(2004) 07 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 296-SB of 1991

Mohinder Singh		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: July 14, 2004

Citation: (2005) 3 CLR 344 : (2005) 1 RCR(Criminal) 317

Hon'ble Judges: Virender Singh, J

Advocate: Mr. Gurcharan Singh, Advocate with Mr. Pritam Saini, Advocate. Mr. Sanjiv Sheokand, A.A.G., Haryana., Advocates for appearing Parties

Judgement

Virender Singh, J.

1. Mohinder Singh s/o Ujjagar Singh, resident of Ghallor, Police Station Radour stands convicted under Sections 376 read with Section 511 IPC and Sections 452/323/325/506 IPC by learned Additional Sessions Judge, Yamuna Nagar at Jagadhari vide impugned judgment dated 15.7.1991. He has been sentenced as under on different counts :

(I) Under Section 376 read with Section 511 IPC Rigorous imprisonment for 5 years and a fine of Rs. 500/ and in default of payment of fine, to further undergo RI for six months.

(II) Under Section 452 IPC Rigorous imprisonment for one year.

(III) Under Section 323 IPC Rigorous imprisonment for six months.

(IV) Under Section 325 IPC Rigorous imprisonment for two years.

(V) Under Section 506 IPC Rigorous imprisonment for one year.

2. However, all the sentences were ordered to be run concurrently.

3. Aggrieved by the impugned judgment of conviction and sentence, the appellant has preferred the present appeal.

4. The present case was registered on the statement, Ex. PF, of PW4, the prosecutrix. She is the wife of Amrik Singh. I am not disclosing the name of the prosecutrix in view of the observations made by the Hon''ble Apex Court in State of Karnataka v. Puttaraja, 2004(1) Recent Criminal Reports 113. The appellant is brotherinlaw (Jeth).

5. In short, the case of the prosecution is that on 4.3.1989, the prosecutrix was all alone in her house as her parentsinlaw were away to Mustafabad Town for purchasing certain domestic articles. The husband of the prosecutrix was serving in military. The present appellant, who was residing separately, at 10 a.m. entered the house of the prosecutrix when she was all alone, caught hold of her by arm and when she made an attempt to release herself from the appellant, he gave her injuries on her mouth and then after lifting her, fell her on the cot. The appellant then put the hands on the string of her Salwar but resistance was shown by the prosecutrix with firm hands. However, the appellant torn out her salwar and forcibly laid up on her. The prosecutrix raised an alarm which attracted Surinder Kaur wife of Pritam Singh, Harbans Singh s/o Sodagar Singh and one servant Jai Pal s/o Rati Ram. They got prosecutrix released from the appellant. While running away from the spot, he threatened to kill the prosecutrix.

6. On the aforesaid allegations, the concerned police swung into action and the formal FIR Ex. PF was recorded. The prosecutrix was then examined by Dr. Anita Dahiya PW1 on the same day, who prepared her MLR Ex. PC. The Salwar Ex. P1 & broken tooth Ex. P2 were also produced by the prosecutrix before ASI Devender Singh PW6 and the same were also taken into possession vide recovery memo Ex. PE. The rough site plan Ex. PH of the place of occurrence was also prepared by the Investigating Officer. The appellant was arrested on 8.3.1999 when he was produced by one Gurbachan Singh. He was also got medically examined. In pursuance of his disclosure statement, the appellant also got recovered one shirt Ex. P3 & one Chaddra Ex. P4 and the same were also taken into possession vide recovery memo Ex. PA. The buttons of the shirt were broken and the Chaddra was also found torn.

7. After completion of the entire investigation, the appellant was challaned. As stated above, he was charged under Sections 452/323/325/376/506/511 IPC.

8. The prosecution in order to bring home the guilt to the appellant, has examined Dr. Anita Dahiya as PW1. She found eight injuries on the person of the prosecutrix. These injuries are either in the shape of bruises or abrasions. In her opinion, the prosecutrix was assaulted. Out of eight injuries, injury No. 4 was declared as grievous.

9. Dr. Sukhdev Goel PW2 had examined the appellant.

10. Swaran Singh PW3 has stated that the prosecutrix had handed over the Salwar and broken tooth to the police in his presence and he had signed the recovery memo.

11. The prosecutrix has been examined as PW4. While reiterating her case as initially disclosed to the police on the date of occurrence, she has further stated that the appellant

had committed rape upon her and while leaving the house, he warned that in case the disclosed about the rape to anybody he would kill her.

12. Dr. Promila Chaudhary PW5 had examined the prosecutrix on 7.3.1989 and found that the upper first molar was previously missing in this case and there were other injuries in the jaw.

13. Davinder Singh ASI PW6 is the Investigating Officer of this case. His part of examination has already been detailed by me in the preceding paras.

14. The plea taken by the appellant, is that he has falsely implicated in this case.

15. In defence, he has produced his mother Joginder Kaur as DW1, who has stated that on the date of occurrence they had not gone to Mustafabad and that the appellant in fact had gone to her inlaws" house in village Ramana to attend the marriage of his sisterinlaw on 2.3.1989 and that he was arrested in this case after 67 days. She has further stated that the present appellant had not misbehaved with the prosecutrix.

16. After appreciating the entire evidence, the appellant had earned conviction as indicated above. Hence this appeal.

17. I have heard Mr. Gurcharan Singh, learned counsel for the appellant and Mr. Sanjiv Sheokand, learned Assistant Advocate General, Haryana. With their assistance, I have gone through the entire record.

18. Attacking the charge framed against the appellant under Sections 376/511 IPC, learned counsel submits that, in fact, the prosecutrix has certain extraneous reason to come out with a charge of attempt to commit rape whereas it appears that the appellant & the prosecutrix had fought on some other issue and the prosecutrix is not coming forward with the clear picture. The learned counsel then contends that on seeing the injuries on the person of prosecutrix, one can comfortably make out that no attempt to commit rape as now alleged by the prosecutrix, was ever made upon her. He then contends that it is not believable that the injuries received by the prosecutrix were in fact on account of the resistance shown by her during the scuffle in this case. Dwelling upon his arguments, the learned counsel further contends that another material lacuna which demolishes the case of the prosecution is that the prosecutrix in order to make out her case, even went to the extent of saying in the court that she was subjected to rape by the appellant whereas the basic statement Ex. PF is otherwise and this fact alone is enough to reject the testimony of the prosecutrix so far as the charge of Section 376 read with Section 511 IPC is concerned. He, thus, deserves acquittal qua this charge.

19. Arguing halfheartedly regarding the other charges, learned counsel submits that once the prosecutrix is disbelieved on the main charge, she should also be disbelieved qua the entire occurrence.

20. In the alternative, learned counsel prays for reduction in the quantum of sentence on the ground that at the time of alleged occurrence, the appellant was of the age of 30 years and he has already faced the ordeal of trial for long 15 years by now. He then contends that the appellant was having 4 minor children at the time of his conviction, which was recorded in the year 1991 and all the children have now become of marriageable age. He then contends that out of 4 children, the appellant is having two daughters besides the old parents and in case the appellant is sent to jail at this juncture, it is going to adversely affect whole of the family. The learned counsel further submits that the appellant remained in custody for about a week during the trial and for about 5 weeks after he was convicted by the trial Court and his sentence was suspended by this Court after the admission of the appeal.

21. Refuting the arguments advanced by learned counsel for the appellant, learned State counsel submits that present appellant cannot escape from the commission of the offence or any of the charges framed against him as there is no reason to disbelieve the statement of the prosecutrix. He then contends that the appellant, who is brotherinlaw (Jeth) of the prosecutrix by crossing all the moral limits, entered into the house of the prosecutrix by taking the advantage of the absence of her parentsinlaw and then made an attempt to commit rape upon her. The learned State counsel further contends that even if the statement of the prosecutrix is not corroborated by any independent witness, this fact by itself would not be fatal to the case of the prosecution as the statement of the prosecutrix if read in its entirety, is worthy of credence. The learned State counsel further submits that the appellant does not deserve any leniency in respect of quantum of sentence in view of the peculiar facts and circumstances of the case and as such, the conviction and sentence as recorded by the trial Court, deserves to be upheld.

22. After hearing learned counsel for both the sides at length, I am of the view that prosecution has not been able to prove the charge of Section 376 read with Section 511 IPC atleast and as such, the appellant deserves acquittal qua this charge only. So far as other charges are concerned, I am of the considered view that they are proved to the hilt. The case of the prosecutrix as set up by her in her initial statement Ex. PF is that the appellant had entered into her house when she was all alone and her parentsinlaw had gone to Mustfabad and caught hold of her from her arm. She then states that she was given fist blows on her mouth when she made attempt to release herself and raised alarm. Thereafter, she was lifted and put on the cot. I have rescanned the statement of the prosecutrix in the light of medical evidence. There is no dearth of injuries in this case. Injury No. 8 indicates that there are multiple bruises on the person of the prosecutrix. It appears that the attempt of the appellant was to give injuries to the prosecutrix may be for any reason and possibly in the present set of circumstances, it cannot be said that the appellant had made an attempt to commit rape. As per the case of the prosecutrix certain other persons had gathered at the spot but all those independent witnesses have been given up by the prosecution as having been won over by the accused. At the same time, the motherinlaw of the prosecutrix has also not supported her version by saying that she

had not gone to Mustfabad. I would have ignored the aforesaid infirmity in this case had the statement of the prosecutrix been worthy of credence.

23. The basic infirmity which knocks at the bottom of the prosecution case, is that the prosecutrix when stepped into the witness box has made an attempt to change the basic version by alleging that the appellant had in fact committed rape with her and while leaving the house, he had warned that in case she disclosed about the rape to anybody, he would kill her. This improvement is made by her for the first time in the court after the lapse of 2 years. Had all this been true, the prosecutrix had all the opportunity to make even the supplementary statement in this regard before the police during the investigation but the same has not been done in this case. She was confronted in this regard from her previous statement, during crossexamination, where she has stated that she had disclosed before the police that the accused had committed rape upon her. The said fact, however, is not mentioned in Ex. PF. This material infirmity in the prosecution case, in my view, is enough to reject the testimony of the prosecutrix and it can be safely stated that her statement is not free from doubt. It appears that the prosecutrix was induced by somebody, may be her husband of anybody from the family, to come out with improved version in order to implicate the present appellant for the main charge. I am, conscious of the fact that such type of cases are of serious nature but courts being the guardian of law are also supposed to see that no one should be punished if the case is not proved against him beyond any shadow of reasonable doubt. In my considered view, so far as charge of Section 376 read with Section 511 IPC is concerned, there is no ring of truth around the allegations projected by the prosecutrix in this regard and consequently, the appellant deserves acquitted qua that charge at least.

24. Now reverting back to the other charges, the learned counsel for the appellant has not been able to point out any material weakness which would demolish the case of the prosecution. I have perused the statement of the prosecutrix minutely in this regard once again and am of the view that other charges viz. 452/323/325/506 IPC are proved to the hilt.

27. Consequently, the conviction of the appellant qua charge under Section 376/511 IPC is set aside and he is acquitted of the said charges whereas his conviction for the other offences under Sections 452/323/325/506 IPC is hereby upheld.

28. With regard to quantum of sentence, in my view the appellant deserves sympathetic tilt. As stated above and not disputed by the State counsel that he has already undergone about 6 weeks of his substantive sentence. The occurrence relates to the year 1989. The appellant has already faced the agony of protracted trial. As stated by the learned counsel for the appellant, his four minor children have now become major and the two girls are at present of marriageable age. In my considered view, ends of justice would be adequately met if the substantive sentence awarded to the appellant is reduced to the period already undergone by him. JUDGMENTed accordingly. At the same time, it cannot be ignored that the prosecutrix had received many injuries in this case inasmuch as that

one of the injuries turned out to be grievous resulting into missing of her tooth. The appellant is thus directed to pay Rs. 10,000/ as compensation to her under Section 357 Cr.P.C. The appellant would deposit the aforesaid amount of compensation before the trial Court within three months from today. In case, the said amount is not deposited before the trial Court within the stipulated period, the appellant shall have to undergo the entire substantive sentence awarded to him qua all the charges except under Sections 376/511 IPC.

29. The net result, thus, is that the appeal stands partly allowed acquitting the appellant for the charges of Sections 376/511 IPC and with modification in the quantum of sentence qua other offences as indicated above.