon the prosecutrix. The prosecutrix was also carrying pregnancy of three months at the time of her medico-legal examination. Learned trial Court also erred in determining the age of the prosecutrix on the basis of the date of birth recorded in the school leaving certificate, Ex.PB, as the same is based on the information supplied to the school authorities by PW13, Gulab Singh, complainant/father of the prosecutrix.

On the other hand, learned State counsel has vehemently argued that as per the school leaving certificate, Ex.PB, the prosecutrix was aged 15 years and 4 months at the time of the alleged incident, therefore, the consent, if any, of the prosecutrix, is immaterial. The prosecution witnesses have supported the case of the prosecution in entirety.

I have heard learned counsel for the parties and perused the record.

In the cases of such nature, the evidence available on record has to be read viz.-a-viz. the conduct of the parties.

The conduct of the prosecutrix in this case is under a heavy cloud. While appearing as PW14, she testified as follows:-

“In the intervening night of 31.5.2003/1.6.2003 I was present at my house gate at about 1.30 a.m. (night). I got up to urinate, where I saw accused Sat Pal standing there, who is facing trial today. Accused Sat Pal forcibly took away myself to his house. The accused took off my clothes in his house and committed bad act with me on a cot lying there. Again said accused committed rape upon me, on the assurance that he will marry me. The accused burnt my clothes and he gave his clothes to me to wear. Thereafter he took me to Shahabad Markanda on a scooter. Accused Sat Pal took me to the house of Kali Ram situated in village Rawal-Kheri for arranging Money. Accused Kali Ram is the PHUPHA of accused Sat Pal in relation, where we stayed for two days.”

Further, in her cross-examination, she deposed thus:-

“I did not make any alarm when the accused was taking me on a scooter because the accused had gaged my mouth. Again said the accused had put a bandage on my mouth. My hands were also tied by the

accused. The accused unfolded my hands and bandage from my mouth at Pipli. We might had reached at Pipli at about 2.00/3.00 a.m. (night). I did not raise any alarm at Pipli because the accused had threatened me to kill to death.”

A careful perusal of the above statements of the prosecutrix would go on to show that the prosecutrix and the appellant were in a relationship and she eloped with the appellant in the thick of night with her own free will. Otherwise, it is nearly impossible to believe that the appellant, who was all alone, gagged and put a bandage on her mouth, tied her hands, made her to sit on a scooter and drove her all through the way to Pipli. Furthermore, both of them stayed together in the house of co-accused Kali for two days. No overt act has been attributed to said co-accused except for giving them shelter. The fact that the complainant, PW13, had raised a doubt on the appellant about his involvement in the crime, itself goes to show that he was also aware of the relationship of the appellant with the prosecutrix. Therefore, he remained silent for almost three days.

As per the record, the prosecutrix was medico-legally examined by PW11, Dr. Madhu Sharma. She did not find an mark of injury either on the private parts or other parts of the body of the prosecutrix. The prosecutrix was also found to be carrying three months' pregnancy. Thus, the defence version appears to be more probable that she was a consenting party.

It is true that conviction of rape can be based on the sole testimony of the prosecutrix. However, such testimony must inspire confidence and have a ring of truth. Hon'ble the apex Court in ***Abbas Ahmed Chowdhary Vs. State of Assam, (2010) 12 SCC 115***, has laid down as under:-

“We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.”

Once it has been established that the prosecutrix was a consenting party, the next point for determination is the age of the prosecutrix. The complainant/father of the prosecutrix has recorded her age as 16 years in the FIR. When examined by Dr. Madhu Sharma, PW11, the prosecutrix stated her age to be 17 years. As per the school leaving certificate, Ex.PB, she was aged 15 years and 04 months at the time of the alleged incident. However, it has come on record that the entry regarding age of the prosecutrix in Ex.PB is not based on any birth certificate or any birth entry in the register of Chowkidar, rather, it was recorded on the instructions of the complainant. It has come in the testimony of PW9-Prem Lata, Head Mistress, Govt. Girls Middle School, Umri that no documentary proof regarding age was furnished along with the admission form by the

parent of the child. Further, as per the ossification test, the radiological age of the prosecutrix was calculated between 17 to 19 years.

In the absence of any conclusive proof of age of the prosecutrix on record, an inference must be drawn in favour of the accused-appellant. The ossification test is a scientific method to ascertain age of a person and in the absence of any other conclusive documentary evidence on record, it can safely be relied upon. Thus, the age of the prosecutrix in the instant case is determined as between 17 to 19 and she is held capable of giving consent. In this background, delay in lodging the FIR is another circumstance against the prosecution as there is no explanation for the same.

The entire gamut of circumstances leads to the irresistible conclusion that the trial Court erred in convicting the appellant who certainly deserves to be acquitted by extending the benefit of doubt.

In view of the above discussion, this Court finds that the prosecution has not been able to prove its case beyond reasonable doubt and benefit thereof is given to the appellant.

Accordingly, the present appeal is allowed and the impugned judgment and order passed by the trial Court are set aside. Appellant is stated to be on bail. His bail bonds stand discharged.

02.12.2017

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No