

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

CRA S-3529-SB of 2012 (O&M)

Date of Decision: 18.11.2017.

Bellu

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Sanjeev Manhas, Advocate/Legal Aid Counsel,
for the appellant.

Ms. Mahima Yashpal, AAG Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 03.04.2012, and order dated 05.04.2012 passed by Additional Sessions Judge, Panchkula vide which the appellant was convicted and sentenced as under:-

Offence	Sentence	Fine	In default
376(2)(f) IPC	RI for 10 years	Rs.20,000/-	RI for 6 months
307 IPC	RI for 10 years	Rs.20,000/-	RI for 6 months

Both the substantive sentences were ordered to run concurrently. It was further ordered that out of the total fine of Rs.40,000/-, a sum of Rs.20,000/- shall be paid to the prosecutrix as compensation.

Brief facts of the case as noticed in the judgment passed by the trial Court are as under:-

“The brief facts of the prosecution story are that on 03.01.2011 on receiving an information that the prosecutrix, a victim of rape being admitted at PGI, Chandigarh, SI Balwan Singh along with C. Rajesh Kumar reached there (PGI, Chandigarh), where Shakti son of Subramani got recorded his statement that he is working as a private driver and that they are three brothers and one sister (prosecutrix). He had further stated that on the previous night at about 9.00 PM the prosecutrix had gone to a shop to fetch milk. As she failed to return for a considerable time, they started searching for the prosecutrix but could not find her. As per him the accused Bellu also used to visit their house quite often and on enquiry it was revealed that he was also not present at his house. On the morning of 03.01.2011, during search the prosecutrix was found in a naked condition lying unconscious in an open plot near Guga Madi and blood was present on her head as well as on her private part. It was further disclosed by the complainant that he and one Shiv s/o Supermani took the prosecutrix to the General Hospital, Sector 6, Panchkula, from where she was referred to PGI

Chandigarh. The complainant further disclosed that he was sure that the accused-Bellu had committed rape upon the prosecutrix and had also tried to kill her. In view of the above statement, the investigation was started. The site of crime was visited, site plan was prepared and statements of the witnesses were recorded. Also, the prosecutrix was got medically examined and on the pointing of accused the blood stained brick was recovered from the spot. Thereafter, the accused-Bellu was arrested in the present case.”

After completion of investigation, challan was presented in the Court.

Charges under Sections 376(2)(f) and 307 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution has examined the prosecutrix as PW-1, Anjali (mother of the prosecutrix) as PW-2, C. Davinder Singh as PW-3, EHC Parveen Kumar as PW-4, EASI Mahavir Singh as PW-5, C. Gurbachan Singh as PW-6, Dr. Kiran Mayi as PW-7, SI Pritam Singh as PW-8, Dr. Riti Saini as PW-9, Shakti as PW-10, C. Partap Singh as PW-11, SI Balwan as PW-12, Dr. Varun as PW-13, Dr. Sunil Gambhir as PW-14, Dr. Manjula as PW-15 and Inspector/SHO Om Parkash as PW-16 and after tendering some

documents closed its evidence.

Statement of accused was recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to him to which he denied and pleaded false implication.

In defence, no evidence was led by the accused.

After appraisal of the evidence, the learned trial Court, vide impugned judgement and order, convicted the accused/appellant as narrated above.

Feeling aggrieved against the impugned judgment and order, the present appeal has been filed by the accused/appellant.

Learned counsel for the appellant refers to Ex.PC, statement of complainant, Shakti recorded by the Police and his testimony while he appeared as PW-10, to contend that in the cross-examination, PW-10 has deposed that the appellant did not meet him in the night of 02.01.2011 and accused Bellu had accompanied them to General Hospital, Sector 6, Panchkula. He has further stated that he never saw the accused along with prosecutrix in the night of 02.01.2011, therefore, the last seen evidence is not made out against the appellant.

It is further contended that as per the medical evidence on record, the nature of injury was noticed as grievous and not dangerous to life. It is further contended that the offence under

Section 307 IPC is not made out against the accused.

On the other hand, the learned State counsel supports the judgment and order passed by the trial Court. It is contended that the appellant had enticed the prosecutrix, raped her and then inflicted grievous injury on her head which could have caused her death in the natural course of events.

I have heard the learned counsel for the parties and have gone through the case file.

As per testimony of the prosecutrix, PW-1, she had gone to fetch milk from village Maheshpur in the night. While she was on the way, accused Bellu, her neighbour, offered to have a toffee. Thereafter, he lifted her and took her to a vacant place having bushes which was behind the residences opposite to Guga Madi and there he pulled off her pant and committed rape upon her. The blood started coming out from her urinal part and she started shouting. Thereafter, accused Belu hit her with a brick many times and she became unconscious. She regained consciousness in the hospital. She was unable to speak. In the testimony of PW-2, Anjali, mother of the prosecutrix, it has come that the prosecutrix was sent to fetch milk for wife of Shiv Kumar whereas, in the statement of PW-10, it has come that in fact, his wife Valli had sent her to fetch milk from a shop located in the locality. However, the fact remains that on the fateful day the prosecutrix while on the way to fetch milk met the appellant who is

residing in the neighbourhood of the prosecutrix and allegedly offered her a toffee. Thereafter, he lifted her and took her to a vacant place behind the residences opposite to *Guga Madi*, committed rape upon her and caused brick injuries as a result of which the prosecutrix became unconscious which she regained only in the hospital. The prosecutrix was found lying unconscious in the vacant plot in a injured condition with blood on her face and head and upper clothes were also blood stained whereas, lower part of the body was naked. Thereafter, she was taken to hospital and it was found that the accused/appellant had committed rape upon her. In the statement of PW-10, Shakti, though, reference is there that the prosecutrix was sent to fetch milk by his wife Valli, the appellant Bellu remained present with them while she was being removed to General Hospital, Sector 6, Panchkula from where she was further referred to PGIMER, Chandigarh. On regaining consciousness, the prosecutrix named appellant Bellu and thereafter the appellant ran away from the PGIMER, Chandigarh. PW-15, Dr. Manjula, who carried out MLR upon the prosecutrix, has deposed that the injuries suffered by the prosecutrix were result of sexual assault as hymen was found to be torn, fourchette tear and labia minora tear of 2.5 cm was found present. The human semen was found from the sample 3-b taken from the labia minora of the prosecutrix. The treatment chart is also verified by Dr. Varun, Senior Medical Officer, PGIMER, Chandigarh along with the observation that as per the MLR,

the nature of injuries suffered by the prosecutrix was grievous in nature. In the circumstances, the Court does not find any merit in the submission that the name of the appellant has not surfaced in the statement of the complainant. Once the appellant has been specifically named by the prosecutrix and the injuries with regard to sexual assault on her person were duly noticed during her medico-legal examination and the subsequent treatment in the PGIMER goes to prove that the victim was raped and assaulted by none other than the appellant. In view of the specific statement and the medical evidence in support thereof, no further corroboration in the matter is required. The discrepancy, if any, in the statement of the complainant or his mother PW-2 deserves to be ignored. In view of the description of injuries given by Dr. Varun Kumar that fracture of mandible was found on the person of the victim coupled with a sexual assault and the seat of injuries clearly makes out a case under Section 307 IPC, therefore, the contention of the learned counsel for the appellant that case under Section 307 IPC is not made out also deserves to be rejected being without any merit.

In view the observation made above, the present appeal is dismissed. The impugned judgment and order are upheld.

18.11.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

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