

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

CRA-S-1425-SB of 2012 (O&M)

Date of decision : 02.12.2017

Kala Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rohan Mittal, Legal Aid Counsel, for the appellant.

Mr. Ayush Sarna, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Arguments in this case were heard and the judgment was pronounced.

On 02.12.2017, the appellant was directed to be set at liberty forthwith. The detailed reasons are being recorded.

The facts of the case as noticed by the learned Sessions Judge, Ferozepur are as under:-

“2. The story of the prosecution in brief is that prosecutrix (name not disclosed in view of the directions of the Hon'ble Supreme Court) suffered a statement dated 2.9.2010 that she is resident of Village Mahuana Bodla and is a house wife. She was married to Baldev Singh son of Partap Singh of Mahuana Bodla about eight years ago and three daughters were born out of her wed lock. Her husband Baldev Singh is an agricultural Labourer (Seree) with DC

@ Angrej Singh son of Joginder Singh. On Sunday at about 10 AM, she went to the field of Jagdeep Singh for bringing grass. When she was cutting the grass from the Narma field of said Jagdeep Singh, her husband was working in the field of DC at some distance. In the meantime, Jagdeep Singh son of Harbans Singh and Kala Singh son of Pritam Singh residents of her village came there. Immediately on his arrival, Kala Singh gagged her mouth and made her to lie on the ground. Jagdeep Singh put off her salwar and subjected her to rape against her wish. Then Kala Singh also committed rape with her while Jagdeep Singh caught hold of her arms. She raised raula and on hearing the same, her husband Baldev Singh came running to the spot. On seeing her husband, Kala Singh and Jagdeep Singh fled away from the spot leaving her in a naked position. Her husband narrated the occurrence to her Jeth Harpal Singh son of Partap Singh and they narrated the occurrence to the Sarpanch and other respectables of the village. The Sarpanch and other respectables of the village kept on putting them off for two days with a promise to get justice for them, but failed to do so. She was got medico legally examined from Civil Hospital, Fazilka."

The prosecution in order to prove its case, examined prosecutrix as PW1, Baldev Singh her husband PW2, Dr. Kavita Singh, Medical Officer, Civil Hospital, Fazilka, PW3 Dr. Hans Raj, Medical Officer, Civil Hospital, Fazilka, in respect of examination of the accused PW4, Head Constable Ved Parkash PW5, Head Constable Beant Singh PW6, SI Ranjit Singh Investigating Officer, PW7.

Learned trial Court has found the appellant guilty of offence under Section 376 of Indian Penal Code and to undergo rigorous

imprisonment for a period of 10 years and to pay a fine of ₹5,000/- and in default of payment of fine, he shall have to undergo further rigorous imprisonment for a period of six months.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgment passed by the learned Sessions Judge and the record.

Learned counsel for the appellant has raised following points:-

1. There is a delay of four days in lodging the FIR as the alleged incident is said to have taken place on 29.08.2010 at 10.00 AM whereas the FIR has been registered on 02.09.2010.
2. It is admitted by the prosecutrix that the people were working in the adjoining fields, however, no independent witness has been examined.
3. The statement of Sarpanch of the Village was not recorded by the prosecution. The Sarpanch has appeared in the defence and has disclosed the facts which have not been appreciated by the trial Court.
4. The medical evidence does not support the allegations of rape/forcible sexual intercourse as neither any external nor any internal injury on the prosecutrix was found. He has further submitted that there is apparent contradiction in the statement of the prosecutrix as stated in the first complaint addressed to SHO, wherein the prosecutrix has stated that she was threatened by the accused and she could not disclose these facts to her husband, whereas while appearing the Court, the statement is entirely different.

On the other hand, learned counsel for the respondent-State of

Punjab has supported the judgment passed by the learned trial Court.

On careful examination and evaluation of the evidence available on the file, there are certain facts which create doubt about the correctness of the case of the prosecution. The doubts are as under:-

- (i) The prosecutrix is a married women having three children. As per the medical examination, there is neither any external nor any internal injury on the private parts or any part of the body of the prosecutrix, although it is alleged that two persons forcibly threw her on the ground in the fields which was uneven and she suffered injuries on account of fall and resistance put up by her.
- (ii) The prosecutrix also alleges that her clothes were torn when the incident took place. However, prosecution has failed to produce the clothes which were torn. The Investigating Officer admits that the prosecutrix did not produce any torn clothes worn by her at the time of the alleged rape.
- (iii) No medical evidence has been produced on the file to prove the rape like collection of samples of semen on the underwear of the prosecutrix or the accused.
- (iv) The prosecutrix has stated in the cross-examination that her husband was working in the field of DC @ Angrej Singh at a distance of about 4 to 5 acres and she could see her husband from the place of occurrence. She also admits that people were working in the fields which were around the place of occurrence.
- (v) The prosecutrix states that the whole occurrence took about half an hour. She states that both the accused gagged her mouth and she was

made to lie on the ground. First of all Jagdeep Singh, removed her salwar and committed rape upon her forcibly against her consent and thereafter despite resistance Kala Singh, the appellant also committed rape on her when Jagdeep Singh hold her arms. She thereafter raised alarm on which her husband came running and accused fled away. No reason is forthcoming as to why she did not raise alarm immediately when the accused caught hold of her. It is the case of the prosecutrix that she was cutting fodder in the field owned by Jagdeep Singh without any permission. It is the case of the defence that she was caught stealing the fodder and produced before the Sarpanch of the Village who had rebuked the prosecutrix and her husband. Jagdeep Singh, the other accused is said to have slapped the prosecutrix because of which the false case was got registered.

The Sarpanch of the Village namely Sikander Singh has been examined by the defence as DW1 who has supported the defence version. It has further been stated by the Sarpanch that 15 days earlier to the incident in question, Jagdeep Singh had caught hold of the prosecutrix while stealing fodder from his fields. Sarpanch has specifically stated that Jagdeep Singh and Kala Singh, the appellant have been falsely implicated and no occurrence had taken place.

Still further, the incident is of 29.08.2010 at 10:00 AM, whereas she has lodged the complaint with the police on 02.09.2010 i.e. after approximately four days.

In view of the aforesaid facts as noticed above, this Court is of the opinion that the prosecution has failed to prove its case beyond

reasonable doubt and, therefore, the judgment under appeal is set aside and the appellant is acquitted by giving benefit of doubt.

Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No