

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-612-DB-2014

Reserved on : 27.08.2019

Date of decision : 03.09.2019

Raghbir Singh

... Appellant

Versus

State of Punjab

... Respondent

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

Present: Mrs.Shubhra Singh, Legal Aid Counsel
for the appellant.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 13.09.2013 rendered by the Sessions Judge, Hoshiarpur, in Sessions case no.20 of 01.08.2013 whereby the appellant, who was charged with and tried for offence punishable under Sections 376 of the Indian Penal Code (in short 'IPC'), has been convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution in a nutshell is that on 11.04.2013, ASI Salwinder Singh along with other police officials was holding picket at Bus Stand, Bhangala. Complainant Ved Parkash approached them. He made the statement. According to him, his mother (prosecutrix) was residing with him. Her age was about 90 years. She was unable to speak properly due to old age. She used to pay obeisance on temple at Mand Mandir Motla. On

11.04.2013 at about 2.30 P.M. the prosecutrix went in routine, for paying obeisance in the said temple. However, she did not come back until 6.00 P.M. Thereafter, the complainant went in search of prosecutrix at Mandir Motla. At about 6.30 P.M., when he reached in the area of Motla in forest area, he found accused belonging to his village committing rape with the prosecutrix against her wishes. The accused ran away. The complainant brought his mother to house. He disclosed the occurrence to his brother Narinder Pal. Consequently the FIR was registered. Statements of witnesses were recorded. Site plan was prepared. The medical examination of the prosecutrix was got conducted. Vaginal swabs were sent to chemical examiner along with the parcel of the clothes of the prosecutrix. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statement of accused was also recorded under Section 313 Cr.P.C. According to him, he was falsely implicated in the case. The appellant was convicted and sentenced as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

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

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

7. PW-1 Dr.Shelly Bajwa had proved the MLR Ex.P2. According to her opinion, spermatozoa was detected in vaginal swab and salwar. In her opinion, the sexual intercourse has probably occurred in this case. She gave

her opinion Ex.P14 after receipt of report of Chemical Examiner Ex.P13. Since she has not received report of blood grouping, she could not comment upon the blood group. In her cross-examination, she deposed that the history about the sexual assault was not recorded at the instance of the prosecutrix. However, it was recorded at the instance of daughter-in-law of the prosecutrix. Ved Parkash, son of the prosecutrix, was present when the prosecutrix was medico legally examined. He did not disclose any history of assault on the patient to her. She examined the body of the patient. No injury of any type including teeth bites etc. was found on any part of the body. The blood on the spot found was very small. It was taken into possession by scratching it. No blood was found on any part of the body. No blood was found on the clothes of the prosecutrix. She admitted that DNA profile was a 99.9% exact science. She also admitted that the spermatozoa found in the chemical report could only be attached to a particular person by DNA profiling otherwise it was not possible.

8. PW-2 Dr.Gurinder Pal Singh had examined the accused. According to him, there was nothing to suggest that the accused was unable to perform the sexual act.

9. PW-3 Subhash Kumar had prepared site plan Ex.P5. In his cross-examination, he deposed that he did not obtain signatures of Ved Parkash on the site plan Ex.P5. He admitted that near the alleged place of occurrence there was a pucca road which went from village Mand to village Motla. There was Shiv Mandir near the alleged place of occurrence. He also admitted that the alleged place of occurrence was open space. Abadi of the village was at a distance of 300-400 meters from the alleged place of

occurrence.

10. PW-5 Ved Parkash deposed that his mother was 90 years of age. She could not talk properly and her memory was also weak. She used to go to pay obeisance at Mand Mandir Motla. On 11.04.2013 at about 2.30 P.M., his mother had gone to offer prayers at the Mandir. She did not come back till 6.00 P.M. Then he went in search of his mother. When he reached near the forests of Motla at about 6.30 P.M., he saw that accused Raghbir Singh was committing rape upon his mother. Raghbir Singh ran away from the spot. He could not follow him as he was handicapped. He narrated the incident to his sister and brother Narinder Pal. He took his mother to Civil Hospital, Mukerian. She was medically examined. In his cross-examination, he deposed that the house of the accused was on the backside of their house. Accused was from his clan. He was labourer. He used to undertake labour work early in the morning at 8.00 AM and thereafter used to return at about 5.00/6.00 P.M. He also admitted that there was a dispute between him and accused party qua some plot. They were not on visiting terms with each other. Accused was about 60/65 years of age. He also admitted that his mother was quite old and could walk with great difficulty. He also admitted that due to old age, eye sight of his mother was weak. Nobody accompanied his mother when his mother used to go to Mandir. The place of occurrence was at a distance of two killa from the village abadi and was open space. Due to forest area, it was not possible to see a person from distance. He was all alone when he saw his mother. He also admitted that there was a pucca road which was frequented by traffic. He had gone towards the said place on hearing the shrieks of his mother. Accused committed rape for about 10/15

minutes in his presence. Thereafter, he raised alarm. Then accused ran away from the spot. He was at a distance of about 200-250 feet when he saw accused committing alleged rape with his mother. So long he remained present for about 15 minutes at the place of occurrence, none came on the spot. Accused ran away from the spot in naked condition. Lot of blood had fallen on the ground. The clothes of his mother were also smeared with blood. The blood stained clothes were retained by the doctor. The teeth bites were visible on the back of his mother and there were other injuries on the back. The same were shown to the doctor. Firstly, they changed the clothes of his mother after the incident. However, again those clothes were worn by his mother. His mother was not in position to make statement. His mother disclosed to the investigating officer that she did not want to make statement and she would make statement later on. His mother's statement was recorded after 4/5 days of the occurrence. He also admitted that prior to 4/5 days of recording of statement, police used to come in the village to record the statement of his mother. However, she did not disclose the incident to the police. She made the statement after 4/5 days of the alleged occurrence. He also admitted that during the said period, he made his mother understand and thereafter, his mother at his instance got recorded her statement to the police. It was got recorded by him in his statement Ex.P7 that he could not follow the accused as he was handicapped. He was confronted with statement Ex.P7 where it was not so recorded. In his further cross-examination, he deposed that accused ran away from the spot in naked condition by leaving his clothes there. He did not hand over the said clothes of accused to the police. He again reiterated that accused committed rape

with his mother for about 10/15 minutes in his presence and after it, accused ran away from the spot and then he raised alarm. He did not chase the accused.

11. PW-6 ASI Salwinder Singh deposed that Ved Parkash made statement Ex.P7. FIR Ex.P9 was registered. He visited the place of occurrence. He arrested the accused. He got the scaled site plan prepared from Subhash Kumar, Draftsman, on 16.04.2013. In his cross-examination, he deposed that no blood was found at the spot. No clothes smeared with blood of the prosecutrix were produced before him. He met the prosecutrix in Civil Hospital, Mukerian, after 12.00 P.M. on 11.04.2013. She was not in position to speak being mentally retarded. Statement of the prosecutrix was recorded at the instance of Ved Parkash. She could not hear and speak properly. He did not obtain the help of any instructor. There was a metalled road from Mand Motla. The same was frequented by people. The village of abadi was at a distance of 400 meters from the place of occurrence. He admitted that accused and complainant were relative.

12. PW-7 Narinder Pal deposed that Ved Parkash was his younger brother. His mother was mentally sick. His mother used to go to temple of Motla. On 11.04.2013 at about 2.30 P.M. his mother had gone to temple to pay obeisance. His mother did not come back. His younger brother Ved Parkash had gone in search of his mother. His brother disclosed him that accused Raghubir Singh had committed rape with his mother. In his cross-examination, he deposed that his brother met him at his house at about 7.00 P.M. His house was near to house of his brother. He saw the clothes of his mother smeared with blood. He also saw the signs of teeth bite on back of

his mother.

13. The learned trial Court had made attempt to record the statement of the prosecutrix. The learned trial Court ordered the Civil Surgeon, Hoshiarpur to constitute Board of Doctors for ascertaining the mental caliber of the witness to respond to the questions put to her. The Medical Board had opined that the prosecutrix was suffering from senile dementia (early). Thus the statement of the prosecution was not recorded.

14. PW-8 Kanta Devi is the daughter of the prosecutrix. She deposed that her mother did not understand the questions put to her. She was unable to reply to any of the questions put to her. They had got medical treatment for mental ailment of her mother from Pathankot. Her position did not improve. Her mother was mentally ill but now her mental ailment level had gone up.

15. According to FSL report Ex.P13, spermatozoa were detected in the contents of exhibits I and III, i.e. vaginal swabs and *salwar*. No spermatozoa were detected in the contents of exhibits II and IV, i.e. vaginal slides and kameez.

16. PW-5 Ved Parkash in his examination-in-chief has deposed that when his mother did not come back, he went in search of her. He saw the accused committing rape on his mother at 6.30 P.M. He did not follow the accused as he was handicapped. He disclosed this incident to his brother. In his cross-examination, he admitted that there was dispute between them and accused party qua some plot. The place of occurrence was at a distance of two kills from the village abadi. It was open space. There was pucca road which was frequented by the traffic near the spot. Accused committed rape

for 10/15 minutes in his presence. Thereafter he raised alarm. He was at a distance of about 200-250 feet when accused was committing rape with his mother. He remained present for about 15 minutes at the place of occurrence. According to him, he reached the spot after hearing shrieks of his mother. The clothes of his mother were stained with blood. He further deposed that he could not follow the accused as he was handicapped. His statement is Ex.P7. In his statement, he has not deposed that he could not chase the accused since he was physically handicapped. It is not believable that son would witness the accused committing rape on his mother for 15 minutes and would raise alarm only when the accused ran away from the spot. He would have immediately reached the spot and tried to save his mother. The place of occurrence was only two killas from the abadi. It was open space. Nobody would dare to commit rape from the distance of 2 killas of abadi.

17. PW-3 Subhash Kumar has also deposed in his cross-examination that near the alleged place of occurrence, there was a pucca road which went from village Mand to village Motla. There was Shiv Mandir near the alleged place of occurrence. The alleged place of occurrence was open space.

18. PW-6 ASI Salwinder Singh in his cross-examination has admitted that the prosecutrix could not hear and speak properly. There was metalled road frequented by the people.

19. PW-7 Narinder Pal deposed that the clothes of his mother were smeared with blood. He had seen the teeth bites on the back of his mother.

20. PW-1 Dr.Shelly Bajwa though had given opinion that the

sexual intercourse has probably occurred in this case but she has not noticed any teeth bite on the body of the prosecutrix or on any part of the body including genital part. No blood was found on the clothes of the prosecutrix. She has also admitted that spermatozoa so found in the chemical report could only be attached to a particular person by DNA profiling otherwise it was not possible.

21. PW-5 Ved Parkash in his cross-examination deposed that accused was labourer. He was also labourer. He used to go for work early in the morning at 8.00 A.M. and thereafter used to come back at about 5.00/6.00 P.M.

22. It has also come on record that there was a dispute between the parties qua some plot. According to the duly constituted Board, the prosecutrix was suffering from senile dementia. It has also come on record that the prosecutrix was hard of hearing. She could not speak and walk properly. In these circumstances, she could not visit the temple without the help of family members. However, PW-5 Ved Parkash in his cross-examination deposed that nobody used to accompany her when she used to go to temple. The statement of the prosecutrix could not be recorded in view of the opinion of Medical Board. PW-8 Kanta Devi has also admitted that her mother prior to the incident was mentally ill and now her mental ailment level has gone up. PW-5 Ved Parkash was 38 years of age at the time of recording his statement. He witnessed the incident. According to him, accused committed the rape for about 15 minutes and he raised alarm only when accused left the spot. It is unusual conduct. We reiterate that he should have reached the spot immediately to save his mother or to raise alarm. He

neither tried to save his mother nor he raised alarm till the accused ran away from the spot. This conduct of PW-5 Ved Parkash is not believable. His explanation that he was handicapped was not mentioned in his statement Ex.P7. PW-1 Dr.Shelly Bajwa has not noticed any injury on the body of the prosecutrix including private parts.

23. Accordingly, the appeal is allowed. The judgment and order dated 13.09.2013 are set aside. The appellant is acquitted of the charges framed against him by giving him benefit of doubt. Appellant is in custody. He is ordered to be released forthwith, if not wanted in any other case. Release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No