Balraj Singh Vs State of Haryana

Criminal Appeal No. 383-SB of 1992

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 25, 2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 313#Penal Code, 1860 (IPC) â€" Section 376, 452, 506

Citation: (2007) 3 RCR(Criminal) 787

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Rakesh Nehra, for the Appellant; Y.P. Malik, AAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

T.P.S. Mann, J.
Vide judgment and order dated 10.10.1992, learned Additional Sessions Judge, Jind convicted and sentenced the

Appellant as under:

Sentence of Sentence of Sentence in default of

Offence

imprisonment fine payment of fine

S. 376 IPCRI for Seven YearsRs. 250/- RI for Three months

S. 452 IPCRI for Three YearsRs. 150/- RI for Two months

S. 506 IPCRI for Six months - -

2. All the sentences of imprisonment were ordered to run concurrently.

3. Against the aforementioned judgment of conviction and sentence, the present appeal has been preferred by the Appellant.

4. As per the case of the prosecution, the prosecutrix, who was a married lady and aged 21/22 years was present alone in her house and lying on

a cot on 4.4.1992. Her husband had already left for serving food to his father at about 7.30 p.m. The accused entered her house and bolted the

door from inside. He came near the cot of the prosecutrix and laid himself on her. He placed his left hand on her mouth. He forcibly broke open

the string of her salwar and threatened her that in case, she raised alarm, he would kill her. She offered resistance. The accused gave teeth bites on

both the sides of her face and on her nose. The accused then committed rape upon her. In the struggle she suffered bruises on her right elbow. The

accused tore her shirt and salwar. When she raised an alarm, her jethani and her husband reached the spot. They tried to open the door. However,

the accused opened the bolt of the door and ran away from the spot. The prosecutrix narrated the entire incident to her husband and her jethani.

On account of it being night time, she could not leave the house for lodging the report. Next morning, the villagers asked them to settle the matter,

but they did not get any justice. Thereafter, she along with her husband proceeded towards the Police Station when they came across the police at

Bus Stand of village Naguran. Her statement Ex. PD was recorded by Inspector Daya Kishan Bhardwaj, SHO on 5.4.1992 at 6.00 p.m., on the

basis of which FIR Ex. PD/2 was recorded at Police Station, Alewa on the same day at 6.30 p.m.

5. During investigation of the case, the prosecutrix was subjected to medico-legal examination. Accused was also arrested and got medico-legally

examined. Statements of the witnesses were recorded by the police. On completion of the investigation, final report u/s 173 Code of Criminal

Procedure was submitted in the Court.

6. After commitment of the case, learned Additional Sessions Judge, Jind framed charges under Sections 452, 376, 506 IPC, to which the

accused pleaded not guilty and claimed trial.

7. In support of it case, the prosecution examined Dr. R.K. Grover PW-1 who had medico-legally examined accused on 7.4.1992 at 5.45 p.m.

and opined that the accused was fit to perform sexual intercourse.

8. Dr. Renu Aggarwal PW-2 had medico-legally examined the prosecutrix on 6.4.1992 at 12.40 p.m. and found the following injuries on her

person:

1. Marks of abrasions 7 in number of varying size and shape ranging 1 cm x 1 cm, brown colour and scabs were present over the face on right and

left side, nose.

2. There abrasions on the dorsum of right elbow 2 x 3 cm in size. Three abrasions on dorsum of left elbow brown in colour.

3. One mark of bite over plam of right hand. Two abrasions of 1/2 cm x 1/2 cm.

9. Dr. Renu Aggarwal PW-2 stated that no injury was present on the private parts of the prosecutrix. Vagina admitted two fingers. There was no

bleeding.

10. Scaled site plan Ex. PC was proved by Kuldip Gupta PW-3, who had prepared the same on 10.4.1992.

11. The prosecutrix was examined as PW-4, who stated about the details of the occurrence, in which she was raped by the accused. She also

stated that the police had recorded her statement Ex. PD.

12. SI Rajinder Kumar PW-5 deposed that he partly investigated the case and recorded statements of a few witnesses. On completion of the

investigation, report u/s 173 Code of Criminal Procedure was prepared.

13. The husband of the prosecutrix appeared as PW-6 and stated that he had gone with the meals of his father at about 7.30 p.m. leaving his wife

and daughter in the house. When he came back at about 7.45 p.m., his sister-in- law told him that noise was coming from the house and there was

some body there. He along with his sister-in-law peeped through the door and saw the accused committing intercourse with his wife. Thereafter,

the accused ran away after opening the door. His wife narrated the incident to him.

15. Ranbir Singh PW-7 deposed about the production of the accused before the police and consequently his arrest on 7.4.1992. The kachha of

the accused was taken into possession vide recovery memo Ex. PK.

16. HC Prem Chand PW-8 deposed about the appearance of the prosecutrix and her husband before the police, when it was present at Naguran

Chowk on 5.4.1992. The statement of the prosecutrix was recorded. Salwar Ex. P-1 and shirt Ex. P-2 were taken into possession vide recovery

memo Ex. PE. The prosecutrix was, thereafter, taken for her medico-legal examination. He also deposed about the taking into possession kachha

Ex. P-3 of the accused vide recovery memo Ex. PK.

17. Inspector Daya Kishan Bhardwaj, who by then stood promoted as DSP appeared as PW-9. He deposed about the investigation of the case,

starting with the recording of statement Ex. PD and ending with the preparation of report u/s 173 Code of Criminal Procedure by SI Rajinder

Kumar.

18. The sister-in-law of the prosecutrix was given up as unnecessary. The prosecution case was, thereafter, closed when statement to that effect

was made by Additional Public Prosecutor on 4.9.1992.

19. When examined u/s 313 Cr.P.C., the accused denied the prosecution allegations. He stated that the prosecution witnesses were deposing

falsely. He had been implicated falsely by the police, at the instance of the complainant, as a raid was conducted at the house of the husband of the

prosecutrix for searching the illicit liquor, on a secret information. The husband of the prosecutrix had a doubt that it was the accused who had

given information to the police. However, the accused did not lead any evidence and closed the same on 8.10.1992.

20. The trial Court believed the prosecution version and convicted and sentenced the Appellant as mentioned above. Hence the present appeal.

21. I have heard learned Counsel for the parties and gone through the entire evidence and documents brought on record with their able assistance.

22. The prosecution has relied upon statements of the prosecutrix as PW-4 and her husband as PW-6. Even a cursory look at the statements of

the said two star witnesses of the prosecution would show that it was not a case of commission of rape by the accused, but was a case of

intercourse by consent. The husband of the prosecutrix stated that he had seen the accused through the window, committing intercourse with his

wife. He raised an alarm on seeing it but none came. He knocked at the door for about 15 minutes. According to him, the legs of his wife at the

time of incident were on the shoulders of the accused. The hands of his wife were across the body of the accused. The intercourse went on for

about 15 minutes. When he had given push to the door, his wife did not raise any alarm. This witness further went on to state that the cot on which

the accused and the prosecutrix were lying was having one cushion and a chaddar on it. There was also a pillow on the cot, which pillow was put

under the buttocks of his wife when the accused was committing intercourse. The witness further stated that when he entered the house, he saw his

wife lying naked and he gave sufficient beating to her with danda. He asked her as to what she was doing, but she replied that as the accused was

strong, he had committed intercourse with her forcibly. Towards the end of his statement as PW-6, the husband of the prosecutrix again stated that

the accused was already committing intercourse for the last about 15 minutes, when he reached there and the continued to do so for about 15

minutes when the witness was standing. In this way, the accused took half an hour in committing intercourse with his wife.

23. Coming to the statement of the prosecutrix, who had appeared as PW-4 she stated in her cross-examination that the accused had committed

rape upon her for about half an hour. She denied that her legs were lifted by the accused while committing the intercourse. However, the accused

caught hold of her head with both his hands, during the incident. He hands remained straight on the cot, when the accused was committing

intercourse. She did not catch hold of the accused with her hands. She did not push the accused nor did she put her hands on the chest of the

accused. The accused gave about 10 or 20 strokes while committing the intercourse and then discharged, whereas she herself had not discharged.

24. In view of the aforementioned facts which have come on the record through the statements of the prosecutrix and her husband, it is a clear

case of consensual sex.

25. The prosecution has tried to build the theory of resistance by the prosecutrix to the act of rape by the accused. She stated in her statement Ex.

PD that she had received bruises on her right elbow, during the incident. The accused had also given teeth bites on both sides of her face and nose.

The medical evidence discloses presence of certain injuries on the prosecutrix, but it is hard to infer that these could be caused in the manner, as

alleged by the prosecution. Teeth bites would not leave marks of abrasions. Apart from injury No. 3, which was one mark of bite over the right

palm, the other two injuries sustained were multiple abrasions. As per the statement of the husband of the prosecutrix, he had given danda blows to

the prosecutrix, when he entered the room and found her lying naked. The presence of the abrasions on the persons of the prosecutrix was thus on

account of receiving of danda blows from the husband of the prosecutrix and not on account of giving of teeth bites by the accused.

26. The examination of private parts of the prosecutrix showed that no injury was present on the same. There was no bleeding even from her

vagina.

27. As per the case of the prosecution, the accused was produced before the police by Ranbir Singh PW-7 on 7.4.1992. The accused was made

to remove his kachha Ex. P-3, which was taken into possession vide recovery memo Ex. PK. In his statement as PW-6, the husband of the

prosecutrix stated that the accused ran away naked while opening the door. At that time, the accused left his pajama and underwear in the room,

which were thereafter, produced by the said witness before the police. If the pajama and underwear of the accused were being produced by PW-

6 before the police, there was no occasion of the accused wearing the same on 7.4.1992, when he was produced before the police by Ranbir

Singh PW-7.

28. The occurrence had taken place on 4.4.1992 at about 7.30 p.m. Statement Ex. PD of the prosecutrix was recorded on 5.4.1992 at 6.00 p.m.

The prosecutrix came up with an explanation about this delay of about 24 hours in the lodging of the report by saying that when on 5.4.1992 she

along with her husband started for the Police Station, the villagers told them that they would get the matter compromised and punish the accused,

but as no compromise was effected, therefore, report was lodged with the police. The husband of the prosecutrix did not say any such thing

regarding the delay in the lodging of the report with the police. The only explanation given by him was that since no vehicle was available, during

the night time, therefore, the visit to the Police Station was postponed for the next day.

29. In view of the above, it is not safe to rely upon the case of the prosecution so as to return a finding of guilt against the accused. Consequently,

the appeal is accepted. The conviction and sentence of the Appellant is set aside and he is acquitted of the charges against him.