

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

CRA-S-2830-SB-2013 (O&M)

Date of Decision: January 15, 2018

Gurjant Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Samir Rathaur, Advocate
for the appellant.

Ms. Bhavna Gupta, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

The present appeal has been filed against the judgment of conviction and order dated 16.05.2013 passed by the Sessions Judge Rupnagar whereby, the appellant has been sentenced under Section 376 Indian Penal Code to undergo rigorous imprisonment for 7 years and to pay fine of Rs.7,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 7 months, further sentenced under Section 452 Indian Penal Code for a period of 3 years and to pay a fine of Rs. 3,000/- and in default of payment of fine to further undergo rigorous imprisonment for 3 months and further sentenced under Section 323 Indian Penal Code for a period of 6 months and to pay fine of Rs.1,000/- and default of payment of fine to further undergo rigorous imprisonment for one month.

2. An FIR was registered on the basis of statement of the prosecutrix recorded on 18.11.2012, stating therein that she was an illiterate person and could not walk since the last 6/7 years on account of her illness . It was stated that her husband used to work as a labourer, and on the night of 18.11.2012, at about 1.00 a.m. Gurjant Singh alias Bunty son of Jagjeet Singh who is their neighbor, entered her room and forcibly raped her. When she tried to raise an alarm, he closed her mouth and after committing sexual intercourse, he left the room. Upon hearing the alarm raised, her mother-in-law Surjeet Kaur reached shortly and also saw Bunty coming out of her room. It was further stated that Gurjant Singh alias Bunty had given a fist blow on her face due to which lower teeth of her jaw were broken. Her daughter, on coming to know about the incident, got her admitted to Civil Hospital, Morinda.

3. After the registration of the FIR, the matter was investigated by the police during which course the police prepared a rough site plan, recorded statement of the witnesses in terms of Section 161 Cr.P.C and medical records were collected from the hospital. The appellant accused was arrested on 18.11.2012 itself. The prosecutrix expired on 07.01.2013 before the challan could be presented by the police. After following due procedure of supplying copies of documents relied upon by the prosecution to the accused, offences punishable under Sections 376, 452 and 323 IPC were made out and the case was committed to the Courts of Session by an order dated 19.01.2013.

4. In order to prove its case, seven witnesses were examined namely PW1 Dr. Jaswinder Singh, PW2 Dr. Ritu Attri who had examined

the prosecutrix and had proved the MLR, PW3 Head Constable Mohinder Pal, PW4 Surjit Kaur, mother-in-law of the prosecutrix, PW5 Head Constable Jaswinder Singh, PW7 ASI Satvir Singh, the Investigating Officer. Statement of the accused was recorded in terms of Section 313 Cr.P.C. and the appellant denied the case of the prosecution stating that he had been falsely implicated. In defence evidence, he examined DW1 Harjinder Singh.

5. After taking note of the fact that the prosecutrix had expired before the recording of a statement under section 164 Cr.P.C, the Session Judge by relying upon the medical evidence and the statement of witness Surjit Kaur convicted the appellant herein to undergo 7 years imprisonment along with payment of fine.

6. Aggrieved against the conviction the instant appeal has been preferred.

7. Mr. Samir Rathaur, learned counsel appearing on behalf of the appellant contends that the conviction is unsustainable on the ground that the statement of the prosecutrix was not recorded under Section 164 Cr.P.C and that she was not subjected to cross examination. It is also submitted that the statement of PW4 Surjit Kaur cannot be relied upon as she was not an eyewitness. It is argued and that there was enmity between the parties since the father of the appellant Jagir Singh had arrested one Jagdish Singh son of Mal Singh lodged in Central Jail Patiala, who was a brother-in-law of the prosecutrix.

8. Ms. Bhavna Gupta, learned counsel appearing on behalf of the respondent-State argues that the Sessions Judge, after appreciating the

evidence on the record, rightly convicted the appellant-accused and there is no infirmity in the judgment so rendered.

9. I have heard the counsel for the parties and with their assistance have gone through the record pertaining to the appeal.

10. The initial allegations in the FIR were based on a statement made by the prosecutrix herself who stated that Gurjant Singh alias Bunty entered her room at 1.00 am in the morning and sexually assaulted her by committing rape. When she tried to raise an alarm, he closed her mouth and after committing sexual intercourse, left the room. Upon hearing the alarm, her mother-in-law Surjit Kaur reached shortly and also saw Bunty coming out of her room. It was alleged that Gurjant Singh had given a fist blow on her face, due to which two teeth of her lower jaw were broken. Her daughter got her admitted in Civil Hospital, Morinda.

11. The initial statement recorded, which was exhibited as Ex.PM, became the basis of the FIR. However, since the prosecutrix could not be cross-examined, the Sessions Judge relied upon other evidence produced by the prosecution. PW4 Surjit Kaur deposed that she rushed to the room of the prosecutrix on hearing the alarm raised by her and saw Gurjant Singh appellant in the room. PW2 Dr. Ritu Attri examined the prosecutrix and also proved the Medico Legal Report Ex.PD and opined that possibility of sexual intercourse could not be ruled out. In defence, a plea was taken that there was enmity between the family of the prosecutrix and the appellant since father of the appellant was instrumental in getting the brother-in-law of the prosecutrix arrested on account of him being a terrorist.

12. An argument has been raised by the counsel for the appellant

that there is no direct evidence linking the appellant to the crime in question, since the prosecutrix, who had died before the challan was put up, could not be cross-examined and therefore there could be no reliance upon the statement recorded under Section 161 of Cr.P.C. It is also argued that the testimony of PW4 could not be relied upon since she was not present at the time of actual occurrence of rape of prosecutrix and only reached the spot thereafter. It is also argued that the witness had made material improvement in her statement and therefore became an unreliable witness.

13. These arguments are without merit. PW4 Surjit Kaur in her examination deposed that on 18.11.2012 at about 1.00 am she heard the '*raul*' of her daughter-in-law. When she rushed to the room of her daughter-in-law she saw Gurjant Singh present in the room. Her daughter-in-law told her that Gurjant Singh committed rape upon her forcibly. Even in her cross examination she has stated that she had seen accused standing at the door of the room of her daughter-in-law on the day of the occurrence and again she reiterated that she saw Gurjant Singh inside the room of her daughter in law. The room of witness PW4 is only at a distance of 50 – 60 feet away from the room of the prosecutrix, which is not too great a distance to hear any alarm raised, and that too at night when there are no disturbances of the day.

14. Strong reliance can be placed upon the medical evidence that has been adduced. Immediately on 18.11.2012, the prosecutrix was taken to the Civil Hospital where she was medically examined by the doctor in attendance. PW2 Dr. Ritu Attri stated that she had examined the prosecutrix who came with alleged history of sexual assault on 18/11/2012 at 1 am. On

examination she found swelling of lower lip with redness on inner side present, interior teeth in lower jaw slightly loosened while giving an opinion that possibility of sexual assault cannot be ruled out. The prosecution also got the underwear of the prosecutrix examined and as per report of the Chemical Examiner marked as Ex.PF spermatozoa was detected on the underwear, as also upon chemical examination of vaginas swabs. Read together, i.e the statement of the doctor PW2 and the medical evidence i.e. Ex PF it is easy to draw a conclusion that Charanjit Kaur was subjected to sexual assault and rape.

15. The Session Judge while convicting the appellant, held that even though PW4 Surjit Kaur was not an eyewitness to the event, but as per her statement she did see the appellant at the place of occurrence, when she reached the place as soon as the prosecutrix raised the alarm. She was informed about the rape by the prosecutrix herself. The presence of the appellant in the room at 1.00 a.m. is established, since there is nothing else on the record to establish his presence elsewhere. The corroborated medical evidence leaves no manner of doubt that the appellant entered the house of the prosecutrix and committed the offence of rape and also caused hurt to the prosecutrix on her lips and teeth.

16. As per the argument raised that there is enmity between the parties on account of the arrest of brother-in-law of the prosecutrix at the hands of father of the appellant, the said argument is not sustained. Moreover there is nothing on the record to substantiate this plea as has rightly been noticed by the Sessions Judge.

17. On an overall view of the matter, there is enough evidence

available to link the appellant with the commission of the crime. The testimony of PW4 remains unshaken to the effect that she saw the accused in the room of the deceased prosecutrix. The medical evidence too supports the allegations as made out in the FIR, therefore, no ground is made out to upset the judgment and conviction order of the accused appellant.

18. In view of the foregoing discussion, the appeal in hand is hereby dismissed. Concerned Chief Judicial Magistrate is directed to take the necessary steps against the appellant herein to serve the remaining part of the sentence awarded to him.

January 15, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No