

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

CRA-S-2681-SB-2010

Date of decision: 23.9.2017

Sukhchain Singh

...Appellant

Versus

State of Punjab

...Respondent

CRA-S-232-SB-2011

Date of decision: 23.9.2017

Sukhpal Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Ashwani Bhardwaj, Advocate/ Amicus Curiae
for the appellant in CRA-S-2681-SB-2010

Mr.Gaurav Sharma, Advocate
for the appellant in CRA-S-232-SB-2011

Mr.Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J.

This judgment shall dispose of both the abovementioned appeals, assailing the judgment and order dated 13.10.2010 passed by learned Sessions Judge, Mansa, whereby the appellants, Sukhchain Singh and Sukhpal Singh were convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of

Rs.1000/- each and in default of payment of fine, the defaulter was ordered to further undergo rigorous imprisonment for a period of one month, under Section 450 IPC. The appellants were further sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2000/- each and in default of payment of fine, the defaulter was ordered to further undergo rigorous imprisonment for a period of two months, under Section 376(2)(g) IPC. Both the sentences were ordered to be run concurrently.

The facts of the case as narrated in para No.2 of the impugned judgment passed by learned trial Court are as under:-

“The prosecution against the accused was launched on the basis of the statement, made by the prosecutrix on 23.9.2008 wherein she has got recorded before ASI Sarup Singh, Police Station Joga, inter -alia to the effect that she is a labourer by profession. She was married to Karnail Singh son of Maghar Singh of village Joga, 27 years ago and from their wedlock, a daughter named Pammi, now aged about 23 years, and a son named Bindu alias Balwinder, aged about 21 years, were born. Her daughter Pammi was married to Baljit Singh son of Hardev Singh of village Chuhrian, Police Station Jaurkian, 7/8 years ago and she was blessed with a daughter. Said Pammi was not having cordial relations with her husband Baljit Singh

and Panchayat was convened many a times to patch up the matter, but to no effect. Baljit Singh was being helped in that dispute by Sukhchain Singh son of Gurjant Singh resident of Lehra Mohabbat. In the intervening night of 22/23.09.2008, at about 12.00/1.00 a.m. when the prosecutrix was sleeping in her house, then accused Sukchain Singh accompanied by another person came to her house riding on a red coloured motorcycle and finding her alone in the house accused Sukchain Singh forcibly tore off her kamij & salwar and committed rape on her. He was helped by his accomplice, whose name was not known to her, but she could identify him if he appears before her. Later on she came to know that accomplice was the person, running a watch repair shop at bus-stop of village Lehra Mohabbat. He had gagged her mouth with the cloth when she was being raped by accused Sukhchain Singh. She raised noise after removing cloth from her mouth, which attracted Tek Singh Ex.Panch and one Nachhattar Singh to the spot, upon which accused Sukhchain Singh and his accomplice fled from the spot by boarding the motorcycle. Then she made telephonic call at her parental village, upon which her brother Gurguran

Singh reached there and he took her to Government Hospital, Joga and then to Government Hospital, Mansa, where her above statement was recorded, on the basis of which, First Information Report was lodged against the accused-appellants.

After completion of investigation, by putting Sukhpal Singh in column No.2, challan was presented against accused Sukhchain Singh. But on an application moved under Section 319 Cr.P.C. by the prosecution, accused Sukhpal Singh was also summoned to face the trial.

Charges were framed against both the accused under Sections 450 and 376(2)(g) IPC, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution had examined PW1 Dr.Avtar Singh, Medical Officer, Civil Hospital, Mansa, PW2 Dr.Asha Kiran, Medical Officer, Civil Hospital, Mansa, PW3 prosecutrix, PW4 MHC Amrik Singh, PW5 Constable Harwinder Singh and PW6 Sarup Singh, (Retired ASI), whereas PWs Tek Singh and Nachhattar Singh were given up as having been won over by the accused.

In their statements, recorded under Section 313 Cr.P.C, the accused denied all incriminating evidence against them and pleaded innocence and false implication on account of nursing a grudge against them by the complainant. In defence, they examined DW1 Amarjit Singh, SP(H), Bathinda, DW2 HC Darshan Singh and closed the evidence.

After going through the evidence and hearing learned Additional Public Prosecutor and the learned counsel for the accused-appellants, learned trial Court convicted and sentenced the accused as indicated above. Aggrieved by the judgment of conviction and sentence, the accused-appellants filed two separate appeals.

It is contended by learned counsel for the appellants that in the absence of any injury on the body of the prosecutrix, the statement of the prosecutrix alone cannot be made the sole basis of conviction without corroboration by an independent witness. It is further submitted that there was a motive to implicate the accused, Sukchain Singh because he was helping her son-in-law, who was not having cordial relation with the daughter of the prosecutrix. Tek Singh and Nachhattar Singh were not examined by the prosecution. Her brother Gurparan Singh, who took her to the hospital was also not examined. On behalf of accused Sukhpal Singh, it is contended that he is not named in the statement of the prosecutrix recorded under Section 164 Cr.P.C. He was found innocent during investigation and was kept in column No.2.

On the other hand, the learned counsel for the State submitted that the prosecution case is fully established against the appellants and therefore, the learned trial Court has rightly convicted and sentenced the appellants.

The rival contentions of the learned counsel for the parties have been heard and record has been perused.

PW3, the prosecutrix in her cross-examination deposed that

she received scratches on neck and ankle. To the contrary, PW2 Dr.Asha Kiran, Medical Officer, Civil Hospital, Mansa, who conducted the medico legal examination of the prosecutrix has opined that there were no stretch marks on any part of the body. Per vaginal examination, she noticed that there were no marks of injury on thighs, lower abdomen and external genitalia as well. There was no fresh injury to urethra or perineum. As per chemical examination report Ex.PG, spermatozoa were detected in vaginal swab, salwar and underwear of the prosecutrix, so in her opinion, sexual intercourse was committed on the person of the victim.

But the report is silent with regard to group of semen to connect the same with the appellants. PW2 Dr.Asha Kiran had specifically recommended for DNA test for identification of semen. However, the prosecution failed to get the same conducted for the reasons best known to it. The prosecutrix (PW3) admitted in her cross-examination that though there was bed sheet on the cot and the said bed sheet was spoiled by semen of the accused, the same was not taken into custody by the police. In the absence of matching of the semen found on the Vaginal swab, salwar and underwear worn by the prosecutrix, it cannot be said that the appellants committed rape upon the prosecutrix, a married woman.

PW3, prosecutrix in her statement has specifically deposed that Baljit Singh was not keeping cordial relations with her daughter. Sukhchain Singh accused was helping her son-in-law Baljit Singh. On

22.9.2008, when she was sleeping in her house at about 12 O'clock night Sukhchain Singh alongwith Sukhpal Singh allegedly came to her house. Sukhpal Singh gagged her mouth while Sukhchain Singh torn her clothes and forcibly committed rape against her wishes. On raising voice, her neighbours Tek Singh and Nachhattar Singh also came there. Said Tek Singh and Nachhattar Singh were the best witnesses to depose in this case but the learned Public Prosecutor gave up these two material witnesses. In this way, the best evidence was withheld by the prosecution. It is settled position that it is bounden duty of the prosecution to produce the best evidence before the Court and not to withhold the same. Even, brother of the prosecutrix, namely, Gurpuran Singh, who had allegedly taken her to the hospital, at the relevant time and could have thrown light on the prosecution case has also not stepped in the witness box to lend support to the prosecution case. No doubt, it is the quality of evidence and not the quantity to establish the case of the prosecution but at the same time, withholding the best evidence, is itself an infirmity, which weakens the prosecution case.

In the opening line of her cross-examination, the prosecutrix candidly admitted that she was in custody in a case under Sections 366 and 367 IPC alongwith her son. The case was pending at Rampura. The appellants have proved on record, copy of FIR No.180 dated 14.12.2007 Ex.D1. It is thus, proved on record that there has been long drawn litigation between the prosecutrix and the appellants. Appellant Sukhpal, in his statement recorded under Section 313 Cr.P.C. has stated that earlier

to the present case, there was a dispute between the daughter of complainant and her husband and therefore, she was nursing grudge against appellant- Sukhpal Singh, who happened to be a friend of her son in law. The defence version that FIR No.180, under Section 366 IPC and Sections 4 and 5 of the Child Marriage Restraint Act for minting money to get the child marriage was registered against the complainant in Police Station Rampura, District Bathinda, appears to be probable. False implication of the appellants in the present case cannot be ruled out completely.

Hon'ble the apex Court in the case of **Abbas Ahmed Choudhary v. State of Assam** reported at **(2010) 12 SCC 115**, in para No.5 has held 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.”

In the statement Ex.PJ of the prosecutrix, recorded under Section 164 Cr.P.C. appellant- Sukhpal Singh was not named, whereas said Sukhpal had allegedly actively participated in the crime and caught hold the prosecutrix from the arms. In the cross-examination, she

specifically stated that she had received scratches on neck and ankle, whereas in the statement of PW2 Dr.Asha Kiran, Medical Officer, Civil Hospital, Mansa, who carried out the medico-legal examination upon the prosecutrix, observed that there were no scratch marks on any part of her body. PW3, the prosecutrix deposed that she had allegedly become unconscious, whereas she has specifically stated that on raising alarm, her neighbours Tek Singh and Nachhtter Singh came there and thereafter, accused Sukchain Singh and Sukhpal Singh ran away on a motorcycle.

In the present case, the victim was allegedly overpowered by appellants Sukhpal Singh and Sukhchain Singh while she was sleeping in her house during night time. The prosecutrix is a mature woman and had she offered any resistance as projected by her, there would have been tell-tale marks on her body. Hon'ble the apex Court has time and again noticed that the approach of the trial court that ordinarily a lady would not "put her character at stake" may not be wrong but cannot be applied universally and each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions, where charges under Section 376 IPC have been found to be false. The medical officer had categorically observed that there was no external mark of violation on any part of the lower body or at the back. It appears that there was no forcible sexual intercourse. Had it been so, the victim must have put in resistance as she was a grown up lady and there would have been some injuries on her private parts, which is indicative for the use of force. The injuries on the body is not always must but

when the victim has been subjected to forcible sexual intercourse for about an hour, there has to be some injuries.

In **Partap Misra v. State of Orissa, 1977 CLJ 817**, Hon'ble the Supreme Court observed that the opinions of medical experts showed that it was very difficult for any person to rape single handedly a grown up and an experienced woman without meeting the stiffest possible resistance from her and the absence of any injury either on the accused or the prosecutrix was a clear pointer to the fact that she had not put any resistance to the alleged rape leading to the irresistible conclusion that she was a consenting party or no such incident ever took place.

In view of the discussion above, it is held that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. Both the appeals are accepted and both the accused are acquitted of the charges levelled against them by granting them benefit of doubt. Appellant Sukhchain is stated to be in custody. He be released henceforth, if not required in any other case. Appellant Sukhpal Singh is already on bail. His bail /surety bonds stand discharged.

A photocopy of the judgment be placed on the connected file.

23.9.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No