

(2010) 04 P&H CK 0057

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Vikas alias Vicky and Others and

APPELLANT

Kishan Lal

Vs

State of Haryana

RESPONDENT

Date of Decision: April 22, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Penal Code, 1860 (IPC) - Section 344, 363, 366, 376, 506

Hon'ble Judges: Sabina, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sabina, J.

Vide this order, the above-mentioned two criminal appeals are being disposed of by a common order as they have arisen out of common judgment dated 2.11.2007 passed by the Additional Sessions Judge, (Fast Track Court), Ambala.

2. Appellants were convicted by the Additional Sessions Judge (Fast Track Court), Ambala vide judgment dated 2.11.2007 for an offence under Sections 363/366/376(2)(g)/344/506 of the Indian Penal Code ("IPC" for short). Vide order dated 3.11.2007 appellants were ordered to undergo sentence of rigorous imprisonment for ten years u/s 376(2)(g) IPC and to pay a fine of Rs. 10,000/- each; to undergo sentence of rigorous imprisonment for five years u/s 363 IPC and to pay a fine of Rs. 1000/- each; to undergo sentence of rigorous imprisonment for seven years u/s 366 IPC and to pay a fine of Rs. 1000/- each; to undergo sentence of rigorous imprisonment for two years u/s 344 IPC and to pay a fine of Rs. 500/- each and to undergo sentence of imprisonment for six months u/s 506 IPC and to pay a fine of Rs. 100/- each. All the sentences were ordered to run concurrently. Hence, the present appeals by the appellants.

3. The brief facts of the case, as noticed by the Additional Sessions Judge, in para 2 of the impugned judgment , read as under:

2. The story of the prosecution as can be gathered from the report u/s 173 Cr.P.C and the accompanying documents is that on 15.2.2007 ASI Suresh Pal was posted as incharge of Police post No. 2 when the prosecutrix alongwith her brother Surinder Kumar moved an application Ex.PE before him. It was contended in the application Ex.PE by the prosecutrix that she is resident of Ravi Dass Majri, Ambala City and is 17 years old. On 9.12.2006 the prosecutrix had gone to the clinic of Dr. Sohan Lal in order to procure medicine for her neighbour Dayalo. While the prosecutrix was returning after fetching the medicine, she came across accused Kishan Lal and accused Sunni (since juvenile) on Takia road. Both the accused represented to the prosecutrix that her sister Sonu was roaming in the area of Inder Puri. The sister of the prosecutrix is mentally retarded and on receipt of information from the above said accused the prosecutrix accompanied the accused who took her to the house of accused Lalit (since proclaimed offender) in Hari Nagar, Ambala City. The prosecutrix was raped by the above said three accused turn by turn in the house of Lalit against her wishes and under threats. The prosecutrix thereafter was wrongfully confined in a room and next day she was shifted to Ambala Cantt. In the evening hours the prosecutrix was brought to the City park in the vicinity of bus stand Ambala City. In the park accused Titu and Ravi also came and the prosecutrix was represented by accused Titu, Ravi and Lalit and promised to the prosecutrix that they will escort her to her residential house. However, the prosecutrix was taken to the agricultural fields behind Birju Ki Kothi where accused Titu and Ravi (since juvenile) committed rape with the prosecutrix but in the mean time, accused Vicky and Biru also came over there and they also committed rape on the prosecutrix turn by turn. Thereafter, the prosecutrix was left and accused Titu, Ravi Vicky and Biru sped away from there. Accused Lalit against brought the prosecutrix to Hari Nagar in his house and again committed rape on the prosecutrix during night. Next day, the prosecutrix was moved to village Baltana (Punjab) where the prosecutrix was kept confined in a room and accused Lalit continuously committed rape on the prosecutrix. It was also mentioned in the application Ex.PE by the prosecutrix that she was shifted to Baltana by accused Lalit on the pretext that he will perform marriage with her but subsequently accused Lalit declined to perform marriage with the prosecutrix and he threatened the prosecutrix that in case she dared to disclose anything to any person then she as well as her family members will be eliminated. The prosecutrix got herself freed from the clutches of the accused Lalit on 15.2.2007 and returned to her house at Ambala. A prayer was made by the prosecutrix for proceeding against the accused persons. It is worth mentioning here that the application Ex.PE was signed by brother of the prosecutrix also namely Surinder Kumar.

4. I have heard the learned Counsel for the parties and have gone through the record of the case carefully.

5. The appellants have been convicted for an offence of gang rape. It has been held by the Apex Court in *Dinesh Jaiswal v. State of M.P.* 2010 (2) RCR (Criminal) 139 which reads as under:

There can be no quarrel with this proposition (and it has been so emphasised by this Court time and again) but to hold that a prosecutrix must be believed irrespective of the improbabilities in her story, is an argument that can never be accepted. The test always is as to whether the given story *prima facie* inspires confidence.

6. The facts of the present case are peculiar. As per the prosecutrix, she had been raped by Krishan, Sunny and Lalit. On 9.12.2006, she had been taken by Krishan and Sunny on the pretext that her elder sister Sonu was roaming in the area of Inder Puri. Her sister Sonu was mentally retarded. However, thereafter, she had been raped by Krishan, Lalit and Sunny. Thereafter, at about 10.00 a.m., she was left near City Park bus stand Ambala City. There she met Titu and Ravi, who represented to her that they would drop her at her house. Thereafter, both the said persons took her to agricultural fields and committed rape on her person. While she was in the fields, Vicky and Biru also committed rape on her person. Thereafter, Lalit took her to Chandigarh on the assurance that he would perform marriage with her. She was detained in the house of Lalit where she was raped by him. On 10.2.2007, she managed to escape from the clutches of Lalit and returned home.

7. There are various loopholes in the prosecution case which render the prosecution case doubtful. Prosecutrix was, allegedly, taken away by Krishan Lal and Sunny on 9.12.2006. Brother of the prosecutrix, namely, Joginder Kumar, lodged a DDR Exhibit DA on 23.12.2006 to the effect that his sister i.e. prosecutrix was upset and was a simpleton and had left the house without telling any one. She had earlier also on two occasions disappeared and later she had returned back home. Prosecutrix was searched as she had failed to return home since 9.12.2006. A perusal of Exhibit DA leads to the inference that the prosecutrix might have left home of her own freewill. On earlier occasions also, prosecutrix had disappeared. Admittedly, the prosecutrix was more than 18 years old at the time of the alleged occurrence. Prosecutrix herself admitted in her cross-examination that her date of birth is 6.8.1988. Hence, on 9.12.2006, prosecutrix was more than 18 years old. Head Teacher, Government Primary School Part 5-B, Amabla City was examined as PW6 and she has deposed that as per certificate Exhibit PC, the date of birth of prosecutrix was 6.8.1988. Prosecutrix had remained absent and her name was struck off while she was in 3rd standard. Thereafter, she was again admitted in the School on 25.4.1997 in 3rd standard and her date of birth was given as 6.8.1989. In the facts and circumstances of the case, it would be safe to assume the date of birth of the petitioner as 6.8.1988.

8. It has been observed by the trial Judge that the prosecutrix had been asked certain questions and she had understood most of the questions.

9. As per the prosecutrix, she had returned home on 10.2.2007 but the FIR in question was lodged by the prosecutrix and her brother Surinder Kumar on 15.2.2007. Although the delay is not a material factor in rape cases but in the facts and circumstances of the present case, delay gains significance. The possibility that the delay was used to give a distorted version cannot be ruled out, especially, because prosecutrix allegedly stayed with Lalit for about two months and yet did not make any effort to inform the police. Prosecutrix has stated in her cross-examination that the house of Lalit was in a densely populated area. The brother of the prosecutrix Surinder Kuamr, who had moved the complaint to the police along with prosecutrix, was neither cited as a witness nor was examined as a witness. This also renders the prosecution case doubtful. The prosecutrix was a major and it appears that she might have gone with accused Lalit of her own freewill and after due deliberation and consultation, appellants were falsely involved in this case. The testimony of the prosecutrix fails to inspire confidence. An accused is presumed to be innocent till proved guilty. Prosecution is required to lead cogent and convincing evidence to establish its case beyond the shadow of reasonable doubt. However, in the present case, the prosecution case is not free from doubt and the benefit of the said fact has to go to the appellants/accused.

10. Accordingly, these appeals are allowed and impugned judgment/order whereby the appellants were convicted and sentenced under Sections 363/366/376(2)(g)/344/506 IPC are set aside. Consequently, the appellants are acquitted of the charge framed against them.