

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1394-SB of 2005 (O&M)
Date of decision:14.07.2018.

Rajender Singh

...Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nitin Jain, Advocate for the appellant.

Mr. Indresh Goyal, Additional A.G., Haryana.

LISA GILL, J. (ORAL)

This appeal has been filed by the appellant challenging the judgment dated 09.07.2005 as well as order dated 11.07.2005 passed by Additional Sessions Judge, Faridabad, vide which he was convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of eight years besides pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

Brief facts of the case are that FIR No.336 dated 08.08.2003 (Ex.P5) was registered under Section 376 IPC at Police Station Hathin, District Palwal on a written complaint, Ex.P4, submitted by the prosecutrix. As per allegations in the FIR, it is stated that the prosecutrix was married with Dharambir, PW4 on 05.03.2003. She was brought to her matrimonial village

by her husband on 24.07.2003 and was living along with her husband and in-laws in the village. Prosecutrix went towards the fields to answer the call of nature at about 08.00 am on 05.08.2003, where the Bajra crop was standing. After answering the call of nature in the fields when she was returning home, the appellant caught hold of the prosecutrix, put his hand upon her mouth, dragged her towards the field of Bajra and committed rape upon her. It is further stated that the prosecutrix raised noise and on hearing the same, her mother-in-law, PW3 and brother-in-law, PW2 arrived at the spot. The appellant ran towards the jungle on seeing them. She narrated the incident to her mother-in-law and on coming home revealed the facts to her husband. However, as her father-in-law was working in a factory at Bhiwadi, Rajasthan, they awaited his return before taking any action. Thereafter, FIR in respect of the incident, which took place on 05.08.2003, was lodged on 08.08.2003.

PW5 Kartar Singh, ASI, Investigating Officer of the case testified that formal FIR (Ex.P5) was registered. Place of occurrence was inspected. Rough site plan (Ex.P6) was prepared. Prosecutrix was medico-legally examined by PW13 Dr. Anju Verma, Medical Officer, General Hospital, Palwal, vide application (Ex.P7) on 08.08.2003. Copy of the medico-legal report is available as Ex.P21. No sign of any injury was found on the person of the prosecutrix. The undergarments of the prosecutrix along with vaginal swabs and envelope duly sealed, handed over by the doctor, were taken in possession vide Ex.P8. The said case property was handed over to MHC of the Police Station, who later on sent the same to FSL, Madhuban on 14.08.2003. The appellant was arrested on 16.08.2003 and thereafter, on application (Ex.P9), he was medico-legally examined.

Statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 27.08.2003 (Ex.P2). School leaving certificate (Ex.P11) of the prosecutrix was taken in possession on 01.09.2003 vide recovery memo Ex.P3. Final report under Section 173 Cr.P.C. was presented on completion of investigation. The appellant pleaded not guilty and claimed trial. Charge against the appellant was framed under Section 376 IPC.

The prosecution examined as many as 17 witnesses to prove its case and tendered into evidence certain documents. The appellant in his statement under Section 313 Cr.P.C. denied the incriminating evidence put to him. He pleaded innocence and false implication.

Learned trial Court on considering the evidence on record concluded that the prosecution has successfully proved its case against the appellant for the offence punishable under Section 376 IPC. The appellant was accordingly convicted for the offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of eight years besides pay a fine of Rs.1000/-.

Aggrieved therefrom, this appeal has been filed.

Learned counsel for the appellant has vehemently argued that the evidence on record is woefully insufficient to sustain the conviction of the appellant. There is an unexplained delay of three days in lodging the FIR. The appellant was admittedly a neighbour of the prosecutrix, therefore, the factum of not informing the police authorities immediately casts a doubt on the prosecution case. Moreover, it is admitted by the prosecutrix as well as other witnesses that there is enmity between the families of the appellant and her in-laws. An uncle (Tau) of the accused, namely, Mamraj was murdered by an uncle (Phoopha) of the husband of the prosecutrix. It is further urged

that the medical evidence on record does not corroborate the prosecution version. No injury was found on the body of the prosecutrix. It is highly improbable that in case of rape being committed upon the prosecutrix in a field of standing crop of Bajra, no injury was received on her person. Presence of semen as reported in the FSL report (Ex.P24) is not relevant as the prosecutrix was admittedly married and her medical examination was conducted a number of days after the alleged occurrence. Moreover, the prosecutrix herself gave discrepant statements, which are not in consonance with each other. At the initial stage while submitting the complaint, prosecutrix stated that she raised noise and upon hearing her cries, her mother-in-law and brother-in-law had arrived at the spot but in her statement under Section 164 Cr.P.C before the Magistrate, prosecutrix stated that she became unconscious and was not able to raise any noise as the appellant had gagged her and her mother-in-law and brother-in-law came to the spot to look for her as a long time had passed since she came from home. When she regained consciousness, they went home. PW2 brother-in-law of the prosecutrix gave a discrepant statement as well. PW3 mother-in-law had given a slightly different version as well.

Learned counsel for the appellant further argues that age of the prosecutrix has wrongly been concluded to be less than 18 years by the trial Court on the basis of a school leaving certificate (Ex.P23). The said school leaving certificate is admittedly a duplicate copy and not proved in accordance with law. PW16 who sought to prove this document did not bring the record of the concerned school to prove the certificate which was admittedly obtained on 29.08.2003 i.e. after the alleged occurrence. Moreover, there is nothing on record to indicate the basis on which the date

of birth of the prosecutrix had been mentioned. It is, thus, prayed that the present appeal be allowed and the appellant who is not involved in other criminal case, be acquitted.

Learned counsel for the State has refuted the arguments raised by learned counsel for the appellant while submitting that there is clear and cogent evidence on record to inculcate the appellant. There is no reason to doubt the veracity of the statement of the prosecutrix which in itself is sufficient to convict the appellant. FSL report proves the commission of offence. Moreover, delay in lodging of FIR in such circumstances is not a material circumstance. It is thus prayed that impugned judgment and order be upheld and the appeal be dismissed. Custody certificate dated 16.02.2018 furnished in court today showing the appellant being not involved in any other criminal case, is taken on record.

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

Occurrence in question is alleged to have taken place on 05.08.2003 at about 08.00 am. In the complaint (Ex.P4) on the basis of which the formal FIR (Ex.P5) was registered, it is mentioned that the prosecutrix went to answer the call of nature at about 08.00 am on 05.08.2003. She was married to PW4 on 05.03.2003. She was brought to her matrimonial village on 24.07.2003 by her husband. The appellant is alleged to have caught hold of the prosecutrix when she was returning home after answering the call of nature in the field where bajra crop was standing. Appellant is alleged to have dragged her to the bajra field and committed rape upon her. She cried, raised noise, upon which her mother-in-law and brother-in-law arrived at the spot. When the appellant saw them, he fled

towards the jungle. It is further stated that prosecutrix narrated the incident to her mother-in-law and on returning home she narrated the facts to her husband. However, father-in-law of the prosecutrix was working in a factory at Rajasthan. They waited for him to come back and when the prosecutrix's father-in-law returned, her mother-in-law narrated the incident to him, upon which the prosecutrix along with her parents-in-law came to the Police Station for initiating action against the appellant. Formal FIR (Ex.P5) was registered on the said written complaint.

Medical examination of the prosecutrix was conducted by PW13 Dr. Anju Verma on 08.08.2003. It was specifically mentioned by PW13 that no sign of injury, external or internal, was detected on any part of the body of the prosecutrix. PW1, the prosecutrix, recorded her statement under Section 164 Cr.P.C. on 27.08.2003 at 3.00 pm. In the said statement, prosecutrix stated that when she was in the process of easing herself in the field of Jawar-Bajra, the appellant came at the spot. She tried to tie the string of her garment, the appellant gagged her mouth with his hand and dragged her in the Bajra field. It is further stated that the prosecutrix tried to free herself, but the appellant hit her on the chest due to which she fell unconscious. The appellant thereafter committed rape upon her and fled from the spot. Her mother-in-law came to the spot looking for her as a long time had elapsed since she left her matrimonial home. Prosecutrix came out of the field and told the entire incident to her mother-in-law. Her brother-in-law (Jeth) PW2, who had also gone to the fields to answer the call of nature, saw both the prosecutrix and her mother-in-law, in a troubled state. He was apprised of the facts on enquiry. Brother-in-law of the prosecutrix tried to look for the

appellant but in vain. Prosecutrix came back home and narrated the incident to her husband who also tried to search for the appellant but did not succeed.

PW1, prosecutrix, while deposing before the trial Court, stated that she went to answer the call of nature on 05.08.2003 at about 8.00 pm in the field of Jawar-Bajra. When she was returning home, the appellant suddenly appeared, put his hand on her mouth and took her towards the field of Bajra and committed rape upon her. PW1 stated that she tried to raise noise but as her mouth was gagged by the appellant, she was unable to raise any hue and cry. Her mother-in-law and brother-in-law came to the spot and saw the appellant who fled from the spot. Her husband was away to work. Her father-in-law, who was working in a factory at Rajasthan, was called back. Thereafter application (Ex.P1) was submitted before the police after her father-in-law returned. PW1 in her cross examination stated that she did not know the appellant prior to the incident though she knew his father Dharampal who belongs to the same caste. It is admitted that house of the appellant is near the matrimonial house of the prosecutrix. Distance of the house of the prosecutrix from the place of occurrence was admitted to be about two/two and a half (2/2.5) acres in the cross examination. It is further stated that the prosecutrix lost consciousness and rape was committed upon her when she was unconscious. Her mother-in-law and others came on the spot after waiting for her to return. They came to the spot when she was weeping and coming out of the Bajra field. The appellant was seen running from the spot by her mother-in-law, brother-in-law and other persons who reached the spot.

PW2, brother-in-law of the prosecutrix, stated that he was going to his shop on 05.08.2003 at 8.00 am and on the way he saw the appellant

running out of the Bajra field and his mother PW3 was running after him. He followed them but Rajinder Singh managed to flee. Thereafter, he came to know from PW1 and PW3 about the commission of rape upon his sister-in-law by the appellant.

PW3, mother-in-law of the prosecutrix, stated that on 05.08.2003 the prosecutrix had gone to the fields to answer the call of nature at about 08:00 am. When the prosecutrix did not return for some time, PW3 went to look for the prosecutrix towards the jawar fields. PW3 heard some noise and proceeded towards that side and she saw the appellant committing rape upon the prosecutrix. It is further stated that the appellant ran away from the spot on seeing her. PW2 it is stated also came to the spot and she narrated the incident to him. Thereafter they returned back house.

PW4 husband of the prosecutrix stated that he was present at his shop on 05.08.2003. He was called back home by his cousin. Prosecutrix narrated the said incident of the appellant committing rape upon her when he reached home. Matter was reported to the police on 08.08.2003. In the intervening period they tried to search for the appellant but in vain. It is further stated that the school leaving certificate was given by him to the police officials.

In my considered view, a perusal of the record indeed, reveals material discrepancies, which go to the root of the matter and create a substantial doubt on the prosecution version. This is so for various reasons as discussed here under.

There is no doubt that an accused can be convicted on the sole testimony of the prosecutrix and moreover delay by itself cannot be a relevant factor to disbelieve the prosecution version. At the same time it is

equally true that in given circumstances, the Court can look for corroboration. Keeping in view the factual matrix of this case, statement of the prosecutrix is to be evaluated with caution. Version given by the prosecutrix at the outset on the basis of which FIR was registered is that she raised noise upon which her mother-in-law and brother-in-law arrived at the spot. It is stated by the prosecutrix that her matrimonial house is at a distance of about two/two and a half (2/2.5) acres from the place of occurrence. However, in her statement under Section 164 Cr.P.C., she stated that she lost consciousness on being gagged by the appellant and rape was committed while she was unconscious. She further states that her mother-in-law came to the spot while looking for her and her brother-in-law happened to be in the vicinity having come to the answer to call of nature. Detail of the testimony given by the prosecutrix before the trial Court is given in the forgoing paragraphs. At this juncture, it is relevant to refer to the statement of PW17, Judicial Magistrate 1st Class, Kaithal before whom statement of the prosecutrix under Section 164 Cr.P.C. was recorded. In cross examination, PW17 specifically stated that when an application for recording the statement of the prosecutrix was moved before her at 01.45 pm, the prosecutrix seemed to be under the influence of police officials. She was, however, given time to think over and compose herself. Prosecutrix was allowed to sit in the court room. PW1 in her cross examination before the learned trial Court admitted that there was enmity between the appellant and the family of prosecutrix's in-laws which was continuing. It is further admitted that Ramu is her uncle (husband's Phoopha) though it is denied for want of knowledge whether Mam Raj (appellant's uncle) was murdered by Ramu (uncle of the husband of the prosecutrix). It is further mentioned by PW1 that the accused was seen

running away from the spot not only by her mother-in-law, brother-in-law but other members of the village who reached the spot as well. PW3 also mentioned that certain villagers had met them while they were searching for the appellant. However, none of the said witnesses have been examined by the prosecution.

PW2 brother-in-law has given a different version. This witness denied that any Panchayat whatsoever was conducted in respect of the incident whereas respondent No.3 mother-in-law of the prosecutrix specifically stated that a panchayat in this regard was convened in the village. In respect of the murder of Mam Raj, PW3 stated that she had only heard about the murder. She admitted that Ramu etc., were involved in the murder case of Mam Raj though she denied the fact that they had any enmity with the appellant or his family. Peculiarly, father-in-law of the prosecutrix for whom they kept waiting to lodge the FIR was given up by the prosecution. PW4 husband of the prosecutrix mentions lodging a report against the appellant himself as he was having a suspicious character. Therefore, a specific doubt is indeed, created on the prosecution case.

Moreover, the medical evidence does not indicate any injury external or internal on the person of the prosecutrix. There is merit in the arguments of learned counsel for the appellant that FSL report (Ex.P24) showing the presence of semen cannot be of much value for this case as the prosecutrix was admittedly married. Her medico-legal examination was conducted three days after the alleged incident. It is trite that absence of injuries by itself may not detract from the prosecution case, but in the instant matter, the entirety of facts is a contributing factor in casting a shadow of doubt over the prosecution case.

Furthermore, a perusal of the school leaving certificate (Ex.P23) issued on 29.08.2003 mentions the date of birth of the prosecutrix to be 20.05.1998. The said certificate is sought to be proved by PW16 Yad Ram, Teacher of the Primary School, Basantgarh. A perusal of his testimony reveals that the record on the basis of which the alleged certificate was issued was not produced before the Court, though it is stated in his cross examination by PW16 that date of birth of the prosecutrix was recorded on the basis of the date of birth revealed by the grandfather who got her admitted. It has been held by Supreme Court in Alamelu and another Vs. State represented by Inspector of Police, 2011 (2) SCC 385 that mere production of a document cannot be proof of the age of the prosecutrix in isolation.

A material and substantial doubt is created on the prosecution case and the appellant is entitled to the benefit of doubt. As per the prosecution, the appellant is admittedly not involved in any other criminal case. In view of the evidence on record, facts and circumstances of the case, the learned trial Court, in my considered opinion, has wrongly concluded that the prosecution has proved its case against the appellant beyond reasonable doubt, thereby convicting him for the offence punishable under Section 376 IPC and sentencing him to undergo rigorous imprisonment for the period of eight years besides pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

Keeping in view the facts and circumstances of the case as discussed above, judgment dated 09.07.2005 and order dated 11.07.2005 are set aside. The appellant is consequently acquitted of the charges against him. As the appellant is on bail, bail bonds and surety bonds be discharged.

Appeal is accordingly allowed.

(LISA GILL)
JUDGE

July 14, 2018

Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No