

(2010) 04 P&amp;H CK 0139

## High Court Of Punjab And Haryana At Chandigarh

Case No: None

Noora

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** April 23, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 313
- Penal Code, 1860 (IPC) - Section 376, 452

**Hon'ble Judges:** Tej Pratap Singh Mann, J**Bench:** Single Bench**Final Decision:** Allowed

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**Judgement**

T.P.S. Mann, J.

By way of the present appeal, the appellant has challenged his conviction and sentence for the offences under Sections 376 and 452 IPC.

2. On 6.2.1997 at 11.30 A.M. Ahmad son of Pitra, caste Meo, resident of Singar reached Police Station Punahana and submitted an application to the Station House Officer. It was stated therein that on 27.1.1997, he and his family members were away from the house in connection with death of a relative. In their absence, his son's wife was present in the house. At about 12 mid-night, the appellant came to his house and after opening the door by giving it a push, he came inside. He then committed rape upon his son's wife. The latter raised an alarm lalkara which attracted people from the neighbourhood. The appellant ran away from the spot. While he was running away, he was seen by a number of persons. When the complainant and his family members came back, they learnt about the incident. The incident was also brought to the notice of the panchayat of the village. The panchayat had been trying to settle the matter at its level but no decision could be arrived at. Accordingly, the complainant prayed for taking appropriate action against the appellant.

3. After recording DDR No. 11 dated 6.2.1997 on the basis of the application submitted by the complainant, ASI Siri Dev, alongwith Constable Mahavir, went to village Singar and recorded the statement of the prosecutrix on 7.2.1997 at 4.00 P.M. on the basis of which formal FIR was registered against the appellant at Police Station, Punahana for an offence u/s 376 IPC. In her statement Ex.PF, the prosecutrix stated that she was 34/35 years of age and married, having four children. On 27.1.1997, she was all alone in the house and sleeping. The members of her family had left on 26.1.1997 to attend the last rites of her brother-in-law. At about 11.00 P.M., the appellant came to her house and after giving push to the door, entered inside. On seeing her all alone, he broke the string of her salwar and had forcible sexual intercourse with her. When she raised an alarm, Sardar son of Mutki, resident of the village, came present at the spot. The appellant pushed him aside and managed to flee from the spot. Out of shame, she left for her parents' place. Only a day before, i.e. on 6.2.1997, her husband brought her back. She narrated the entire incident to her husband and father-in-law. Accordingly, she prayed for taking strict action against the appellant.

4. During investigation of the case, the police recorded the statements of the witnesses. The prosecutrix was got medically examined. The appellant was arrested on 10.2.1997. After completion of the investigation, final report u/s 173 Cr.P.C. was submitted before the Ilaqa Magistrate, who after supplying the copies thereof to the appellant, committed the case to the Court of Sessions.

5. Vide order dated 15.7.1997, the trial Court charged the appellant u/s 376 read with Section 452 IPC, to which he pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined ten witnesses. PW1 Dr. Lal Singh stated that he had medico-legally examined the appellant on 11.2.1997 at 11.30 A.M. and found that there was nothing to suggest that he could not do sexual intercourse. PW2 Constable Surinder stated that he delivered special report to the Ilaqa Magistrate on 7.2.1997 at 8.00 P.M. PW3 Constable Sarwan Kumar proved the scaled site plan Ex.PD, which he had prepared on the pointing out of the prosecutrix. PW4 SI Kailash Chand deposed that he had recorded the statement of Constable Sarwan Kumar u/s 161 Cr.P.C. and prepared final report u/s 173 Cr.P.C., when the investigation was completed. PW5 ASI Ram Singh stated that he had recorded the statements of MHC Inder Singh and Constable Kishan Singh on 21.3.1997, of Khurshid Ahmad on 22.3.1997 and of Constable Mahabir Singh on 27.3.1997.

7. The prosecutrix appeared as PW6 and reiterated what she had earlier stated in her statement Ex.PF, on the basis of which FIR Ex.PC was recorded. She also pointed out towards the appellant, who was present in the Court, by stating that it was he who had committed rape upon her. She identified her salwar Ex.P1, which had been taken into possession by the doctor at the time of her medical examination. Sardar son of Mutki, who was attracted to the house of the prosecutrix on hearing noise

from her house and had seen the appellant embracing the prosecutrix, appeared as PW7 and stated that the appellant had also given slaps to the prosecutrix and, thereafter, escaped from the scene. When the appellant had left the spot, the prosecutrix told him that the appellant had removed the string of her salwar and forcibly raped her.

8. The medico-legal examination of the prosecutrix was conducted by PW8 Dr. Santosh Jain on 7.2.1997 at 7.30 P.M, who deposed about what she had found, as under:

Per-chest Examination: No external injury was seen on the breast. As per abdomen examination, no external injury was seen. No external injury was seen on face examination.

Vaginal examination: External examination - pubic hair were present normally. Labia majora and minora were normally present. No external mark of injury was seen. No spot of semen was present on pubic hair.

Internal examination: Per vagina finding, two fingers loose entered the vaginal orifice. No discharge and hymen absent.

9. PW8 Dr. Santosh Jain, after seeing FSL report, stated that the prosecutrix was subjected to intercourse.

10. PW9 HC Inder Singh proved DDR No. 11 dated 6.2.1997, whereas PW10 ASI Siri Dev stated about recording of DDR Ex.PH at the instance of Ahmad and statement Ex.PF of the prosecutrix. He also deposed about various steps taken by him during the investigation of the case. The prosecution also tendered in evidence affidavits Ex.PE of HC Inder Singh and Ex.PN of Constable Kishan Singh and thereafter closed its evidence by giving up the remaining witnesses.

11. During his examination u/s 313 Cr.P.C., the appellant was confronted with the incriminating evidence appearing against him on the record. He denied the same as incorrect and false, and pleaded himself to be innocent. He also stated that even the witnesses had deposed falsely. In his defence, the appellant had examined DW1 Majid, DW2 Khushal and DW3 Niamat.

12. After hearing learned Counsel for the parties and going through the evidence available on the record, the trial Court held that the statements of PWs 6 and 7 were trust worthy, reliable, believable and worthy of credence and, therefore, could be relied upon. Moreover, the statement made by the prosecutrix as PW6 was corroborated by the medical evidence. The testimonies of DWs 1 to 3 were held to be not helping the appellant so as to negate the allegations of rape. Accordingly, the appellant was held guilty for the offences charged. He was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 2,000/- u/s 376 IPC and in default thereof to undergo further simple imprisonment for two months. He was also sentenced to undergo rigorous imprisonment for two years and to pay

a fine of Rs. 1,000/- u/s 452 IPC and in default of payment of fine to undergo further simple imprisonment for one month. Both the sentences were ordered to run concurrently. It was made clear that the period spent by the appellant in custody during the trial would be set off against the substantive sentences.

13. Learned Counsel for the parties were heard and the evidence perused with their able assistance.

14. It has come in the statement of the prosecutrix when she appeared as PW6 that she was having four children and on the day of incident her one son and one daughter were with her in the same room where she was raped. Though the two children of the prosecutrix, who were present at the time of the occurrence, were minor yet it was highly unlikely that the appellant would have committed rape upon the prosecutrix while in the presence of her two children. It is true that being minor, the two children would not have created any hurdle in the appellant committing rape upon their mother yet they would not have remained mum on seeing their mother being sexually ravished by the appellant unless, of course, the prosecutrix herself was a consenting party.

15. According to the prosecution, the alarm raised by the prosecutrix attracted PW7 Sardar to the place of occurrence. According to PW7 Sardar, on 27.1.1997 at about 11.00 P.M., he was returning to his hut from his fields when he found the door of the house of the prosecutrix open. At that time the light was on. According to the prosecutrix, she had suffered some scratches while she was trying to get herself released but PW8 Dr. Santosh Jain did not find any external injury on the person of the prosecutrix. Though the prosecutrix was medico-legally examined after 10 days of the incident yet scratches would not have healed up during that period so as to escape notice of the doctor during the said examination. Further, according to the prosecutrix, her bangles were broken. However, no broken bangles were produced either by the prosecutrix before the police or recovered by the police during the spot inspection.

16. According to the prosecution, after the prosecutrix was raped on 27.1.1997 at about 11.00 P.M. she started feeling ashamed and left for her parents' village on 28.1.1997 at 9.00 A.M. Reaching her parents' village, she narrated the incident to her brother, who further disclosed it to her father but none from her parental family came to her in-laws' place for lodging a report or for informing the in-laws' family of the prosecutrix. In her examination-in-chief, the prosecutrix stated that after she went to her parents' house, her husband reached there on the following day. However, in her cross-examination she stated that her husband reached her parents' village on 6.2.1997 and she accompanied him back to her in-laws' village on the same day. According to PW7 Sardar, the husband of the prosecutrix returned to the village on 28th and on 29th he left to bring the prosecutrix and, thereafter, the Panchayat of the village was convened on 30.1.1997. This shows that the prosecutrix returned to her in-laws' village on 29.1.1997 but despite the same, the

FIR was registered only on 7.2.1997. The prosecution tried to explain the delay in the lodging of the FIR by asserting that the matter was reported to the village panchayat but when no compromise could take place, report was lodged with the police. According to PW7 Sardar, the panchayat of the village was convened from 30.1.1997 to 6.2.1997. However, no one from the panchayat was examined by the prosecution in that regard.

17. On appraisal of the entire evidence, possibility of consensual sexual intercourse by the prosecutrix with the appellant cannot be ruled out. Therefore, it cannot be said that the prosecution has been able to lead sufficient evidence for upholding the conviction of the appellant for the offences under Sections 376 and 452 IPC.

18. Accordingly, the appeal is accepted and the appellant is acquitted of the charges against him. The fine, if paid, be refunded to the appellant. The appellant is on bail. The bail bonds shall stand discharged.