

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

**CRA-S-330-SB-2004(O&M)
Date of decision:-3.8.2018**

Mai Chand

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Namit Sharma, Advocate
for the appellant.

Ms.Aditi Girdhar, AAG, Haryana.

H.S. MADAAN, J.

Accused Mai Chand faced trial by learned Additional Sessions Judge, Panipat, who vide judgment dated 19.11.2003 convicted him for the offences under Sections 323, 341, 376 and 506 IPC and vide order of the even date he was sentenced as under:

Under Section	Sentence Awarded
323 IPC	Rigorous imprisonment for a period of six months.
341 IPC	Simple imprisonment for one month.
506 IPC	Rigorous imprisonment for a period of one year.

376 IPC	Rigorous imprisonment for eight years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for six months.
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All the sentences were ordered to run concurrently.

The accused-convict – Mai Chand, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence passed against him be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case are that criminal machinery was set into motion by the complainant Bachno Devi, aged 65 years, resident of village Sithana, who in her statement made to the police on 1.5.2001 stated that she had been earning her livelihood by doing menial jobs; that on 30.4.2001 at about 2:00 p.m., when she had left her house for going to her daughter house situated at Gopal Colony, Panipat and time was about 7:00 p.m. and while she was present at Kabri Railway crossing for the purpose of boarding a bus then accused Mai Chand from her village, who happened to be a member of the village Gram Panchayat came there, addressed her as aunt and represented to her that he would get her some grant under Indra Vikas Scheme; that he asked her to accompany her; that he stated that some other women of the village had also come; that accordingly the complainant accompanied the accused; that when they reached near eucalyptus tress of Kachi Nagar, the complainant enquired from the accused as to where he was taking her, then accused took out a knife from his pocket asking the complainant to come along with him, otherwise she would be killed by him; that the accused gagged her

mouth, took her to the pits situated near Garhi Sikenderpur and had sexually intercourse with her thrice, which was against her wishes; that the complainant continued to weep and requested the accused to leave her but to no effect, rather accused threatened the complainant and took her to the village and left her there at about 11:00 p.m., threatening the complainant not to disclose the occurrence to anybody, otherwise he would kill her.

According to the complainant, she narrated the entire incident to her husband Rattan Chand, who took her to Sarpanch Darshna Devi, where the entire incident was narrated. Then the complainant along with other respectables of the village went to the police station and lodged FIR there. After registration of the FIR, the matter was investigated. The accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Area Magistrate.

On presentation of challan in the Court of learned Area Magistrate, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 376 IPC is exclusively triable by Court of Sessions, learned Area Magistrate committed the case to the Court of learned Sessions Judge, Panipat from where it was entrusted to the Court of learned Additional Sessions Judge, Panipat.

On receipt of case in the Court, learned Additional Sessions Judge, Panipat observing that prima facie charge for offences under Sections 323, 341, 376 and 506 IPC was disclosed against accused, he

was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as thirteen witnesses namely Balwant Singh, Patwari as PW1, HC Anand Parkash as PW2, Constable Jai Bhagwan as PW3, Smt.Bachno Devi as PW4, Dr.Tejinder Kumar as PW5, Dr.Neeru as PW6, Constable Karambir as PW7, Constable Balkar Singh as PW8, Rattan Singh as PW9, Sh.Dhan Singh as PW10, SI/SHO Naresh Kumar as PW11, ASI Om Parkash as PW12 and Ex.Constable Raj Kumar as PW13.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

In defence evidence accused examined Subhash as DW1, who stated that he was acquainted with the accused and the complainant; that the complainant had migrated from Rajasthan to village Sithana; that she wanted to have the panchayat land meant for the cattle; that the accused had objected to the allotment of the land to the complainant, as such she became inimical towards the accused, however despite objection of the accused, the complainant was allotted panchayat land; that the complainant had stated at that time that she would teach a lesson to the accused for coming in her way in the allotment of the panchayat land; that the accused was the member of Gram Panchayat at that time and that the complainant had migrated to

village Sithana about 8/10 years back.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Haryana besides going through the record.

Bachno Devi, the prosecutrix while getting her statement recorded as PW4 repeated on oath the case of the prosecution. She was subjected to lengthy cross examination on behalf of the accused but she stuck to her guns and could not be shattered on material contents. No plausible or satisfactory explanation could be furnished providing the motive for alleged false implication of the accused in this case. The motive suggested that the accused being member of the village Gram Panchayat had opposed the allotment of panchayat land to the complainant, though the panchayat had allotted such land to her and for that reason she bore a grudge against the accused does not appear to be satisfactory. No woman much less an elderly one would invite stigma on her moral character by levelling such type of allegations against a person without any rhyme or reason. The motive suggested for alleged false implication is too trifling to spur the complainant to level wrong allegations of rape against the accused. Rattan Chand – PW9 husband of the complainant is though not an eye witness of the incident but as per prosecution story soon after the occurrence, the complainant had informed him in that regard then they had gone to the village Sarpanch and thereafter accompanied by several persons had gone to police

station to lodge report regarding the accused there. Therefore, his testimony is *res gestae* and corroborates the prosecution story on material aspects. The trial Court has rightly observed that the complainant prosecutrix was allotted the land by Gram Panchayat about 7-8 years back and it is not believable that prosecutrix thought of taking revenge from the accused after such a long period of time.

The medical evidence in this case corroborates the ocular evidence. PW6 Dr.Neeru, who had medico legally examined the complainant on 1.5.2001 while posted as Medical Officer at General Hospital, Panipat, the time of examination of being 5:00 p.m., had found three injuries on her person, which are as under:

- 1. Blunt injury on forearm 1 cm x 1 cm reddish in colour.*
- 2. Contusion i.e. blunt injury on face on both side of face 1 cm x 1 cm.*
- 3. There was abrasion 1 cm x 1 cm at the lower back in centre.*

She had opined that kind of weapon used for injuries No.1 to 3 was blunt and injuries were caused within a period 24 hours. She further proved copy of MLR as Ex.PF/1. She had also proved salwar of the complainant as Ex.P3, shirt Ex.P4, cover of the parcel Ex.P5, two slides Ex.P6 and Ex.P7, swabs tubes Ex.P8 and Ex.P9 and cover of the parcel Ex.P10. As per the report from the FSL Ex.PG, semen was found to be there on the salwar and the shirt pointing out that the complainant had been subjected to rape. From the statement of PW5 Dr.Tejinder Kumar, who had medico legally examined the accused on 5.5.2001 at

the police request, it comes out that accused was able to perform sexual intercourse since there was nothing to suggest that he could not do so. He proved MLR of accused as Ex.PE/1, underwear of accused Ex.P1 and sample seal as Ex.P2. From the statement of PW7 Constable Karambir, who had proved his affidavit Ex.PH and testimony of PW8 Constable Balkar besides statements of other witnesses corroboration is lent to the case of prosecution.

The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

Learned counsel for the appellant stated that there is delay of 15 hours in lodging a report with the police, which has been left unexplained and the prosecution story should be disbelieved for that reason.

However, I am not convinced by this argument. The delay in such type of sexual offences is nothing unusual because it involves the dignity and honour of the family. The victim and his family members do ponder over the things, concert their nears and dears and then take decision to inform the police. In the instant case as per the prosecution story goes after the incident, the accused had left the complainant near her house. The complainant had then discussed the matter with her husband Rattan Singh, thereafter they had gone to the village Sarpanch and then had gone to the police station. Therefore, the delay, if any in reporting the matter has been adequately explained and it does not affect the credibility of the prosecution story.

According to the learned counsel for the appellant, the medical evidence did not corroborate the prosecution story as regards rape having been committed upon the complainant. However, I do not find any merit in this contention. As per report received from FSL, Madhuban marks of semen were found to be there on the shirt and salwar of the complainant, which clearly points out towards rape.

Learned counsel for the appellant has referred to authority *Devanand Versus State (NCT of Delhi), 2003(1) RCR(Criminal) 771* by Delhi High Court. The same had different facts where an accused and prosecutrix lived in the same house and as per allegations accused raped the prosecutrix many a time by threatening to put her parents to death. However, there was no injury or resistance on part of prosecutrix coupled with delay in lodging the FIR, the accused was acquitted giving benefit of doubt. Here the facts are different. The delay in lodging the FIR had been adequately explained and as per the prosecution story accused had threatened the complainant and then raped her. Putting a person in so much fear so that she cannot offer any resistance does not go to show that she as a consenting party. Therefore, this authority does not help the appellant in any manner.

As regards the next citation *State of Rajasthan Versus Kishanlal, 2002(2) RCR(Criminal) 852* where in a rape case conviction of the accused had been set aside on the following grounds:

(i) Statement of prosecutrix that accused offered her Rs.20/- for having intercourse and also stated that another persons will also pay Rs.20/- for same favour.

(ii) No alarm was raised though the brother-in-law of the prosecutrix and his wife were sleeping only 20-25 feet away.

(iii) Two abrasions were found on the breasts of prosecutrix – According to Doctor these could be self inflicted.

(iv) According to prosecutrix she was silenced by accused by show of knife – Accused was caught on the spot, but knife was not seized.

(v) These facts show that rape was with consent.

For the reasons discussed above and view of the different facts and circumstances of the case in hand, this authority is also not helpful to the appellant.

The judgment of conviction is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

As regards the sentence part, the accused had done a very heinous crime of repeating rape on an aged woman by causing injuries to her, illegally detaining her and threatening her. Such type of conduct on the part of accused cannot be taken lightly. He has been sentenced for eight years for the offence under Section 376 IPC. No scope for reduction in sentence is there lest that should send a wrong signal in the society that one can commit a heinous crime and then get away lightly.

The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Mai Chand is on bail in terms of the orders passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Panipat.

3.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No