

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

1. CRA-D-242-DB-2013

Kulwinder Singh @ Billu

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-248-DB-2013

Narinder @ Neelu

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-D-328-DB-2013

Amandeep Singh @ Aman

... Appellant

Versus

State of Punjab

... Respondent

4. CRA-D-341-DB-2013

Harinderjit @ Babby

... Appellant

Versus

State of Punjab

... Respondent

**Reserved on : 06.03.2019
Date of decision : 13.03.2019**

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

Present: Mr.T.S.Sangha, Senior Advocate
with Mr.Narinder Singh, Advocate
for the appellants
in CRA-D-328-DB-2013, CRA-D-341-DB-2013.

Mr.Aakash Singla, Advocate
for the appellants
in CRA-D-242-DB-2013, CRA-D-248-DB-2013.

Mr.S.P.S.Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

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

2. The aforesaid four appeals are instituted against the judgment and order dated 22.02.2013 rendered by the Additional Sessions Judge, Patiala in Sessions Case No.21 dated 01.11.2012 whereby the appellants, who were charged with and tried for offences punishable under Sections 364, 366, 382, 376(2)(g) and 506 of the Indian Penal Code (in short 'IPC') read with Section 34 IPC, have been convicted thereunder and sentenced as under:-

Convict Kulwinder Singh @ Billu

Under Section	Imprisonment awarded	Fine	In default of payment of fine
364/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
366/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
382/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
376(2)(g) IPC	Imprisonment for life	Rs.10,000/-	R.I. for 1½ years
506/34 IPC	R.I. for two years	Rs.1000/-	R.I. for six months

Convict Amandeep Singh @ Aman

Under Section	Imprisonment awarded	Fine	In default of payment of fine
364/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
366/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
382 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
376(2)(g) IPC	Imprisonment for life	Rs.10,000/-	R.I. for 1½ years
506/34 IPC	R.I. for two years	Rs.1000/-	R.I. for six months

Convict Harinderjit @ Babby

Under Section	Imprisonment awarded	Fine	In default of payment of fine
364/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
366/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
382/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
376(2)(g) IPC	Imprisonment for life	Rs.10,000/-	R.I. for 1½ years
506/34 IPC	R.I. for two years	Rs.1000/-	R.I. for six months

Convict Narinder @ Neelu

Under Section	Imprisonment awarded	Fine	In default of payment of fine
364/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
366/34 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
382 IPC	R.I. for seven years	Rs.2000/-	R.I. for six months
376(2)(g) IPC	Imprisonment for life	Rs.10,000/-	R.I. for 1½ years
506/34 IPC	R.I. for two years	Rs.1000/-	R.I. for six months

3. The case of the prosecution in a nutshell is that on 22.08.2012 SI Karnail Singh along with his police party in connection with Nakabandi, was present at Dakala Octroi Post. Mohit Joshi got recorded his statement to the effect that he was doing the course of Chartered Accountant. He used to take tuition in Bright Professional Institute, Chhoti Baradari, Patiala, from

05.30 P.M. to 08.30 P.M. He along with prosecutrix (name withheld) were taking tuition for CA classes. As usual both of them after taking tuition were coming to their houses on 21.08.2012. The prosecutrix was on her Activa vehicle. He was riding on his motor cycle. From the side of Dakala Octroi Post, they moved over to embankment and turned towards Dakala road. After going about 400 yards ahead, when they were in the process of returning towards Urban Estate, then from behind two motor cycles came. It was dark. He could not read their registration numbers or colours. Two persons were driving the motor cycles while two persons were pillion riders. Two persons got down from the motor cycles. They asked the complainant that what were they doing. They started scuffling with the complainant. They demanded purse and mobile. They forcibly took away the prosecutrix and made her sit on the motor cycle and sped away. The occupants of other motor cycle also followed them. SI Karnail Singh cordoned off the entire area. When SI Karnail Singh was conducting checking of vehicles in front of Bhupinder International Public School, then a girl came out from the Beer (jungle). She was perplexed. She disclosed her particulars. It was found that she was the same girl who was abducted. The prosecutrix was taken to the spot. Rough site plan was prepared. The prosecutrix was medico legally examined. On the basis of information supplied by the prosecutrix, SI Karnail Singh started searching accused. Two clean shaved persons came out of thick bushes and tried to run away. They were nabbed. Another person also tried to run away from the bushes. He was also apprehended. First person disclosed his name as Kulwinder Singh @ Billu. Second person disclosed his name as Amandeep Singh @ Aman. Third person disclosed his name as Harinderjit @ Babby. They were taken into

custody. The prosecutrix had identified them. Kulwinder Singh @ Billu and Amandeep Singh @ Aman made disclosure statements on 23.08.2012 on the basis of which motor cycle was got recovered. Accused Narinder @ Neelu surrendered in the Court on 27.08.2012. He made disclosure statement that he had kept concealed the mobile phone. He could get it recovered. Mobile phone was recovered. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 13.09.2012. Investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined as many as 10 witnesses. Statements of appellants were recorded under Section 313 Cr.P.C. Appellants also examined five witnesses in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

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

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

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

8. PW-1 (name withheld) deposed that she was studying Chartered Accountant Course since 2010. She was taking tuition at Bright Professional Institute, Chhoti Baradari, Patiala. She used to take tuition from 05.30 P.M. to 08.30 P.M. Mohit Joshi was also taking tuition. Mohit Joshi was in his group. On 21.08.2012 the tuition class was over at 08.30 P.M. Thereafter she along with Mohit Joshi was going towards her house via Shish Mahal, Patiala. She was driving Activa whereas Mohit Joshi was

driving his bike. They were going towards her house at Urban Estate, Patiala. She along with Mohit Joshi after passing through Shish Mahal was going on Dakala Road. This road leads to Rajpura side if one turns to left side while going from Shish Mahal, Patiala and on one side of this road there was *nadi* (canal) and while reaching on the said road, they turned towards left side and they had gone a little ahead on that road. All of a sudden, the bike of Mohit Joshi developed some technical defect. She parked Activa on one side. In the meantime, four accused persons came on two motor cycles from Sanouri Adda side. Accused persons stopped their motor cycles. They enquired from Mohit Joshi what had happened. Mohit Joshi replied them that his bike had gone out of order. Two accused persons sitting on the rear seat of motor cycles alighted and started scuffling with Mohit Joshi. Amandeep Singh @ Aman present in the Court had snatched her mobile phone and purse. Amandeep Singh @ Aman had handed over the same to accused Kulwinder Singh @ Billu. She identified all the four accused present in the Court. Accused Narinder @ Neelu had snatched mobile phone and purse of Mohit Joshi. Suddenly accused Amandeep @ Aman came from the back side. He gagged her mouth. He forcibly made her to sit on one motor cycle in between them. Kulwinder Singh @ Billu was driving the motor cycle. Amandeep Singh @ Aman was sitting behind her. Amandeep Singh @ Aman gagged her mouth. She could not breath properly. They went towards Dakala side. The other two were also following them. They went towards Beer. Accused Amandeep Singh @ Aman alighted from the motor cycle and accused Narinder @ Neelu sat behind her forcibly. He also gagged her mouth. Accused Kulwinder Singh @ Billu and accused

Narinder @ Neelu forcibly took her into the Beer on their motor cycle. They took her deep inside the Beer. Accused Kulwinder Singh @ Billu and Narinder @ Neelu forcibly committed rape with her. Firstly accused Kulwinder Singh @ Billu had forcibly committed rape with her and thereafter accused Narinder @ Neelu forcibly committed rape with her. She was threatened. All of them were in contact with each other. She had also made statement before the CJM, Patiala. On reaching at the spot, accused Harinderjit @ Babby and accused Amandeep Singh @ Aman were also preparing to commit forcibly rape with her. However police hooters were heard. She came out of Beer and narrated the incident to the police. She identified her Samsung phone. She also identified her clothes in the Court. In her cross-examination she admitted that there was a gap of 20/21 days for making statement in the Court of CJM, Patiala.

9. PW-4 Satpal has proved the date of Beerth of the prosecutrix as 05.08.1991 as per Ex.PW4/A.

10. PW-5 Mohit Joshi has corroborated the statement of PW-1 and the manner in which she was forcibly taken away by the appellants on their motor cycle. He had informed the police. He along with police had reached Bhupindera International School on Dakala Road on 22.08.2012. The prosecutrix narrated the incident to the police. He identified his mobile phone Ex.MO7 and purse Ex.MO8. In his cross-examination he deposed that he knew the prosecutrix for the last 7/8 years. He was cross-examined at length.

11. PW-9 ASI Gurdeep Singh deposed that on 27.08.2012 he was posted at PP Division No.2, Patiala. Accused Narinder @ Neelu suffered

disclosure statement. He got mobile phone and purse recovered from the almirah.

12. PW-10 SI Karnail Singh deposed that he was posted as Incharge PP Division No.2, Patiala. He recorded the statement of Mohit Joshi vide Ex.PW5/A on the basis of which FIR Ex.PW5/A1 was recorded. He along with police party searched the girl. He reached in the area of Beer, Moti Bagh, Patiala. He recorded supplementary statement of Mohit Joshi. The prosecutrix met him at about 06.45 A.M. in front of Bhupindera International Public School. He prepared rough site plan Ex.P10/C. Accused were arrested. Motor cycle was got recovered by the accused. He also moved application for medical examination of accused.

13. PW-2 Dr.Jaideep Bhatia had medico legally examined accused Kulwinder Singh @ Billu and Narinder @ Billu.

14. PW-3 Dr.Kushaldeep Gill had examined the prosecutrix. The doctor had opined that possibility of sexual intercourse in this case with the prosecutrix could not be ruled out. Doctor had made endorsement Ex.PW2/E1. Doctor had noticed fresh bleeding coming out of vagina. Hymen was ruptured. Doctor had also noticed multiple abrasions on both arms and feet of the prosecutrix.

15. The appellants have also produced DW-1 Joginder Singh. He deposed that he was working as Personal Manager in DSG Papers Pvt. Ltd. Bhaperi Patiala. Harinderjit @ Babby was driver to General Manager (W) on casual basis. On 22.08.2012 Harinderjit @ Babby came to the Mill. He received telephonic message from the security personnel that Harinderjit @ Babby was taken into custody by the police. He made telephonic call to

General Manager. However in the cross-examination he admitted that he had stated the abovesaid facts in the examination in chief for the first time in the Court. Prior to that he had not stated these facts to anybody. He did not make any entry in the record that he had seen Harinderjit @ Babby in the office on 22.08.2012.

16. DW-2 Ram Ekwil Singh deposed that he was working as General Manager (Works) in DSG Papers Pvt. Ltd. Harinderjit @ Babby was driver with him. However in the cross-examination he admitted that he was not in possession of any appointment letter of Harinderjit @ Babby as personal driver of General Manager (W). He was also not in possession of any document to show that Harinderjit @ Babby was ever paid any salary by the firm.

17. DW-3 Avtar Singh deposed that he was residing in village Sullar opposite to the house of Harinderjit @ Babby. On 21.08.2012 Harinderjit @ Babby came to his house at 09.30 P.M. after taking his meal and remained at his residence till 09.45 P.M. Thereafter he went to his house. In his cross-examination he admitted that he did not move any application or representation to the police that Harinderjit @ Babby was innocent.

18. DW-4 Harmeet Singh Bajwa deposed that he knew accused Kulwinder Singh @ Billu and Amandeep Singh @ Aman. On 21.08.2012 he had gone to the house of Kulwinder Singh @ Billu in village Sullar to know about the condition of father of Kulwinder Singh @ Billu at 09.00 P.M. He remained there upto 10.00 P.M. Kulwinder Singh @ Billu along with his wife, mother and father were present in his house. He left the house at

10.00 P.M. Thereafter in the morning he saw Kulwinder Singh @ Billu standing outside the gate of his house. Thereafter on 22.08.2012 at about 01.00 /01.30 P.M. the police had conducted searches in various houses of their village. Thereafter the police took away Amandeep Singh @ Aman and Kulwinder Singh @ Billu from their houses along with their motor cycles. In cross-examination he deposed that he did not move any representation to the higher police officer or to any court of law about the false implication of the accused Kulwinder Singh @ Billu and Amandeep Singh @ Aman.

19. DW-5 Mohan Lal deposed that he was present in the house on the intervening night of 21.08.2012 and 22.08.2012. They were watching T.V. at that time. His brother Narinder @ Neelu was also with them. His friend Jaggi went to his house after that. On the next day, i.e. 22.08.2012 police came to their house and enquired about his brother Narinder @ Neelu. In cross-examination he has also admitted that he had not moved any application before any authority that his brother was falsely implicated.

20. According to the FSL report, spermatozoa was detected in exhibits I, II & IV, i.e. vaginal slides, vaginal swabs and panty. The date of Birth of the prosecutrix is 05.08.1991. The prosecutrix was kidnapped by the appellants. She was taken to forest by the appellants. According to the prosecutrix, Kulwinder Singh @ Billu firstly forcibly committed rape with her and thereafter accused Narinder @ Neelu forcibly committed rape with her. Other appellants namely Harinderjit @ Babby and Narinder @ Neelu were also present on the spot. They were preparing to commit rape with the prosecutrix. In the meantime police came. The statement of the prosecutrix was recorded. She was medically examined. According to MLR, possibility

of rape could not be ruled out. Blood was found on the vaginal slides, vaginal swab sticks and panty. The doctor had noticed abrasions on the body of the prosecutrix. The doctor had also noticed fresh bleeding coming out of vagina. Hymen was ruptured. The statement of the prosecutrix inspires confidence. The statement of prosecutrix is duly corroborated by PW-5 Mohit Joshi who narrated the manner in which she was taken away on the motor cycle by the appellants. Recovery of motor cycle has been made on the basis of disclosure statement made by accused. Mobile and purse were also recovered from the accused.

21. Statements of DWs do not inspire confidence. The appellants have also taken the plea of *alibi*, however, they have not proved the same. It is settled law that any person who takes advantage of any exception, has to prove his case. Since the appellants have failed to prove the plea of *alibi* taken by them, their presence on the spot is confirmed. The appellants have not led any documentary evidence that Harinderjit @ Babby was engaged as driver. In case appellants were falsely implicated, DWs 3 to 5 should have made representation to the police. It was expected from them to at least inform the local Panchayat.

22. In the instant case, statement of the prosecutrix is duly corroborated by the medical evidence as well.

23. There is no occasion for us to interfere with the well reasoned judgment of the trial Court. Accordingly the judgment of conviction is upheld. However taking into consideration that the appellants are of young age, i.e. 30 to 34 years, sentence of imprisonment for life awarded for offence under Section 376(2)(g) IPC is reduced to 12 years without remissions. The

imposition of fine of Rs.10,000/- imposed upon the appellants and additional imprisonment for 1½ years in default of making payment of fine is upheld. The conviction and sentences of the appellants for other offences under Sections 364, 366, 382, 506 read with Section 34 IPC are also upheld.

23. The appeals are accordingly disposed of.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 13, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No