

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-707-SB-2013 (O&M)
Date of decision: 25.11.2017

Harmesh Singh @ Manga
...Appellant

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Arnab Sood, Advocate / Legal Aid Counsel
for the applicant/ appellant

Mrs.Anju Arora, Addl.AG, Punjab

JITENDRA CHAUHAN, J.

The present appeal is directed against the judgment of conviction and the order of sentence dated 24.1.2013, passed by Additional Sessions Judge, Patiala vide which the appellant was convicted and sentenced as under:-

U/s	Imprisonment	Fine	In default of payment of fine
376 IPC	7 years rigorous imprisonment	Rs.10,000/-	RI for one year
452 IPC	3 years RI	Rs.2000/-	RI for six months
506 IPC	6 months RI	Rs.500/-	RI for one month

All the sentences were ordered to run concurrently.

The facts of the case as noticed in para no. 3 of the judgment of the trial Court are as under:-

“... on 15.5.2012 ASI Kuldeep Singh alongwith other police officials on private vehicle in connection with patrolling, was present at Mehamadpur Barrier, Tepla Road where Shamsher Singh son of Chhitar Ram alongwith his nephew Om Parkash met the police party and got his statement recorded to the effect that he is an agriculturist. On 8.5.2012 at about 12 noon, he went to the house of his nephew to take water pipe and there was hue and cry in the room. He went inside the room and saw that his granddaughter (prosecutrix) daughter of Om Parkash, resident Village Rajgarh, aged about 16 years 9 months, was raising alarm “Bacho Bacho” and Harmesh Singh, his relative, aged about 20 years, son of Dharampal, resident of Village Rajgarh, was doing intercourse with his granddaughter (prosecutrix) and was threatening that if she did not keep mum, he will kill her. He became nervous on seeing the aforesaid episode. He raised alarm and on seeing him, Harmesh Singh @ Manga fled away from the spot after lifting his clothes. He asked his granddaughter to put on the clothes. After wearing the clothes, her granddaughter started weeping and told him that Harmesh Singh @ Manga has committed rape upon her while seeing her alone in the house. He also gave threats to her. At that time, his nephew Om Parkash had gone to the house of his niece Krishna at village Dadupur, near Barara (Haryana). His daughter-in-law Manjit Kaur had gone to private hospital at Ambala, where she is doing job as Sweeper. When Manjit Kaur came back at home in the evening, he and his granddaughter (prosecutrix) narrated the occurrence. She became nervous. When

Om Parkash came at home, they disclosed the occurrence to him. They think that they cannot marry their daughter and they have been insulted in the society. They became under depression. On the basis of the aforesaid statement, an FIR was registered.....”

On completion of investigation, report under Section 173 Cr.P.C. was filed in the Court, on the basis of which, charges under Sections 376, 452 and 506 IPC were framed against the accused, to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Dr. Ashwani Sharma, PW2 prosecutrix, PW3 Manjit Kaur, PW4 Shamsher Singh, PW5 ASI Kuldeep Singh, PW6 Dr.Harpreet Kaur Dhaliwal, PW7 Anita Rani and PW8 Gurbachan Singh.

In his statement, recorded under Section 313 Cr.P.C, the accused denied all incriminating evidence against him and pleaded his false implication. In defence, DW-1 Harnam Kaur, DW2 Sinder Kaur, DW3 Jagdish Singh, DW4 Gurpreet Kaur, DW5 Parveen Kumar, DW6 Khushi Ram, DW7 Manjit Singh, DW8 Rani, DW9 Seeto, DW10 Gurdev Kaur, DW11 Gurbachan Singh, DW12 Gurmeet Singh, DW13 Puran Singh and DW14 Labh Singh were examined.

After going through the evidence and hearing the counsel for the parties, learned trial Court convicted and sentenced the accused as indicated above. Aggrieved by the judgment of conviction and order of sentence, the accused-appellant filed the present appeal.

It is contended by learned counsel for the appellant that the

alleged occurrence took place on 8.5.2012, but the matter was reported to the police by the complainant on 15.5.2012, on the basis of which, the First Information Report was lodged against the appellant. Thus, there was an unexplained delay of 7 days in lodging the First Information Report. He further submitted that as per the medico-legal report, no injury was found on the person of the prosecutrix. There is no evidence to prove that the appellant has committed the alleged rape. It was the duty of the prosecution to send the vaginal swabs, clothes and inner wears and bloodstained earth to the FSL, which could connect him with the crime, but it was not done.

Learned counsel further contends that due to a quarrel that took place on 8.5.2012 between the family of both the parties, the appellant had been falsely implicated in the present case. The prosecutrix in her statement before the Magistrate on 16.5.2012 admitted that she was being pressurised to give statement by the police and due to that she did not get her statement recorded on the said date and again on 18.5.2012, she got her statement recorded.

On the contrary, learned State counsel has supported the impugned judgment and submitted that the appellant has committed heinous crime with a young girl, aged about 16 years and 9 months at the time of occurrence. The offence committed by the appellant stands duly proved from the evidence on record.

I have heard the learned counsel for the parties and have gone through the record with their able assistance.

The moot point involved for consideration in this appeal is whether evidence adduced by the prosecution on rape, particularly testimony of prosecutrix is trustworthy, credible and worthy of reliance?

In order to test the veracity of the deposition of Prosecutrix (PW2), it needs to be discussed threadbare. She was examined on oath in Court during trial where she narrated the details of the occurrence before the Court.

PW2, prosecutrix stated that on 8.5.2012 at 12 Noon, she was alone in the house and the accused came there. He caught hold her from her arm and then put her on a cot and put his hand on her mouth and committed rape upon her against her wishes. She further deposed that the accused threatened her that if she makes a noise then he will eliminate her. In the meantime, her grandfather came there and the accused on seeing him, ran away from the spot.

However, PW4 Shamsher Singh, grandfather (father's uncle) of the prosecutrix in his deposition specifically stated that he saw that the doors of room were bolted from inside and he heard hue and cry coming from the bolted room. He further deposed that when he entered in the room, he saw that accused Harmesh Singh was forcibly committing sexual intercourse with his granddaughter. Then he raised hue and cry at the spot and thereafter, accused Harmesh Singh @ Manga picked up his clothes and fled away from the spot.

The story putforth by the prosecution seems to be concocted. As the room had been bolted from inside, in that case it

becomes crucial as to who opened the door. As per deposition of Shamsher Singh PW4, when he entered in the room, the accused was committing intercourse with the prosecutrix. The house of the prosecutrix was in the middle of the village. Moreover, it is not explained as to how when this witness raised hue and cry, as to how nobody from the neighbourhood was attracted to the spot and the accused ran away from the spot.

PW6 Dr.Harpreet Kaur Dhaliwal, Medical Officer, Civil Hospital, Rajpura, who conducted the medico-legal examination of the prosecutrix, deposed that no struggle marks and no injury marks were noticed over the body of the prosecutrix.

PW2 prosecutrix in her cross-examination has specifically deposed that she raised alarm and tried to stop the accused from committing rape upon her. The prosecutrix was 16 year and 9 month old whereas, the accused was 20 year old at the time of occurrence. Had there been any resistance by the prosecutrix, there would have been marks of injury on the person of the prosecutrix. But in the present case, as per the medical evidence brought on record, there was no injury mark on the person of the prosecutrix. Not only that it has come in the evidence of PW4 Shamsher Singh that when he heard the cries from the room, he was standing outside. It seems improbable that a grandfather on hearing the cries would stand idle. Further it remains a mystery as to who opened the door as the same had been bolted from inside as has come in the statement of PW4 Shamsher Singh, who witnessed the accused

committing rape upon the prosecutrix. There is no explanation by the prosecution as to how PW4 Shamsher Singh entered into the room.

In the circumstances, the Court feels that the possibility of false implication cannot be ruled out as it has also come on record that a civil litigation was pending between the parties, as admitted by PW2, prosecutrix that they were not on visiting terms with the accused and a litigation was pending between the two families. Moreover, in her statement recorded under Section 164 Cr.P.C. on 16.5.2012, she admitted that she was being pressurised by the police to make statement against the appellant and due to that she did not get her statement recorded.

PW4 Shamsher Singh has deposed in his cross-examination that he saw blood on the cot, but there is no explanation as to why the the bloodstained material was not sent to FSL.

The matter does not end here. There is unexplained delay of seven days in lodging the FIR. As per the case of the prosecution, the father of the prosecutrix had gone to village Dadupur to visit his sister. It has also been proved on record that the distance of village Rajgarh and Dadupur is of three hours. The explanation put forth by the prosecution that the father of the prosecutrix had returned from village Dadupur to village Rajgarh on 15.5.2012 and then the FIR was registered, is not acceptable at all. If at all, the prosecutrix was raped by the accused, a message could have been conveyed to her father, who was at a distance of three hours only. Moreover, when the alleged rape was committed, the grandfather of the prosecutrix was very much present in village Rajgarh

and also the mother returned to home in the evening of the same day after doing her job. The matter could have been reported to the police by either of them. It is strange enough to note that father of the prosecutrix, who got the FIR registered, was not examined as a prosecution witness. It signifies that the events did not happen in the manner, there have been projected. Therefore, the delay in lodging the FIR remains unexplained and is fatal to the case of the prosecution.

In view of above, the Court feels that the prosecution has not been able to prove its case beyond shadow of reasonable doubt. Consequently, the present appeal is allowed and the impugned judgment and order dated 24.1.2013 are set aside. The accused is acquitted of the charges framed against him. His bail/ surety bonds are discharged.

25.11.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No