

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

CRA-S No.1386-SB of 2013
Date of decision : 28.10.2017

Bhajan Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Aggarwal, Advocate for the appellant.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Bhajan Singh son of Prem Singh is in appeal against the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Bathinda under Section 376 IPC.

In short, the facts are that Nachattar Singh father of the prosecutrix registered an FIR on 19.08.2011 stating that his daughter Raj Kaur went missing on the intervening night of 26.06.2011 and ultimately she was traced out in Hanumangarh with one Bhajan Singh i.e. the appellant on 02.05.2012. It is a case where prosecution has been changing the story repeatedly. Prosecutrix was examined as PW2 on 23.11.2012 in the Court and she stated as under:-

“Stated that I have passed 7th class and I was born on 20.07.1994. We are 4 brothers and sisters. My mother

Paramjit Kaur has expired. In our neighbour, there is house of Sukhdeep Singh alias Seepa. My father used to dig wells. About one year 6 months back, I am known to Sukhdeep Singh alias Seepa and have love and affair with him. The mother of Sukhdeep Singh namely Harbans Kaur used to visit my house and compelled me to perform marriage with Sukhdeep Singh. On 26.06.2011, Harbans Kaur visited my house at 12 noon and she handed over intoxicant i.e. tablets and Harbans Kaur instructed me to administer the intoxicant i.e. tablets to my parents. Harbans Kaur also knew that we belong to the Schedule Caste Category and they are Jatt Sikh. Besides that, Harbans Kaur allured me to perform marriage with her son Sukhdeep Singh alias Seepa. At about 11 PM, Sukhdeep Singh alias Seepa came to my house on his motorcycle and he accompanied me to his fields and he committed intercourse with me against my wishes. I tried to stop him but he allured me to perform marriage. On the next day, at 5 am, Sukhdeep Singh accompanied me at Bathinda and left me with Bhajan Singh. I asked from Sukhdeep Singh where he was going. He told me that he had the motive to commit rape with me and he will not perform marriage with me as we belong to different caste. I requested Bhajan Singh son of Prem Singh to leave me before my parents and he told that he had purchased me and he will not leave me. Bhajan Singh threatened me of dire consequences if I informed anybody about the above said incident. Bhajan Singh also knew that I belong to Schedule Caste and I am a minor. At about 9 am, Harbans Kaur mother of Seepa came there and she also knew that I was a minor. Bhajan Singh restrained me against my wishes. My statement was recorded. I identify the accused present in the court today i.e. Bhajan Singh and Sukhdeep Singh.”

Thereafter, she was again examined on 12.02.2013 when she came out with a entirely different story. Relevant part of the cross-examination of the prosecutrix is extracted as under:-

“My date of birth is 20.07.1994. We are 4 brothers and sisters. My mother has died. On 26.06.2011, my father got angry with me and had left home for his work and thereafter I came to Bathinda. Two women took me from Bathinda Bus Stand and kept me in their house for 4/5 days and then solemnized my marriage with Bhajan Singh accused present in Court, who kept me in his house for 9 months and had relation with me as his wife and he committed rape on me. On one day, he took me to Rajasthan in a car there Hanumangarh police apprehended us on suspicion and involved us in a poppy husk case. Due to fear, I did not disclosed my name and gave a fake name there. And we were confined in Jail. Then my father came to know about it and got me released on bail. No one else enticed me from my house.

At this stage, Learned Addl. PP made a request that the witness may be declared hostile as she is suppressing the truth. Heard. Request allowed and prosecution is allowed to cross examine the witness.”

“I do not know accused Harbans Kaur present in Court. I cannot tell the date of my said marriage which was solemnized at Bathinda in the Gurudwara located in his house. Two persons are living there. There are several houses nearby. Sri Guru Granth Sahib is installed in said Gurudwara and Path is reacted. Only a few people visit the said Gurudwara. I have been doing the house hold works while my stay in his house. No one attended the marriage ceremony. I did not file any application/complaint against the women who took me with them. Accused was bearing my

expenses during said period of 9 months. He himself was bringing the household articles. I did not tell anyone visiting there about our marriage. I did not tell this fact to anyone from the neighbouring houses also. Our village is a small village. I cannot tell the number of houses in my village. I cannot tell the number of castes of the residents of my village. I cannot tell the distance of house of accused Sukhdeep Singh alias Seepa from our house. I did not visit anyone in the city during my stay of 9 months with the accused. It is wrong that accused is blind. I had not got my vote made with the accused. It is wrong that mark D1 is my election identity card under the name of Paramjit Kaur which I also disclosed with Hanumangarh Police. It was got recorded by the accused. I cannot tell the name of Advocate engaged by us in this case. On each and every date of hearing I firstly visit the office of my advocate and thereafter come to court. My Advocate always accompany me in the Court. When my statement Ex.P6 was recorded my Advocate was also present who accompanied me on the way to court also. I cannot tell name/identity of the police official who threatened me to make statement on that day.”

As noticed in the statement, prosecutrix was declared hostile. Nachattar Singh-complainant was also declared hostile when he was examined in the Court as PW4.

A careful reading of the statement given by the prosecutrix shows that at one stage she submits that it is Sukhdeep Singh @ Seepa who lured her to run away from the house. She also accuses mother of Sukhdeep Singh @ Seepa in this regard. However, later on she resiles from that statement and comes up with a different story that she left the house as her father had got angry with her.

At this stage, it may be relevant to notice that in the statement dated 12.02.2013, she stated that Bhajan Singh-appellant had solemnized marriage with her. She lived with Bhajan Singh in his house for 9 months. It is also admitted by her that there was no restriction on her. She had further stated that mother of Bhajan Singh was also residing in the same house. She further goes on to say that she made certain statements under the pressure from the police. Thus, this Court is of the opinion that she is wholly unreliable witness.

Nachattar Singh was declared hostile. Nachattar Singh did not support the prosecution story.

Taking into consideration the aforesaid facts, in the considered opinion of this Court, prosecution has failed to prove its case against the appellant beyond reasonable doubt. The story put forth by the prosecution is not believable. There are many loop holes in it.

In view of the discussion made, appeal is accepted.

Judgment of the Additional Sessions Judge, Bathinda, is set aside.

The accused is already on bail. The bail bonds shall stand discharged.

28.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No