

(2008) 04 P&H CK 0054

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Pawan Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 1, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 363, 366, 376

Citation: (2008) CriLJ 4620 : (2008) 4 RCR(Criminal) 258**Hon'ble Judges:** A.N. Jindal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

A.N. Jindal, J.

This judgment of mine shall dispose of Criminal Misc. No. 286-MA of 1998 filed by the State of Punjab for enhancement of sentence and Criminal Appeal No. 25-SB of 1998 filed by the accused-appellant against his conviction.

2. The allegations as levelled by the prosecutrix (name not disclosed) aged 34 years, mother of four children are regarding rape upon her by the accused-appellant Pawan Kumar (hereinafter referred to as "the accused") a neighbourer that led to his prosecution in the instant case. Consequently, vide judgment dated 3-1-1998 passed by the learned Sessions Judge, Gurdaspur, he was convicted and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 200/- u/s 366, IPC and similar sentence u/s 376, IPC.

3. Vikram Pal is the husband of the prosecutrix, whereas, the accused was her neighbour. The prosecutrix had four children i.e. two daughters and two sons. The eldest daughter was about 14 years old. The prosecutrix went missing on the intervening night of 25/26-3-1995 at about 4.00 a.m. about which the complainant suspected the accused to be behind the crime as his house was found locked,

therefore, he lodged the report against him on 31-3-1995. However, the prosecutrix along with the accused was recovered from bus stand Batala on 4-4-1995. Consequently, she was got medico-legally examined so as the accused. The lady doctor handed over two vaginal swabs to the Investigating Officer which were taken into possession vide memo Ex. PH and sent to the Forensic Science Laboratory. The prosecutrix was handed over to her husband on 5-4-1995. On completion of the investigation, challan against the accused was presented in the Court.

4. On commitment, the accused was charged under Sections 363/366/376, IPC, to which he pleaded not guilty and claimed trial.

5. In order to substantiate the charges, the prosecution examined Bikaram Pal complainant (P.W. 1), prosecutrix, (P.W. 2), Dr. Hardip Singh (P.W. 3) who examined the accused, Dr. Tajinder Kaur (P.W. 4) who examined the prosecutrix, HC Siikhdev Singh (P.W. 5) is a witness to the recovery"memo, arrest of the accused and search memo. Constable Chanchal Singh (P.W. 6) is a witness to the sending of the special report. Santokh Singh (P.W. 7) took the parcels containing vaginal swabs to the office of the Chemical Examiner, Patiala. Satish Chander (P.W. 8) Draftsman prepared the scaled site plan Ex. PF. ASI Gurmit Singh is the Investigating Officer.

6. When examined u/s 313, Cr.P.C. The accused denied all the allegations and submitted that he had no relations with the prosecutrix and was falsely implicated in the case. In defence, he examined Didar Singh son of Dalip Singh (D.W. 1).

7. Ultimately the trial ended in conviction. Hence this appeal.

8. Arguments heard. Record perused.

9. There is no dispute with the fact that the prosecutrix was a mother of four children and her eldest daughter was 14 years old. The prosecutrix has admitted that her husband is a drunker. She left the house at wee hours of the day without informing her husband. It is not the case of the prosecution that the accused entered the house, took her forcibly from bed while she was sleeping. The allegations levelled by her are that he took her on the pretext that he would get her job but the same appears to be blatant lie as if it was so, he would have left the house after informing her husband or at least the children. She left the house without taking any of the children with her. It has come in her evidence that they first went to Hoshiarpur, thereafter to Jalandhar, Chintpurni, Hardwar and Amritsar. She has deposed that they had travelled by different buses, but it is surprising that during their visits at the aforesaid places she did not complaint about the conduct of the accused to the people she came across at the place of their stay or in the buses. She did not even ring to her husband or the children from the places of her stay. She travelled with the accused without raising any objection. The medical evidence also does not support the prosecution case.

10. There is no such medical opinion that the prosecutrix was raped but it has been opined by Dr. Tajinder Kaur (P.W. 4) that possibility of intercourse could not be ruled out and the definite opinion could be given on the receipt of the report of the Chemical Examiner. Even on the receipt of the report of the Chemical Examiner she opined that possibility of intercourse could not be ruled out. The said medical opinion does not in any way help the case of the prosecution as in case of married ladies semen could obviously be found on the vaginal swabs. Mere presence of the semen on the swabs of the married lady by itself is not sufficient to establish the offence of rape.

11. There is an inordinate delay in lodging the FIR. The recovery of the prosecutrix from the custody of the accused, in the given circumstances of the case, also adds to our belief that prosecutrix may be a consenting party. The fact that the complainant doubted the accused being culprit indicates that he knew about their alliances. The circumstances that prosecutrix left the house in the wee hours of the day of her own convinces me to hold that no offence of abduction could be made out. Consequently, the prosecutrix being consenting party, no offence of rape could also be said to have been proved.

12. I have gone through the impugned judgment. The same is shorn of proper appreciation of evidence and sans correct observations which a judge to integrity could be expected to make.

13. The facts that the prosecutrix was about 34 years of age and a married lady having four children left the house in wee hours of the day; has remained in the company of the accused for 10 days without any objection on her part stayed with him during this tenure. She did not herself come to the house or tried to inform her husband or children and was arrested in the company of the accused, apparently excite this Court to draw an inference against the prosecutrix. The integrity of the Judicial Officer does not lie in conviction against the facts; to prolong the cases and not to be a willing worker; to give long or unnecessary adjournments; to work under fear psychosis and to move by false notions or suspicion. These factors not only tarnish the image of the Judicial Officer but also put a question mark on the conduct of the system in general and also tarnish his image in particular.

In the present day, when the blind faith is reposed in the Court and the people would over wait for the adjudications made by the Judges, lest the confidence be not eroded, and the people sitting outside the threshold of the Court go disappointed and desperate on hearing the decision un-digestable to the common man; common sense or against the canons of justice, the Courts should rise to the occasion and come at the help of the real litigants emphasizing for their fundamental rights and genuine claims. They should discourage the fake luxury, superfluous and unnecessary litigations work boldly, fearlessly and without any pressure of the public and believe in expeditious disposal of the cases so that faith of the public in the judicial administration of justice delivery system may be enhanced. The timely

judicial intervention and healing of the wounds of the litigant people will not only enhance hour of the rule of law but also strengthen the judicial system.

14. For the foregoing reasons, I hereby accept the appeal, set aside the impugned judgment, acquit the accused of the charges framed against him and direct that he be set at liberty forthwith. Bail bond and surety bonds furnished by him shall stand discharged.

15. Consequently, Crl. Misc. No. 286-MA of 1998 stands dismissed.