

(2006) 07 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 127-SB of 1993

Angrej Singh and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 24, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 366, 376

Citation: (2006) 4 RCR(Criminal) 1003**Hon'ble Judges:** A.N. Jindal, J**Bench:** Single Bench**Advocate:** A.S. Kalra and Mr. Harvinder Singh, for the Appellant; Eklavya Kumar, A.A.G., for the Respondent

Judgement

A.N. Jindal, J.

Angrez Singh, Kuldeep Singh appellants (hereinafter referred to as the accused) faced trial under Sections 366 and 376 of the Indian Penal Code (hereinafter referred to as 'IPC'). Consequently, they were convicted and sentenced to undergo rigorous imprisonment for a period of three year and to pay a fine of Rs. 2000/- each u/s 366 IPC and rigorous imprisonment for five years and to pay fine of Rs. 5000/- each u/s 376 IPC. In default of payment of fine, the corresponding sentence was also awarded by the learned Additional Sessions Judge, Jalandhar against both the accused. It was further ordered that out of the fine, if recovered, a sum of Rs. 10,000/- shall be paid to the prosecutrix, on account of compensation.

2. Since the third accused namely Bhupinder Singh had expired during trial, therefore, proceedings against him stood abated.

3. The prosecution case when put in brief is like this, that on the evening of 21st of March 1989 the prosecutrix (name not to be disclosed and she is referred as prosecutrix hereinafter), along with her mother Simar Kaur had gone to fetch fodder from the fields of Udham Singh. Simar Kaur after collecting the fodder returned to

her house whereas prosecutrix was to return sometimes thereafter. After sun-set, when prosecutrix, after getting fodder reached near the field of Udham Singh then all the three accused, referred to above, came on a tractor. After parking the tractor near prosecutrix, Bhupinder Singh and Angrej Singh caught hold of her by her arms and legs and threw her in the trolley, she was taken to the mustard crop in the fields of Mehanga Singh. While reaching there, Angrej Singh threatened her at the knife point to remove her salwar. When prosecutrix resisted, he gave a knife blow on her right ear and broke the string of her salwar. Thereafter, Angrej Singh, Bhupinder Singh and Kuldeep Singh raped her simultaneously. None was attracted to her cries. The prosecutrix also had a scuffle. As a result of scuffle, her bangles were broken and shirt was torn. At about 10 p.m., all the accused shifted her to the upper storey (chobara) of the house of Angrej Singh, which adjoins to the house of the prosecutrix where they again raped her. At about 4 a.m. on 22.3.1989 when Mehanga Singh and Bhagat Singh were attracted to her cries they came to her rescue and recovered her. After Dharam Singh, father of the prosecutrix returned to the village in the evening, he accompanied by the prosecutrix proceeded to the Police Station for registration of the case. However, ASI Manjit Singh who met them on the way recorded her statement Ex. PA and sent the same to the Police Station. On the basis of which, FIR No. 36 dated 22.3.1989 Ex. PW8/A was recorded in the Police Station Nawanshahr, which was followed by the investigation. ASI Manjit Singh took into possession the trouser (salwar), torn shirt of the prosecutrix and collected the broken bangles of the prosecutrix and prepared the rough site plan of the place of occurrence. The also recorded the statements of the witnesses, got the prosecutrix medico-legally examined and on completion of investigation, challan against all the accused was presented in the Court.

4. After charge was framed against all the three accused, Bhupinder Singh accused expired, therefore, accused Angrej Singh and Kuldeep Singh faced trial. Both the accused denied the charges framed against them and pleaded their innocence.

5. During trial, prosecution examined as many as eight witnesses. Dr. Jagjit Singh (PW-1), who examined Angrej Singh, Bhupinder Singh and Kuldeep Singh accused vide reports Exs. PA, PB and PC opined that they were quite fit to commit sexual intercourse. Prosecutrix (PW-1/1) while appearing in the witness box reiterated her version as given in her statement u/s 161 Cr.P.C. Bhagat Singh (PW-2) is an eye-witness to the occurrence who saw the accused Kuldeep Singh committing rape upon the prosecutrix and further saw that Angrej Singh and Bhupinder Singh were sitting on the cot. Dharam Singh (PW-3) is the father of the prosecutrix. He has addressed about her age by stating that she was born in June 1972 at Ludhiana. Lal Chand Patwari (PW-4) has proved the Aksh shjra of the fields of Mehanga Singh. Dr. Surinder Kaur, Senior Medical Officer, Civil Hospital, Jalandhar (PW-6) who had examined the prosecutrix aged about 18 years on 23.3.1989 at 10 a.m. observed as under :-

1. There was swelling on elbow of left arm.

(Advised X-ray)

2. Ecchymosis 8 cms x 4 cms on the back in the middle on left side of mid line.

3. Ecchymosis 3 in number parallel to each other on the back on the lower side measuring each about 6 cm x 3 to 4 cms.

4. Lacerated wound of 2 cms to 1.5 cm on the pinna of right ear.

5. No mark of injury on her breasts. No mark of injury on external genitalia.

6. She further deposed that on P/V examination, vagina admitted 2 fingers hymen was absent. Foul smelling discharge, mixed with blood was present. Patient was menstruating (sic. menstruating) for the last 5-6 days according to patient's statement. No definite opinion about rape could be given. Report of the Chemical examined awaited.

7. This witness handed over to the police two slides with vaginal smears 2. Bottle containing two vaginal swabs. 3. An envelope containing MLR, sample of seal, police docket forwarding letter to the Chemical Examiner. 4. MLR No. SK/102/89.

8. She proved the carbon copy of the MLR Ex. PW5/A regarding medico-legal examination of Kamlesh Rani. The report of the Chemical examiner was received vide No. 770 dated 29.6.1989 revealed as under :-

No spermatozoa was detected on Ex. P1 and P2.

9. She has given her as 18 years and has further stated that she is unable to opine if prosecutrix was subjected to rape or not on the day of occurrence. PW-6 Ajaib Singh Head Master, Government Middle School, Mazara Khurdon has made a sworn testimony that according to School record her date of birth is mentioned as 28.4.1974. PW-7 Sub Inspector Manjit Singh is the Investigating Officer. He has proved the investigation conducted by him from time to time.

10. On closure of the prosecution case, the accused were examined u/s 313 Cr.P.C., in which they denied all the allegations being incorrect and pleaded their false implication, in this case due to party faction in the village.

11. On conclusion of the trial, as referred to above, all the accused were convicted under Sections 366 and 376 IPC and were sentenced accordingly. Hence this appeal.

12. Having scrutinized the entire evidence on record, the case is shrouded by such suspicious circumstances which impel the Court to form an opinion about innocence of the accused.

13. The occurrence in this case took place on the evening of 21st March 1989 and the prosecutrix was recovered from the adjoining house of the complainant in the wee hours of the day of 22nd March 1989 and she was medico-legally examined by

PW-5 Dr. Surinder Kaur on 23.3.1989 at 10 a.m.

14. First of all, it stands unexplained that when the prosecutrix had been produced before the Police in the evening of 22.3.1989, why the Investigating Officer shirked in taking her to the Doctor on the same day and took her to him the next day i.e. 23.3.1989 for her medico-legal examination. Dr. Surinder Kaur, who had medico-legally examined the prosecutrix, made a definite statement in the examination-in-chief itself that she was unable to form an opinion whether she was subjected to rape or not. She further made definite opinion that she was used to sexual intercourse. In support of her opinion, she has further explained during the course of her cross-examination that if a lady is subjected to sexual intercourse it would expected laceration of hymen or even bleeding after a short time, say within 24 hours. Admittedly, the prosecutrix was examined within 24 hours but she did not find any injury on her private-parts. She detected injuries on the other parts of the body which may be result of beatings given to her by her parents. It may be pertinent to mention that Dr. Surinder Kaur opined that if the prosecutrix had been menstruating for the last 5-6 days then certainly there should have been stains of blood emanating from the vagina but she could not detect any blood oozing out of the vagina of the prosecutrix.

15. The prosecutrix while appearing as PW-1/1 has made a categorical statement that Angrej Singh inflicted knife blow on her right ear but such incised wound was not detected by Dr. Surinder Kaur PW-5 during her examination. The prosecutrix has not explained the other three injuries if the same were caused by the accused or not.

16. Strangely enough, both Simar Kaur and the prosecutrix had gone together to the fields to collect the fodder, it had gone dark and then why Simar Kaur alone returned after leaving her daughter in the fields without any purpose therefor. It has also come in evidence of Bhagat Singh (PW-2) that they went to sleep at about 9 a.m. and did not search for the prosecutrix when she had not returned from the fields. Bhagat Singh (PW-2) has specifically stated that he did not go in search for the prosecutrix. He did not go to the Sarpanch of the village to lodge any report and no panchayat was arranged in the evening to inquire about the whereabouts of prosecutrix. Thus, a doubt is created from the story set up by the prosecution regarding the manner in which the occurrence took place and about the place of occurrence.

17. The story with regard to the recovery of the prosecutrix from the house of Angrej Singh also becomes doubtful. It has come in evidence of Bhagat Singh that house of the prosecutrix as well as accused Angrej Singh adjoin each other. Both are having chobaras on the back side. The prosecutrix was first taken to the fields of Mehanga Singh where she was raped then at about 10 p.m., she was brought to the house of Angrej Singh in the village which adjoins the house of the prosecutrix. It is also admitted by Bhagat Singh (PW-2) that if any alarm is raised from the chobara of

Angrej Singh then it is audible from their house. The prosecutrix has also categorically stated that she continued raising hue and cry in the fields of Mehanga Singh till 10 p.m. and also in the chobara of Angrej Singh till she was recovered. According to the prosecution, the prosecutrix remained in the chobara of Angrej Singh from 10 p.m. to 4 a.m. Under these circumstances, it does not appeal to the reason that PW-2 Bhagat Singh and Mehanga Singh did not hear the shrieks of the prosecutrix from the adjoining chobara. It is not only improbable but also can't be digested that the accused who were already settled in the field of Mehanga Singh, will take the prosecutrix to place adjoining to house of the complainant and to invite a trouble for themselves.

18. The story regarding the recovery of the girl further entertains a doubt from the fact that Bhagat Singh (PW-2) in his statement has stated that when they went to the chobara of Angrej Singh they found the gate of the chobara open. No sane man will commit crime and make the cries of the prosecutrix audible by keeping the doors of the room i.e. place of crime open. It is also strange enough that after Bhagat Singh had seen the accused, committing rape upon the prosecutrix, why he kept mum for a day and kept waiting (for) Dharam Singh to lodge the report. Bhagat Singh being an eye-witness to the occurrence, in the normal circumstances, would have come forward to disclose about the occurrence to the police. His silence for a day to lodge the report also affects the substratum of the prosecution case, and creates a doubt over the version put forth by the prosecution.

19. Before throwing the light over the conduct of the prosecutrix, I need to discuss the evidence with regard to her age. Though, the prosecution has projected that the prosecutrix was less than 16 years of age at the time of occurrence yet the admitted document i.e. Ex. P-1 a certificate issued by Registrar of Births and Deaths, Ludhiana and relied upon by the prosecution reflects that prosecutrix was born on 27.6.1972 and this fact stands corroborated by her father Dharam Singh who in his examination-in-chief has stated that she was born in the month of June 1972. Thus, on the alleged day of occurrence i.e. 21.3.1989, the prosecutrix had certainly crossed 16 years of age. The conduct of the prosecutrix in this case is far from placing reliance. She though examined after one and half years of the occurrence has again claimed herself to be 16 years of age when she recorded her age as fifteen and half on 22.3.1989 i.e., at the time of registration of the case. She has made twisting statement when she says that the sun had already set one or one and half hour prior to the occurrence and at the same time she changed her statement and deposed that sun had set half an hour prior to her kidnapping by the accused. She has stated that while preventing the accused from taking her away, he had given them nail as well as teeth bites but the doctor did not find such injuries on the persons of the accused. She has stated that during the sexual intercourse with her, she had received number of scratches on her thigh and also a number of injuries on her private-parts. But, no such injury was found on her person by Doctor Surinder Kaur (PW-5) during her examination. She has stated that she kept on raising alarm

up to 4 a.m. when Mehanga Singh and Bhagat Singh came to the chobara. Since the house of the prosecutrix was quite close, the mother and other family members of the prosecutrix were present in the house then why they could not be attracted to the cries allegedly raised by the prosecutrix especially when there was no distance or obstruction in-between two houses. None from the adjoining houses of Bhagat Singh and Angrej Singh came forward to support the prosecution version and to prove the recovery of prosecutrix from the chobara of Angrej Singh.

20. In these circumstances, no reliance can be placed on the testimony of the prosecutrix for the alleged offences of kidnapping and rape committed by the accused-persons. At the same time, the facts and the circumstances prevailing over the case incite me to form an opinion that it may be a case of consent as set up by the accused. The prosecutrix was habitual to sexual intercourse and she may have been seen by the family members of the prosecutrix going towards the Chobara of Angrej Singh. Therefore, she in order to save her own skin converted the case of consent into rape.

21. Having scrutinized the trial Court judgment, the same does not appear to be well founded. The necessary evidence, as discussed by me above, which has created doubt over the prosecution case, has not been appreciated.

22. Consequently, the same deserves to be reversed.

23. For the foregoing reasons, the appeal is allowed, the impugned judgment of conviction and sentence is set aside and the accused-appellants are acquitted of the charges framed against them. The bail bonds and surety bonds furnished by them stand discharged. Fine, if any, deposited by them be refunded.

24. Before parting with the judgment, it has invariably been observed that the trial Courts while deciding the cases mention the name of the prosecutrix which has been specifically prohibited under law. In order to maintain the dignity, honour and reputation of the victim of rape and also preventing her social victimization or ostracism, it would be appropriate that the name of the victim of rape should not be indicated. The legislature in order to save further victimization of victim of sexual offence added Section 228-A of the Indian Penal Code, which reads as under :-

228-A. Disclosure of identity of the victim of certain offences. etc. - (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence u/s 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D is alleged or found to have been committed (hereinafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim of such printing or publication is -

- (a) by or under the order in writing of the officer incharge of the police station or the police officer making the investigating into such offence acting in good faith for the purposes of such investigation; or
- (b) by, or with the authorization in writing of, the victim, or
- (c) whether (where ?) the victim is dead or minor or of unsound mind, by, or with the authorization in writing of, the next of kin of the victim :

Provided that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognized welfare institution or organization.

Explanation. - For the purpose of this sub-section, "recognized welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in sub- section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation. - The printing or publication of the judgment of any High Court or the Supreme Court does not amount to any offence within the meaning of this section.

The aforesaid section makes disclosure of the identity of the victim of certain offences punishable.

25. The aforesaid section makes disclosure of the identity of the victim of certain offences punishable. No doubt the restriction for printing or publishing of the name of prosecutrix is not applicable to the courts yet the courts should so far as possible avoid disclosing names of the prosecutrix in order to safeguard the dignity, honour and further embarrassment of the victim of sex crime. The judgment to be referred to this regard is [State of Punjab Vs. Gurmit Singh and Others](#), .

26. Similarly, while interpreting Section 228-A(1) of the IPC, as referred to above, the Apex Court in case of [Bhupinder Sharma Vs. State of Himachal Pradesh](#), , observed as under :-

We do not propose to mention name of the victim. Section 228-A of the Indian Penal Code, 1860 (in short the `IPC") makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by High Court or Supreme Court. But, keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the

judgments, be it of High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as `victim" in the judgment.

27. In view of the above observation of the Apex Court, I have also chosen to describe the victim as prosecutrix in this judgment.

28. A copy of this judgment be circulated among the learned Additional Sessions Judges, working in the State of Punjab and Haryana, for strict compliance of the observations of the Apex Court in Bhupinder Sharma"s case (supra) and Gurmit Singh and others" case (supra).