

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 1678-SB of 2004 (O&M)

Date of decision : January 18, 2021

Dalbir and another

....Appellants

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Atul Partap Dhankar, Advocate, for the appellants

Mr. Baljinder Virk, DAG, Haryana

Fateh Deep Singh, J. (Oral)

Both the appellants before this Court namely Dalbir and Bishan were put to trial in case bearing FIR No. 33 dated 7.3.2001 under Sections 363, 366, 342, 506 IPC, Police Station Civil Lines, Sonapat and the court of learned Additional Sessions Judge-cum-Fast Track Court, Sonapat vide impugned judgment dated 11.8.2004 held both the accused guilty of commission of offences under Sections

363, 366, 342 IPC and sentenced them as follows:-

Under Section 366 IPC	To undergo rigorous imprisonment for two years and six months and to pay a fine of Rs 2000/- each.
Under Section 363 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs 2000/- each.
Under Section 342 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs 1000/- each. In default of payment of fine, the accused were ordered to undergo further RI for six months.

The appellants have challenged these findings.

Heard Mr. Atul Partap Dhankar, Advocate, for the appellants; Mr. Baljinder Virk, DAG, Haryana and perused the records.

The present case was got registered on the statement of a victim a girl aged around 13/14 years, a school student Ex. PA. In her statement, the girl alleged that on 6.3.2001 around 11.30 AM when she was returning after appearing in examination in her school on the way near Arya Samaj Mandir, two boys who came on motorcycle bearing No. HR-29-5083 accosted her. After questioning the girl about her family told her that her father was calling her to bus stand Sonapat and told her to sit on the motor bike which she did. It is alleged that thereafter the boys took her to a room and told her to take off her

clothes which she refused and thereafter it is alleged that the boys started beating her with leather belt and she raised hue and cry and thereafter the boys ran away. It is thereafter upon her statement Ex. PA got recorded on 7.3.2001, endorsement Ex. PB was made on the basis of which formal FIR Ex. PB/1 was got registered. The police took into possession through memo Ex. PC, the clothes of the girl and got her medical examination through report Ex. PE. The police upon investigation visited the place of occurrence and prepared rough site plans Ex. PF and Ex. PG and scaled site plan Ex. PK and took into police possession her proof of birth issued by the school Ex. PH. Upon completion of investigation challan was presented in the Court.

Upon due process after framing of charges, the prosecution examined the girl as PW1. PW2 Virender Singh detailed how he met the girl near the place of occurrence and took her to her family followed by testimony of PW3 Mohammed Shah Khan then Inspector (now DSP), PW4 Inspector Siri Krishan, PW5 ASI Sitar Singh, PW6 Dr. Krishna Tehlan, Private Doctor who examined the girl, PW7 Manjeet Singh a distant relative of the girl and thereafter Investigating Officer SI Daya Ram testified as PW8 followed by PW9 Jagdish Chander Sharma, Principal of a private school who proved date of birth of the girl and formal witness PW10 Constable Jagbir Singh and PW11 Constable Inder Pal gave the formal account of the investigations.

Upon closure of the evidence, the accused were put to statement under Section 313 Cr.P.C. who denied the same and examined DW1 Man Mohan Singh, DW2 Manish Tripathi, DW3 Virender Yadav. It is thereafter impugned findings were recorded.

It is clearly admitted on the records that the occurrence took place in broad day light at a public place on 6.3.2001 while the FIR has come about on 7.3.2001. However, no explanation is forthcoming from the side of the prosecution to the arguments raised on behalf of counsel for the appellants. No doubt every delay in registration of the case is not fatal for the prosecution but the prosecution is under bounden duty to clear and establish as to what occasioned this delay. However, no worthwhile effort has been made in that direction and what further aggravates the suspicion of the Court is that the victim accepts that her father was working in the CBI, a police department and therefore, puts on guard the Court to examine the prosecution evidence minutely. In the light of the submissions of the counsel for the appellants, the accused are not named in the FIR and how and by what means the present appellants have been connected with the commission of the offence without there being established on the record any "test identification parade" further aggravates the plight of the prosecution.

As the story goes the girl claims that she was walking on the street in the public place when she was accosted by two

motorcyclists who told her to accompany them and thereafter she sat on the motorcycle and till the place where she claims the occurrence has taken place for a considerable distance she kept mum. It is not the case of the prosecution that she was traumatized or threatened. Having been born and brought up as per her own testimony as PW1 in the city of Sonapat she must be conversant with the geography of the area and could have easily made out where she was being taken and it is highly doubtful that why she kept mum and that too when she entered the room where she claims that the occurrence has taken place and such a conduct leaves many vital questions unanswered placing a big question mark on the veracity of the girl's stand. More-so what is more perplexing is that the girl has been examined by none but a private practitioner PW6 Dr. Krishna Tehlan that too on 7.3.2001 when earlier, when the girl was examined on the same day at Civil Hospital, Sonapat through Ex. PE, there is no mention of even a single injury on her person and it appears that the police for obvious reasons to strengthen their case belatedly came up with the fabricated evidence of PW6, a private doctor to show that she suffered injuries at the hands of the accused. This Court certainly deprecates the manner in which the police has tried to cook up the story and fabricated the evidence to rope in accused and strengthen their case through dubious means. It is the own case of the prosecutrix and so that of the prosecution that the girl was not defiled and how or in what

manner from the under garment of the girl through Forensic Science Laboratory report Ex. PE human semen was detected further complicates the matter that all is not well with the prosecution story. What is glaring of the police highhandedness is that no where in the evidence it has come across as to role of each of the accused in the commission of the crime and the learned trial court in the impugned findings had remained totally insolent to what was there on the file in the evidence of the prosecution and blindly gone about holding the guilt of the accused. The only semblance of evidence as to age of the girl has come through PW9 Jagdish Chander Sharma, Principal of a private school who has simply proved copy of certificate issued by the school when admittedly PW9 is not the person managing the records on the basis of which this certificate has been maintained and more so what was the credibility of this date of birth so claimed by him when there is nothing suggestive of its corroboration from either of Municipal records, testimony of the mother or father of the girl as to her actual date of birth. What are the basis of this school certificate Ex. PH is any body's guess. To the mind of this Court such a piece of evidence as to prove the date of birth of the victim is against the cannons of law and cannot be taken conclusive piece of evidence worth reliance. No doubt the Courts need to be sensitive to such crimes against the women but at the same time the golden principle of criminal jurisprudence that the prosecution is supposed to prove its

case beyond shadow of reasonable doubt has to be followed and cannot stand obliterated under this guise. So not much weight can be given to such evidence as detailed and discussed above.

In the light of what has been detailed and discussed above, the impugned findings of the learned trial court are inherently wrong appreciation of the evidence and the law and needs to be set aside by way of acceptance of the present appeal.

The appeal stands allowed.

January 18, 2021
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>