

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

CRA-S-1562-SB-2003

Date of Decision : 05.02.2020

BharatAppellant

VERSUS

The State of Haryana..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Ms. Sarabjeet Kaur, Advocate
for the appellant.

Mr. Ashish Sanghi, DAG, Haryana.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred against the judgment of conviction dated 31.07.2003 and order of sentence dated 04.08.2003 passed by the Sessions Judge, Faridabad, vide which the accused/appellant was convicted under Section 376 IPC and sentenced to rigorous imprisonment for five years and fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for two months.

The prosecution case in brief is that on an application (Ex.PC) moved by the prosecutrix before PW11 ASI Dharampal, FIR No.24 dated 30.01.2002 (Ex.PC/II) was registered. In her statement (Ex.PC) the prosecutrix alleged that on 28.01.2002 when at about 07:00 A.M. she went out of her house to throw cow dung, the accused who was a co-villager came towards her and pushed her inside the Bonga after catching hold of

objected to the same, he broke the string of her salwar and threw her on the ground. Thereafter, he committed rape upon her. On an alarm being raised by the prosecutrix, the appellant fled away from the spot. On return to her house, she narrated the incident to her mother. However, due to the shame attached, the matter was not reported to the police. It was only when her brother came to know about the incident, the matter was reported to the police leading to the registration of FIR No. 24 dated 30.01.2002 under Section 376 IPC at Police Station Chandhat.

After registration of the aforementioned FIR, the prosecutrix was medico-legally examined by the doctor. During investigation, the investigating agency took into possession her underwear and swabs vide memo (Ex.PN). On the arrest of the accused/appellant, he too was medico-legally examined vide MLR Ex.PA.

On completion of the investigation, the appellant was charged for offence punishable under sections 376 IPC and as he pleaded not guilty, he was brought to trial.

In support of its case, the prosecution examined as many as 12 witnesses including the prosecutrix who stepped into the witness box as PW7 and PW10 Dr. Rekha Singh, who medico-legally examined her. The accused when examined under Section 313 Cr.P.C. denied the evidence appearing against him and stated that he and the prosecutrix were having a love affair. On the fateful day both of them had been seen together by one Bhura of the village and it was at the behest of Bhura that the present case had been foisted upon him. It was submitted that the story of rape had been fabricated later on.

In defence the appellant examined two witnesses i.e. DW1

Partap Singh Ahlmad and DW2 Parkash Chand Ahlmad.

The learned trial Court found the appellant guilty under Section 376 IPC and sentenced him as already detailed above.

The learned counsel for the appellant has vehemently argued that a totally false story had been fabricated against the appellant. It was stated that the ocular testimony was at variance with the medical evidence which clinchingly established that in fact the prosecutrix was a major, aged more than 18 years, on the date of occurrence, and further the absence of any injury mark on her body lent credence to the fact that the prosecutrix was a consenting party. It was further urged that the delay of two days in lodging the FIR created a serious dent in the case of the prosecution for which the benefit of doubt should have been given to the accused.

The learned State counsel on the other hand submitted that the occurrence had taken place early in the morning after the prosecutrix had been dragged into the Bonga. He submitted that there was no evidence on record to show that the complainant party had any reason to falsely implicate the accused much less in a case of rape. It was also urged that the factum of rape having been committed upon the prosecutrix stood established not only from the medico-legal report (Ex.PL) of the prosecutrix but also the report of the FSL (Ex.PJ) as human semen had been detected on the underwear (Ex.PN) of the prosecutrix.

I have heard learned counsel for the parties and reappraised the evidence and other material on record.

Coming to the contention of the learned counsel for the appellant qua the delay in lodging of the FIR, the same deserves to be rejected outrightly. It has come in the testimony of the prosecution

witnesses including the complainant and her mother who stepped into the witness box as PW6 and PW7 respectively that soon after the alleged occurrence, the prosecutrix had narrated the entire occurrence to her mother. However, due to the stigma and shame attached to such like incidents, both the mother and the daughter i.e. the prosecutrix chose to keep it under wraps. However, after the brother of the prosecutrix came to know of it, the matter was reported to the police leading to the registration of the FIR in question. In India, specially rural India, the victim of sexual assault would be most reluctant and even embarrassed to reveal to her own family, what to talk of reporting it to the police due to the social stigma attached. Not only this, the fear of victim herself being labelled as unchaste and further being shunned by the society would always act as a deterrent in reporting against the perpetrators of such crime. Hence, in this background the delay in reporting the matter to the police is most natural and well explained. It would not in any way demolish the case of the prosecution.

Coming to the next submission that the prosecutrix was a consenting party and was not 15/16 years of age as projected by the prosecutrix and her mother, the same too is devoid of any merit. In support of her averments, learned counsel for the appellant argued that the prosecution for reasons but obvious suppressed the correct age of the prosecutrix and did not make any efforts to produce the birth certificate of the prosecutrix as that would have clinchingly proved that she was above 18 years of age.

I am unable to agree with the learned counsel for the appellant that merely because of the absence of any injury marks on the person of the prosecutrix inference should be drawn that the prosecutrix was a consenting

party. The submission of the learned counsel that even as per Dr. Rekha Singh PW10, since two fingers could be admitted in the vagina tightly corroborated the factum of her being a consenting party deserves to be rejected outrightly. Once there is a categoric statement of the prosecutrix qua the factum of her being sexually violated by the accused, the natural inference which should be and shall be drawn is that she was in fact subjected to rape. The admission of two fingers tightly in the vagina would not imply that the prosecutrix had given a licence to the appellant to have intercourse with her. Moreover, there is nothing even remotely to suggest by way of any whimper that the prosecutrix or her parents were in any way inimical towards the accused to falsely implicate him in the case in hand. No parent or a girl much less an unmarried girl would falsely implicate a person and too with allegations of sexual assault in the absence of any previous history of enmity particularly when no suggestion by way of even a whisper has been given to any of the prosecution witnesses including the prosecutrix of implicating the appellant on a false charge of rape.

In the light of the aforementioned discussion, I do not find any merit in this appeal. The judgment of conviction dated 31.07.2003 and order of sentence dated 04.08.2003 passed by the Sessions Judge, Faridabad, are upheld.

Appeal is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

05.02.2020

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Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No