

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

CRA-S-305-SB-2002 (O&M)

Date of Decision: December 15, 2017

Court on its own motion

...Appellant

Versus

Kulwant Rai and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Monika Jalota, DAG Punjab.

Mr. H.S. Randhawa, Legal Aid Counsel
for the respondents.

JAISHREE THAKUR, J.

The instant appeal has been arisen out of judgment of conviction/order dated 09.01.2002 passed by Addl. Sessions Judge, Hoshiarpur.

2. In brief the facts of the case are that on 25.4.1997, Manjit Kaur daughter of Nanak Singh resident of Muradpur District Mukerian, aged about 22 years, boarded a passed from Mukerian for going to Jalandhar. Manjit Kaur alighted at the bus stop of village Cholang thinking she would board a bus from there to go to Jalandhar. No bus came to the bus stop at Cholang for going to Jalandhar till 8 p.m. At that time one Kiran (tailor) told her to spend the night in his house since it was late and assured Manjit Kaur that she would be sent to Jalandhar the next morning. She was taken to

a room behind the bus stop where one Naveen Kumar from Delhi was present. After some time one Dara and Lovely also joined in and she was raped by all. Next morning at about 9 a.m. accused Lovely and Naveen took Manjit Kaur to a tube well motor of Lovely and she was again raped turn by turn. On 27.04.1997, Kulbir Singh, Gurdev Singh alias Geba, Chain Singh and also Dalwinder Singh alias Koka and Jaspal Singh came there. Jaspal Singh was killed by Naveen Kumar. All these persons raped Manjit Kaur too, who kept quiet out of fear, in order to save herself. On the basis of statement Ex.PE before Inspector Jaswant Singh, the present FIR was registered against all the accused. Manjit Kaur the prosecutrix was also medically examined, as well as the accused, who were found fit to perform the act of sexual intercourse. The case was committed for trial before the Courts of Session and charges under sections 376/342/406 IPC were framed against the accused, to which the accused did not plead guilty and claimed trial.

3. In order to prove its case, the prosecution examined PW 1 Dr. Kewal Singh, PW2 Dr. Gurmail Singh, PW3 Dr.Kishore Kumar Raikhi, PW4 Manjit Kaur, PW5 ASI Surinder Kumar Sharma, PW6 lady Dr. Mandeep Kaur, PW7 Dr. O.P Arora, PW 8 Gurbachan Singh, PW9 Sh. Harkaran Singh, Judicial Magistrate 1st Class Dasuya, PW10 Inspector Jaswant Singh and the prosecution tendered into evidence report of the chemical examiner Ex.PH/1 and thereafter closed its evidence. The accused got their statement recorded under section 313 Cr.P.C. denying all allegations and in the defence examined DW1 Constable Amarjeet Singh and thereafter closed their evidence.

4. The Sessions Court, after appreciating the evidence came to the conclusion that accused Naveen Kumar, Kulwant Rai alias Dara and Ashok Kumar alias Bittu alias Kiran were guilty of the offence under section 376/342 IPC and convicted them on 09.01.2001 to undergo sentence for a period of 5 years each along with fine of Rs.5,000/- . The other accused were exonerated on the ground that the prosecution failed to prove its case against them, as Manjit Kaur prosecutrix had nowhere stated that any of the accused had committed the offence of rape upon her.

5. Kulwant Rai aggrieved against the said order, preferred an appeal bearing No.CRA-S-274-SB-2001. An application for suspension of sentence was filed in the said appeal by way of CRM No.49737 of 2001, which was declined by an order dated 11.2.2002. However, the High Court noticed that the trial court had convicted the appellant and his co-accused under sections 376 IPC for a period of 5 years and imposed a fine of Rs. 5,000/- each by showing undue leniency. On this ground, *sou moto* notice was issued to the three accused i.e. Kulwant Rai, Naveen Kumar and Ashok Kumar, for enhancement of their sentence. It is in this background that the instant appeal bearing no.**CRA-S-305-SB- 2002, Court on its own motion Vs. Kulwant Rai and Others** came to be registered.

6. After the passing of sentence, all the three accused were arrested and it was only Kulwant Rai who filed an appeal. The sentence of appellant Kulwant Rai was not suspended being a case of gang rape. All the three accused, after having undergone the sentence awarded by the Additional Session Judge, were subsequently released from jail as would be evident from the custody certificate filed in the case of Kulwant Rai.

7. Mr. H.S. Randhawa learned counsel on behalf of Kulwant Rai did not press the appeal bearing CRA-S-274-SB-2001, as the appellant has already undergone the sentence awarded and has since been released. Under these circumstances, the said appeal has been dismissed being not pressed.

8. After notice was issued in the present matter i.e. **Court on its own motion Vs Kulwant Rai And Others** every effort has been made to trace Naveen Kumar through non-bailable warrants and the report received is that he not available. Both Ashok Kumar and Kulwant Rai are represented through counsel appointed through legal aid.

9. Service has been effected upon Kulwant Rai and Ashok Kumar in the present appeal whereas, despite numerous attempts by the police, they have not been able to secure the presence of Naveen Kumar. Counsel appearing on behalf of the respondent-State submits that every possible effort has been made to secure the presence of Naveen Kumar, through bailable and non bailable warrants of arrest, however, his whereabouts are totally unknown. The report as received is that he left his village several years ago and his brother too does not know as to where he is currently residing. Consequently as on this date Naveen Kumar remains unserved.

10. Mr. H.S. Randhawa, learned counsel on behalf of Kulwant Rai and Ashok Kumar urges that even though a heinous crime of rape had been committed, the respondents in the instant appeal had undergone their sentence as awarded to them and had been subsequently released. It is urged that the offence pertained to the year 1997 and since then 20 years had passed by. At the time of commission of the offence, the accused were not

very old and now, after having served their sentence, they have settled down in their regular life and no other case is pending against them. It is argued that some leniency be shown to them instead of enhancing the sentence already undergone. In this regard he places reliance upon judgments rendered in **State Of Punjab Vs Gurmit Singh 1996 (1) RCR (Criminal) 533 .**

11. In the judgment rendered in **Gurmit Singh's case (*supra*)**, the acquittal of the accused of the charges of rape leveled against them was challenged in the Supreme Court by both the State as well as the complainant. While upsetting the judgment of acquittal and addressing the question of quantum of sentence, it was held that the court has to strike a just balance “*We, accordingly, set aside the judgment of the trial court and convict all the three respondents for offences under Sections 363/366/368 and 376 IPC. So far as the sentence is concerned, the court has to strike a just balance. In this case the occurrence took place on 30.3.1984 (more than 11 years ago). The respondents were aged between 21-24 years of age at the time when the offence was committed. We are informed that the respondents have not been involved in any other offence after they were acquitted by the trial court on 1.6.85, more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settled down in life. These are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents.*”

12. Placing reliance upon the aforesaid judgment, this court too is not inclined to enhance the sentence of the three accused even though the

trial court erred in awarding a lesser punishment. This view is being taken primarily on the ground that the occurrence is of the year 1997 and all the three accused have already served their sentence and to incarcerate them again after a period of 15 years, when they are married and have started life afresh with children and grandchildren. It is enough that they have had the threat of enhancement of sentence hanging over their heads like democles sword for the past 15 years. This would be sufficient punishment.

13. It is in this background, this court does not deem it appropriate to continue with the instant appeal. Disposed of accordingly.

December 15, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No