

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1364-DB-2014 (O&M)

Date of decision : 20.12.2019

Dheeraj and others

..... Appellants

versus

State of Haryana.

..... Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI**

Present : Mr. Parmod Parmar, Advocate
for appellant No.1.

Mr. Vibhu Agnihotri, Advocate and
Mr. Pushp Jain, Advocate for
Ms. Tanu Bedi, Advocate
for appellant No.2.

Mr. Vijay, Advocate for appellant No.3.

Ms. Palika Monga, DAG Haryana.

VIVEK PURI, J. (Oral)

1. An appeal has been preferred by the appellants who are aggrieved by the judgment of conviction dated 21.07.2014 and order of sentence dated 25.7.2014 passed by the learned Additional Sessions Judge, Rohtak in FIR bearing No. 440 dated 26.10.2010 vide which accused-appellants have been convicted under Sections 366 read with Section 34, 376 (2)(g) and 506 read with Section 34 IPC and sentenced as follows:

Sr. No.	Section	Sentence	Fine
1	366/34 IPC	Rigorous imprisonment for a period of 10 years	Rs.10,000/- each. In default of payment of fine, convicts shall undergo rigorous imprisonment for a period of one year.

2	376(2)(g) IPC	Rigorous imprisonment for a period of 14 years.	Rs.10,000/-each. In default of payment of fine, convicts shall undergo rigorous imprisonment for a period of one year.
3	506/34 IPC	Rigorous imprisonment for a period of two years.	Rs.2,000/-each. In default of payment of fine, convicts shall undergo rigorous imprisonment for a period of one month.

The substantive sentences were directed to run concurrently.

2. Briefly the facts as put forth by the prosecution are to the effect that the prosecutrix was a student of 9th class. On 25.10.2010 at about 8 A.M. she was proceeding to her school on foot. When she reached the bus stand, a white colored Maruti Van came from behind and stopped adjacent to the prosecutrix. The vehicle was being driven by a boy and two other persons were also sitting on the rear seat. One of the persons sitting on the rear seat was Dheeraj-appellant No.1 and his sister Savita, DW1 was married to Bijender, the cousin of the prosecutrix. The other two occupants of the van were not known to the prosecutrix. Dheeraj asked the prosecutrix to sit in the van and they will drop her in front of the school. At the first instance, the prosecutrix was reluctant but on the insistence of Dheeraj, she sat in the van. On the asking of Dheeraj, the driver of the van turned it towards Gijji road. The prosecutrix raised an objection stating that her school was not in the said direction. Dheeraj asked the prosecutrix to remain silent and thereafter, the van was stopped at an isolated place at a distance of about 2 Kms from the village. The van was having tinted glasses. Thereafter, Dheeraj broke the string of salwar of the prosecutrix and both the boys committed rape upon the prosecutrix. The prosecutrix started crying and requested them not to do so. However, both the boys sitting on the rear seat committed rape upon her. The prosecutrix was

dropped at bus stand at about 2 P.M. and the van was taken towards Sampla. The prosecutrix returned back to her house but did not narrate the incident to her parents on the day of occurrence. On the following day i.e. 26.10.2010 she revealed the incident to her parents and the matter was reported to the police.

3. The accused-appellants faced trial in the Court. The prosecution had examined 21 witnesses during the course of its evidence. The statements of the accused under Section 313 Cr. P.C. have been recorded and the accused have examined Savita, DW-1, the sister of Dheeraj-accused during the course of defence evidence.

4. Vide judgment dated 21.7.2014 the appellants were convicted and order dated 25.7.2015 sentenced as mentioned in para 1 of the judgment. Aggrieved by the aforesaid judgment, the present appeal has been preferred.

5. It has been contended by learned counsel for the appellants that there is a delay of about 36 hours in lodging of the FIR; the prosecutrix was aged about 19 years; it shall not be safe to base the conviction on the solitary statement of the prosecutrix as there are significant improvements, discrepancies and improbabilities therein. Furthermore, the statement has been made by the prosecutrix under the influence of her father on account of his enmity with the brother-in-law of Dheeraj-accused. It has been further argued that appellant No.2-Krishan and appellant No. 3-Rakesh Kumar have not been named in the FIR; the identification of the accused as perpetrators of the crime is not established as no test identification parade has been conducted; the vehicle has been falsely involved in the instant case and there is a probability of defence version as the father of the prosecutrix was enimical with the husband of Savita, DW1 who is the sister of Dheeraj-

accused.

6. On the contrary, while supporting the judgment of the learned trial Court it has been contended by learned Deputy Advocate General that some delay in such like cases is inevitable as the honour of the family and that of a young unmarried girl was at stake. The school record indicates the date of birth of the prosecutrix as 24.10.1996 and as such, she was aged less than about 16 years of age at the time of occurrence. There can be no bar to base the conviction on the solitary statement of the prosecutrix as the same inspires confidence and forms a valid ground for founding the conviction of the accused. It has been further argued that even though no test identification parade has been conducted but it cannot be termed to dispute the identity of the accused as they have been specifically and categorically identified by the prosecutrix during the course of her deposition in the Court. The identity of the vehicle is also established as the same has been got released on 'superdari' by Naresh, PW6, the owner thereof. The defence version cannot be accepted in view of the positive, clinching and reliable evidence led by the prosecution. Moreover, there is nothing to suggest that the case was registered on the influence of the father of the prosecutrix.

7. We have given thoughtful consideration to the arguments advanced on behalf of both the parties.

8. Generally speaking, it is expected that the FIR should be lodged without any delay and with due promptitude, as it will rule out the possibility of introduction of false version. However, delay cannot be termed to be fatal if there is sufficient and proper explanation put forth to justify the same. Furthermore, it may not be appropriate to apply same yardstick in seeking explanation for delay in the cases of sex offence as in

such cases, the honour of the family and more particularly, that of prosecutrix is at stake. In such like cases, it is quite natural for the prosecutrix to take some time to share the incident with family members and thereafter by the family members to take a decision to report the matter to the police.

9. On adverting to the present case, the prosecutrix returned back to her house and did not go to the school on the following day. She narrated the incident to her parents on the following day of occurrence and thereafter, the matter was reported to the police.

10. Faced with this situation, it has been contended by learned counsel for the appellants that clothes of the prosecutrix were torn and the same would have been noticed by her parents on the day of occurrence itself. In this regard, it may be mentioned here that the perusal of the record indicates that the shirt had torn from the neck and the arm and slight damage to the clothes may not have been noticed by the parents of the prosecutrix as she may have gone back to her house in a clandestine manner as she never wanted to share the incident with her parents on the day of occurrence. She deliberated with her parents on the following day and the matter was reported to the police. In such circumstances, there is sufficient explanation to justify the delay in reporting the matter to the police. Moreover, it is not a case of inordinate delay. Furthermore, the material on record does not indicate that a false, coloured, concocted or exaggerated version has been put forth as a result of afterthought.

11. With regard to the age of the prosecutrix, the deposition of the prosecutrix while appearing in the witness-box as PW1 and her father who appeared as PW4 is to the effect that she was aged about 14 years. Even the

age as recorded in the MLR is 14 years. Tejbir, PW15 is working as a Teacher and Bimla Dhaka is working as a Principal in Government Senior Secondary School, Gandhra wherein the date of birth of the prosecutrix has been recorded as 24.10.1996. It is emerging in the statements of these witnesses that her date of birth was recorded on the basis of school leaving certificate of middle school. The prosecutrix had taken admission in their school in 9th Standard. It is not emerging on record as to on what basis the date of birth of the prosecutrix was recorded as 24.10.1996 in the school record. No record of the school where prosecutrix was earlier studying or birth certificate is coming forth. Dr. T.S.Bagri, PW5 had conducted the X-Ray examination for determining the age of the prosecutrix and as per his report Ex.P2, the probable age as per the ossification test was 16 to 19 years. In such circumstances, it can be concluded that the age of the prosecutrix exceeded 16 years at the time of occurrence. It may be noted with significance that it is not a case of the defence that the prosecutrix was a consenting party. In such circumstances, the controversy with respect to the age of the prosecutrix pales into insignificance.

12. The prosecutrix has stepped into the witness-box as PW1 to testify with regard to the allegations against the appellants. Her father has stepped into the witness-box as PW4 but he is not a witness to the occurrence and has deposed on the basis of the information received from the prosecutrix. There cannot be any bar to base the conviction on the solitary statement of the prosecutrix. It sounds unnatural that the prosecutrix will put her honour and that of her family at peril to falsely implicate a distant relative. The learned counsel for the appellants had pointed out certain improvements and discrepancies in the statement of the prosecutrix.

However, such improvements and discrepancies cannot be termed to be significant enough to discard the genuineness of the version as put forth by her. It has been pointed out that in the statement Ex.PB recorded by the learned Judicial Magistrate, the prosecutrix had stated that the occurrence took place in the moving vehicle whereas while appearing in the witness-box it has been stated that the accused had taken the vehicle to an isolated place and was stopped. It may be mentioned here that the first version of the case has been unfolded in the complaint Ex.PA wherein it has also been mentioned that the van was stopped at a lonely place after covering a distance of 2 Kms. Moreover, when a young unmarried girl is being sexually ravished by three persons, it sounds unnatural that she can remember the entire sequence of events with mathematical certainty. In such circumstances, the improvements and discrepancies as sought to be pointed out do not in any manner render the version of the prosecutrix to be doubtful. The version as put forth by the prosecutrix is found to be credible, consistent, and does not suffer from any basic infirmity which may render the same to be doubtful.

13. With regard to the appellant Nos.2 and 3, it has been sought to be argued that they have not been named in the FIR and no test identification parade has been conducted. It may be mentioned here that Dheeraj-appellant No.1 was a relative of the prosecutrix and known to her. It is quite natural that other two occupants of the van were not known to her, being strangers. However, the test identification parade is required to be conducted to get lead during investigation and the case of the prosecution cannot be discarded on the score that no test identification parade has been conducted. The identity of all the appellants is sufficiently proved and established as during

the course of her statement in the Court, the prosecutrix has identified all of them. Merely because the dock identification is not preceded by TIP, it cannot be said that the dock identification has no value. The dock identification is the substantive piece of evidence and fairly reliable in the instant case.

14. The argument put forth on behalf of the appellants that the vehicle is not connected with the commission of crime is liable to be rejected. Although, Naresh PW6 has testified during his cross-examination that the van was impounded by the police as he was not carrying the documents of the van. He got the van released on 'superdari' which was taken in custody in this case. Had his van been impounded without any documents, he would have been issued a traffic challan. There is nothing to suggest that any such challan or document impounding the vehicle was issued which tends to falsify the version as sought to be put forth by the appellants that the vehicle has been falsely implicated in the instant case.

15. It shall not be out of place to mention here that additional evidence is available in the instant case from the medical and forensic evidence adduced on record. As per the MLR, following injuries were found on the person of the prosecutrix.

“1. Black Eye – Lt. bruising around Lt. Eye Reddish blue color abrasion below Lt. Eye 4x3 Cm. Advised X-Ray facial bones.

2. Abrasion over neck & near chin area .5 Cm. Advised X-Ray Facial bones.

3. Abrasion over Rt. Chest area of varies size 1x02 CM, 3x0.5 Cm. over Rt. Side of upper part of chest of near right Clavicle reddish blue in color advice X-Ray chest AP & lateral. Blunt – KUO – within 72 hrs.

4. Abrasion over anterior abdomen

Multiple of various sizes from 6x0.2, 10x0.3cm over entire extent of lower & middle abdomen advise USG in a ultrasound, Reddish blue color Blunt -KUO- within 72 hrs.

5. Over Rt. Thigh multiple abrasion of various sizes 6x0.2 cm-10cm.x0.3cm. Reddish blue in color over anterior extent of Rt. Upper one third of Thigh.

Advised X-Ray AP & lateral Blunt-KUO-within 72 hrs.

6. Abrasion over over back Lt. Side near Scapula 10x0.3cm or 6x0.2cm.

PV – hymen ruptured admits two fingers redness present, tenderness present bleeding present - Spotting.”

16. Furthermore, as per the report of the Forensic Science Laboratory semen was detected not only from the salwar and shirt of the prosecutrix but also from the underwears of the appellants No. 1 and 2. Even the blood was detected on the salwar of the prosecutrix which indicates that she was sexually exploited by the appellant Nos. 1 and 2.

17. The accused had put forth a defence version to the effect that Savita, DW1, the sister of Dheeraj was married with the cousin of the prosecutrix. The father of the prosecutrix was having dispute with the husband of Savita, DW1 and consequently, a false case has been foisted upon them. It sounds unnatural that the father will put the honour of the family and the prosecutrix at stake to falsely implicate a distant relative. Moreover, it is also emerging in the statement of the prosecutrix that her father was having dispute with her mother and she was residing at the house of her maternal aunt at Village Salhawas for the last two months from the

date she deposed in the Court. As the prosecutrix was residing separate

from her father on the day of her deposition in the Court, it cannot be said that any pressure was working upon her mind to falsely implicate the accused at the instance of her father. In these set of circumstances, the prosecution has successfully proved and established the guilt of all the appellants beyond the shadow of reasonable doubt and the conviction has been correctly recorded. The judgment of conviction is accordingly upheld.

18. With regard to the quantum of sentence, it may be mentioned here that the appellants are suffering incarceration since the day of their arrest. They have faced trial for a period of about four years. All of them have undergone custody for a period of more than 8 years. In such circumstances, the sentence of imprisonment imposed upon appellant No. 1—Dheeraj and appellant No. 2-Krishan with regard to the offence under Section 376 (2G) is reduced to 10 years. The substantive sentence of imprisonment with regard to the other offences and the amount of fine imposed and imprisonment in default, shall remain intact.

19. With regard to Rakesh Kumar, appellant No.3, it may be mentioned here that he was driver of the van in which the occurrence took place. The allegations with regard to the forcible sexual intercourse have not been attributed to him and the same have been attributed to his co-accused. As per the proviso to Section 376 (2) IPC for the adequate and special reasons to be mentioned in the judgment, a sentence less than 10 years can also be imposed. Keeping in view the fact that the commission of forcible sexual intercourse has not been attributed to Rakesh Kumar-appellant No. 3; he has already undergone imprisonment for a period of more than 8 years; it has also been reported that his conduct in the jail is satisfactory and has not committed any jail offence, he is directed to undergo imprisonment for a

period already undergone without any alteration pertaining to the sentence with regard to the fine and default sentence imposed upon him.

20. With the aforesaid partial modification in the quantum of sentence, the appeal being devoid of merit is dismissed.

21. Since the main case has been decided, pending applications, if any, stand disposed of.

(AJAY TEWARI)
JUDGE

20.12.2019
Janki

(VIVEK PURI)
JUDGE

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