

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-254-SB-2008 (O&M)
Date of Decision: 14.02.2018

Balwinder Singh and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. APS Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the appellants.

Mr. Rahul Rathore, DAG, Punjab.

ANITA CHAUDHRY, J.

The appellants along with Naresh (main accused) faced trial in FIR No. 246 dated 22.12.2004, registered under Sections 366, 376, 343, 506, 120-B/109 IPC at Police Station Sadar Ropar and on 30.01.2018 all of them were sentenced to the following punishment:-

Under Section	Rigorous Imprisonment for a period of	Fine to each accused/appellant	In default of payment of fine
120-B IPC	10 years	Rs.2000/-	6 months
366 read with Section 109 IPC	7 years	Rs.1000/-	3 months
376 read with Section 109 IPC	10 years	Rs.2000/-	6 months
343 IPC	1 year	-	-
506 IPC	3 years	-	-

It would be necessary to give the relationship first. Naresh son of Dasondhi Ram was alleged to have kidnapped a minor girl in conspiracy with the appellants who are his relatives namely Massi (Suman), her husband Balwinder and their son Jagmohan Singh.

Complainant's daughter went missing from the house on 18.12.2004. The allegations are that she had gone to school on foot. The family was busy and had gone for the Nagar Kirtan. The family returned home around 10:30 PM. They found their eldest daughter missing. Two other minor children were at home. The complainant made inquiries in the neighbourhood but she could not be found. He started the search and contacted his relatives. On 21.12.2004 Gurcharan Singh, Ram Karan and Amarjit Singh, residents of his village came and told the complainant that on 18.12.2004 they were waiting for a bus at the railway crossing Nangal Road, Ropar then a Maruti van bearing registration No. PIM-289 came and stopped at the crossing at 1:00 PM. The vehicle was driven by Nona (Naresh) and Balwinder Singh, his wife Suman and son Jagmohan were sitting in the van along with the complainant's daughter. On this information, the complainant went to the police. The FIR was lodged on 22.12.2004. The girl was recovered and was sent for her medical examination on 24.12.2004.

In the history given to the Medical Officer, she had stated that she had gone with Naresh with her own will and he was known to her and they had gone to Baba Balak Nath Temple and they had returned after six days. The Medical Officer did not note any injury.

The hymen was absent. Swabs were taken and were sent for chemical examination.

The police after completing the investigation filed the challan only against Naresh. The girl had made a statement under Section 161 Cr.P.C. alleging rape and there were allegations that Balwinder and his family were also part of the conspiracy and had kidnapped her.

The trial Court after examination of some witnesses allowed the application filed under Section 319 Cr.P.C. and the appellants were summoned as additional accused.

The Medical Officer – Dr. Sangita Aggarwal had conducted the medico legal examination. She had held back her opinion to await the report of the chemical examiner. On going through the chemical examiner's report, she had stated that no intercourse had taken place.

The victim – PW6 deposed that she used to go to school at foot and on 18.12.2004 she was on her way to school and at 8:15 AM when she was crossing the bridge of Bhakhra canal, a van was parked on the side of the road and when she reached the side of the van, the door opened, she found Balwinder Singh, his wife, their son and Naresh on the driver seat and they forcibly put her in the van, she raised alarm but there was no-one around who could help her and they took her towards Ropar. She stated that they were saying that they would get her married to Naresh. She stated that she refused the offer

and said that she was too young and she would not marry without the consent of the parents. She stated that she was brought to the house at village Alipur and she was kept in a room and the door was bolted from outside. At night, Naresh came inside and raped her and the next morning all of them took her to Baba Balak Nath Temple and they stayed in two rooms and she was violated there. She stated that she refused to marry Naresh and she was brought back on 23.12.2004. She stated that Balwinder, his wife and son were dropped at Nurpur Bedi whereas she was left at her village and was threatened and she reached home and narrated the occurrence to her parents.

Balwinder Singh – complainant stated that he was working in Delhi and during Diwali days he had come to the village. He stated that his daughter had left the house to attend school and the other two children were at home. He stated that there was a celebratory procession commemorating 300 years and the procession was to pass through the village and he, his wife and two younger children participated in the procession and returned home at 10:30 PM and found their elder daughter missing and he went to ask in the neighbourhood but could not trace her. He went to his relatives' house in search of her but failed to trace her. On 21.12.2004 they were informed by Gurcharan and Amarjit that they had seen his daughter at 1:00 PM near the railway crossing and the matter was reported.

Amarjit Singh - PW3 and Gurcharan Singh - PW4 made similar statements that they had seen the girl sitting in the car at the

railway crossing and they had also seen all the accused sitting in the car.

The accused abjured trial and led evidence to show that Balwinder Singh accused was on duty on the day of incident. It had come in evidence that he was working in the Public Works Department.

Paramjit Kaur - DW1 Sarpanch of the village had stated that Suman Kumari accused was a Member Panchayat. Evidence was led to show that Jagmohan and Balwinder remained in the function in the house of Rampal who was their neighbour. It also appeared from the evidence that Gurucharan Singh-PW4 had contested the elections against accused Suman Kumari and lost the election and had later challenged the same in the Courts.

The trial Court accepted the testimony of the prosecutrix and the other witnesses and recorded conviction of all of them under the Sections mentioned aforesaid.

Two appeals were preferred, one by Naresh and the present appeal by the other three appellants. Naresh meanwhile had died while he was in custody. His appeal has abated and a separate order in this regard has been passed today in his appeal.

I have heard the counsel for both the parties.

The submission on behalf of the appellants is that the police had challaned only Naresh and did not find any truth so far as the appellants but they were summoned under Section 319 Cr.P.C. It

was urged that there was a delay in lodging the FIR and a improbable story was put forward by the complainant. It was urged that the victim had admitted that Amarjit was her maternal uncle and the witness has also admitted that the entire village knew that the girl was missing and strangely the two persons who had seen the girl with the accused did not inform the family and the story has been cooked up and the near relatives of Naresh were framed on account of personal vendetta. It was contended that Balwinder appellant was a government employee while his wife was a member Panchayat and was the Massi/Massad of Naresh. It was urged that the victim had stated that she could not raise alarm as her mouth was stuffed with a cloth and she had tried every way to gain attention whereas the two private witnesses examined by the prosecution who had seen the girl in the car did not see her mouth closed and there is a contradiction and the story is improbable. It was urged that the victim in her statement to the Medical Officer had stated that she had gone her own and she does not name any other person and the girl was not produced before the Magistrate to get her statement recorded and the medical evidence also does not support the prosecution as the hymen was found to be absent and no spermatozoa was found in the FSL report. It was urged that in this appeal we are only concerned with the role of the appellants who are accused of being part of the conspiracy and for kidnapping a minor girl. It was urged that the trial Court has not examined the evidence correctly and the girl and boy had run away and there was no reason why they would take along the maternal family and would they take active part in the occurrence?

The State counsel supported the judgment and urged that the judgment was well reasoned and the statement of the prosecutrix was rightly accepted.

The occurrence had taken place on 18.12.2004. As per the complainant, his daughter had gone to school while the other children remained at home. Both the parents accompanied the celebratory procession and returned home at 10:30 PM. They found their eldest daughter missing. The complainant made enquiries in the neighbourhood. The next morning he contacted his relatives but did not lodge any report. On the fourth day, his co-villagers one of whom was related to him, came home and told him that they had seen the girl with the accused and Naresh was on the driver seat and they had seen the car at the railway crossing. Those persons did not see any sign of fear on the girl's face nor did they make any attempt to stop the car. One of the prosecution witnesses admits that the whole village came to know that the girl was missing from the house that evening itself. The three co-villagers had informed the complainant that they had seen the girl and the accused in the car. No explanation has come as to why they withheld the information when the girl was known to them. They failed to offer any explanation as to why they did not take any step to stop the car or help the victim. There are grave suspicion about the manner of incident and role of the appellants. Additionally, there is a contradiction in the version given by these two witnesses. The victim had stated that her mouth was stuffed with a cloth and she could not

have cried for help as her mouth was stuffed with a cloth. If that was so, the co-villagers could have sensed that something was amiss. The statement of the co-villagers appears to be false.

The victim claimed that all the accused took her and forced her in a room and at night Naresh walked in and committed rape upon her. The Medical Officer did not find any case of sexual assault. There was no injury. No spermatozoa was found on the vaginal swabs.

It has come out in evidence that Amarjit was related to the prosecutrix and Gurcharan Singh had made a complaint against Suman accused seeking her removal from the Gram Panchayat.

Nobody had seen the girl leaving home or being forcibly taken out from the house. It is not the case of the prosecution that the complainant's house is in a isolated area. The incident had occurred during day time. It is clear that the girl had gone out of the house on her own and in the first version given to the Medical Officer on her return. She had stated that she had gone on her own. The police did not get the statement of the girl recorded under Section 164 Cr.P.C. purposely as the girl would have blurted the truth. The family was livid as their daughter had been taken away. They took the name of the relatives of Naresh and they had a motive to name them.

Considering the contradictions appearing in the statements, I find that the trial Court had erred while placing implicit reliance on their testimony. The trial Court should have rejected the statements of the so called eyewitnesses who were interested and inimical towards

the accused. It is clear that they were named on account of their personal rivalry. No effort was made by the police to find out where the girl and boy stayed for three days. No witness from that locality was summoned nor any evidence was collected. The prosecution is expected to prove its case beyond reasonable doubt, which it had failed.

Another fact which needs to be noticed is that an application had been moved for declaration of Jagmohan–appellant no.3 as a juvenile. The matter was sent to the trial Judge to hold an inquiry with respect to his age. A report had been received that he was a minor but as the matter is old, it would not be a fit case that the matter should be remanded to the Juvenile Justice Board to consider and hold a *de novo* trial.

There was no evidence that the accused had abetted or had instigated Naresh to commit the crime. There was no evidence that the girl had been subjected to sexual intercourse. The medical evidence belies the testimony of the victim. The trial Court failed to notice the discrepancies and the delay in lodging the FIR.

Considering the above, the appeal is allowed. The judgment of conviction and sentence is set aside.

(ANITA CHAUDHRY)
JUDGE

14.02.2018

Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No