

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

1. CRA-D-1190-DB-2013

Surender @ Khilari

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-1242-DB-2013

Vikram @ Vicky

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-1381-DB-2013

Rakesh @ Kala

... Appellant

Versus

State of Haryana

... Respondent

4. CRR-3437-2013

Jaipal Singh

... Petitioner

Versus

Surender @ Khilari and others

... Respondents

**Reserved on : 19.03.2019
Date of decision : 27.03.2019**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH***

Present: Mr. Manoj Sharma, Advocate
for the appellant in CRA-D-1190-DB-2013.

Mr. Satbir Rathore, Advocate
for the appellant in CRA-D-1242-DB-2013.

Mr. Ashwani Bhardwaj, Legal Aid Counsel
for the appellant in CRA-D-1381-DB-2013.

None for the petitioner in CRR-3437-2013.

Mr. Vishal Garg, Addl. A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals and revision petition, therefore these are taken up together and disposed of by a common judgment.

2. The aforesaid three appeals have been instituted against the judgment and order dated 03.09.2013 and 05.09.2013 rendered by the Additional Sessions Judge, Sonapat, in Sessions Case No.45 of 2012 whereby the appellants, who were charged with and tried for offences punishable under Sections 365 read with Section 34 and 376(2)(g) of the Indian Penal Code (in short 'IPC'), have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years each for offence punishable under Section 365 read with Section 34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of twelve years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three years for offence punishable under Sections 376(2)(g) IPC. The appellants were also

directed to pay compensation of Rs.50,000/- each to the prosecutrix. All the sentences were ordered to run concurrently.

3. The complainant has also filed criminal revision No.3437 of 2013 for enhancement of sentence.

4. The case of the prosecution in a nutshell is that a written complaint was submitted to the police by the complainant Jaipal Singh PW-3 on 09.09.2012 to the effect that his eldest daughter, i.e. prosecutrix (name withheld) was aged about 16 years. She was student of 12th class. On 08.09.2012 at about 09.00/09.30 P.M. she had gone towards the *gher* of Mehar Singh to bring the cattle. The complainant along with his wife and other children was present in his house. The prosecutrix did not come back. On 09.09.2012 he along with his cousin brother Manjit (PW-2) was searching for her on motor cycle. They were going towards Hasanpur Road. When he reached near Shiv Mandir, a Santro car bearing registration No.HR-10-6846 was seen coming from the opposite direction. The same was driven by accused Surender. He was residing in the neighbourhood of the complainant. Accused Kala was sitting along with him on the front seat. Two more persons were sitting on the back seat of the car. On seeing the complainant, they raised the speed of the car and stopped it after a distance of about 2 killas. The occupants of the car threw one female out of the vehicle and fled away. The complainant reached there. He found that female was his daughter. She disclosed to the complainant that she was abducted by the accused Surender and Kala with the help of their two accomplices. She was intoxicated. Rape was committed upon her. MLR was got conducted. Statement of the prosecutrix was also recorded under

Section 164 Cr.P.C. Investigation was completed. Challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants have also examined five witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

6. Learned counsel appearing on behalf of the appellants have vehemently argued that that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the prosecution case.

8. None appeared on behalf of the complainant-petitioner to argue the revision petition.

9. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

10. PW-1 HC Yashbir deposed that ASI Rambir interrogated accused Vikram @ Vicky, Surender @ Khilari and Rakesh @ Kala. They had admitted their guilt. Accused Rakesh, Vikram and Surender demarcated the place of occurrence on 01.10.2012. They made their disclosure statements vide Ex.PD, Ex.PE and Ex.PF. Santro car was also got recovered. Accused Rakesh got recovered one suit and salwar of the prosecutrix. Accused Vikram got recovered one pant, shirt worn by him at the time of commission of crime.

11. PW-2 Manjit deposed that 09.09.2012 at about 09/09.30 P.M. his niece (prosecutrix) had gone to bring the cattle. However, she did not

come back. They started searching for the prosecutrix. In the morning when he and his brother were going on the Hasanpur road on a motor cycle to make search for the prosecutrix, then a Santro car bearing registration No.HR-10-6846 came there. It was driven by accused Surender. Accused Kala was sitting with him on the front seat. There were two more persons on the back seat. The vehicle had slowed down. The occupants of the vehicle threw the prosecutrix out of the Santro car. They saw her being pushed down from the car. The prosecutrix was semi conscious. She told them that when she had gone towards the *gher*, accused Surender and one more person had abducted her by taking her in a car. She was taken somewhere on GT road. She was administered something by accused Surender and the other person. Thereafter she did not know what happened. In his cross-examination, he denied the suggestion that normally alone girl was not sent to the plots in the night. Volunteered that the plot was nearby the house. He denied the suggestion that the prosecutrix was having affair with Surender. He denied the suggestion that the prosecutrix was caught with Surender at Hotel Kuber and once in Murthal. He also denied the suggestion that the prosecutrix had voluntarily left her home at 09.30 P.M. on 08.09.2012.

12. PW-3 Jai Pal is father of the prosecutrix. He deposed that his wife woke up at 12.00 in the night of 08.09.2012. His daughter was missing. They started searching for her in the night but could not find her. In the morning, he along with his cousin Manjit went towards Hasanpur Road on a motor cycle. He noticed a Santro car No.HR10-6846 proceeding towards them. The vehicle was driven by Surender @ Khilari. Kala was sitting on the front seat. Two more persons were on the back seat. They crossed them.

They saw the prosecutrix being thrown out of the car. He identified both the

accused. His daughter was semi conscious. She told him that the accused had taken her towards Panipat road near some Peer Baba temple. Accused had committed rape upon her. They went to the police station. Statement of the prosecutrix was recorded by the Magistrate. In his cross-examination, he denied the suggestion that his daughter was having affair with accused Surender. He also denied the suggestion that his daughter had left the house voluntarily on 08.09.2012 in the night time. He admitted that he had borrowed a sum of Rs.50,000/- from accused Surender.

13. PW-11 prosecutrix deposed that she had gone towards her plot to take care of the cattle. She noticed a white colour Santro car standing nearby the plot. The car was owned by accused Surender. She identified him. She did not notice anybody in the car at that time. When she was coming back out of the plot after taking care of the cattle, suddenly someone gagged her mouth from behind. She was dragged to the car. One another person had lifted her legs. Accused Surender was also sitting in the car. Accused Kala gagged her mouth. She identified accused Kala. The third person who had lifted her legs was not known to her. He sat in the car. She identified him in the Court. Kala also sat in the car. Accused Kala made her unconscious. When she gained conscious, she found that accused Surender @ Khilari, Kala and third person, whose name she did not know, raped her forcibly. She pointed towards Vikram. She was pushed from the car. In her cross-examination, she deposed that she was student of 12th class at the time of incident. She denied the suggestion that she was in love with accused Surender. She denied the suggestion that his father usually sleeps in that plot. She also denied the suggestion that at about 12.30 A.M. she along with accused Surender had crossed the toll tax barrier at Panipat in his Santro

car. She also denied the suggestion that at about 02.00 A.M. they had crossed the toll tax barrier at Nilokheri. Her statement was recorded before the Magistrate. She admitted that she told about involvement of four persons while making statement to the Magistrate. Volunteered she was not in her senses at that time.

14. Dr.Manjri had medically examined the prosecutrix. She tendered into evidence her affidavit Ex.PW12/A. She proved the MLR Ex.PH. After seeing the FSL reports Ex.PX & Ex.PX/1, she opined that possibility of sexual intercourse could not be ruled out.

15. PW-14 ASI Rambir deposed that he was posted in Police Station Murthal on 09.09.2012. The complainant Jai Pal had moved complaint Ex.PG. FIR Ex.PG/1 was registered. He had arrested accused Rakesh @ Kala, Vikram and Surender on 30.09.2012. They were medically examined. They made disclosure statements vide Ex.PD, PE and PF. The car was got recovered by accused Surender. Accused Vikram got recovered his pant shirt. Accused Rakesh got recovered one suit and salwar belonging to the prosecutrix. In his cross-examination, he denied the suggestion that car belonged to one Jyoti Kinner.

16. The date of birth of the prosecutrix as per statement of PW-15 Varsha Chaudhary, Principal, is 04.05.1996.

17. DW-1 Jaswinder deposed that he used to visit the *dera* of Jyoti Kinner. Accused Surender met him on some occasions along with the prosecutrix.

18. DW-2 Gurmeet deposed that accused Surender had love affair with the prosecutrix.

19. DW-3 Savitri, mother of accused Surender, deposed that she

had gone to the house of the prosecutrix for marriage of his son with the prosecutrix.

20. DW-4 Yad Ram deposed that the prosecutrix wanted to marry with Surender. The proposal was turned down by the family of the prosecutrix. However, the prosecutrix was adamant. She left the house on 08.09.2012 and came back on the next day.

21. DW-5 Charan Singh deposed that the prosecutrix wanted to get married with Surender. The proposal of marriage was made by family of Surender to the father of prosecutrix. The proposal was turned down by the family of the prosecutrix.

22. The FSL reports are Ex.PX and Ex.PX/1. According to the report Ex.PX, human semen was detected on exhibit-1a (jeans), exhibit-4a (salwar), exhibit-5 (underwear) and exhibit-6 (underwear). However semen could not be detected on rest of the exhibits. As per FSL report Ex.PX/1, Ethyl alcohol, common tranquillizers or sedatives could not be detected in exhibit-7.

23. The statement of PW-11 prosecutrix inspire confidence. She had gone to the cattle shed. She was abducted by the accused. She was raped. She was pushed from the car. She was medically examined. According to PW-12 Dr.Manjri, possibility of sexual intercourse could not be ruled out. Human semen was detected in exhibit exhibit-1a (jeans), exhibit-4a (salwar), exhibit-5 (underwear) and exhibit-6 (underwear). These underwears belonged to accused Rakesh and Vikram. The prosecutrix had denied that she had love affair with Surender. The father of the prosecutrix also denied the relationship of her daughter with Surender. The prosecutrix deposed that she was forcibly abducted. She was administered something.

The statement of the prosecutrix is duly corroborated by medical evidence. As per opinion of PW-12 Dr.Manjari, the possibility of sexual assault could not be ruled out. PW-2 Manjit (uncle of the prosecutrix) and PW-3 Jai Pal (father of the prosecutrix) had seen the accused in the car on 09.09.2012. Learned counsel appearing on behalf of the appellants argued that their clients have been falsely implicated by the father of the prosecutrix. This Court can take judicial notice that no father would ever compromise the dignity and respect of her daughter for a loan of Rs.50,000/-.

24. Accordingly the prosecution has proved the case against the accused beyond reasonable doubt. Hence the appeals are dismissed. The criminal revision filed by the complainant is also dismissed. Accused Rakesh and Vikram are on bail. The police is directed to take appellants Rakesh and Vikram into custody to undergo remaining sentence imposed by the trial Court vide judgment and order 03.09.2013 and 05.09.2013.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 27, 2019.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No