(2005) 14 CriminalCC 821

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 257-SB of 1992

Rohtash	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Feb. 2, 2005

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 366, 376

Citation: (2005) 14 CriminalCC 821

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Atul Lakhanpal and Mr. R.A. Sheoran, for the Appellant; Sanjay Vashishth, D.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.
By this order, I propose to dispose of two connected Criminal Appeal Nos. 257-SB of 1992 and 260-SB of 1992.

Whereas, Criminal Appeal No. 257-SB of 1992 has been filed by Rohtas, who has since been held guilty u/s 376 of the Indian Penal Code and

sentenced to undergo RI for seven years as also to pay fine of Rs.5,000/- and in default thereof, to further undergo RI for one year, other appeal,

i.e. Criminal Appeal No. 260-SB of 1992 has been filed by Smt. Kashmiri, who has since been held guilty u/s 366-A IPC and sentenced to

undergo RI for five years as also to pay fine of Rs.2,000/- or in default thereof, to further undergo RI for six months vide order of con viction and

sentence dated 15.7.1992 recorded by learned Additional Sessions Judge, Faridabad. Accused Dharamwati, who was also tried along with the

appellants, was, however, acquitted by giving her the benefit of doubt.

2. The occurrence of kidnapping and rape of the prosecutrix, Geeta, is stated to have taken place on 8.10.1991, FIR, with regard to which came

to be lodged by her father Sher Singh, which was recorded by Hari Chand, SI, PW 13 and formal FIR, on the basis of which came into being on

the same day.

3. While unfolding the prosecution version, Sher Singh, father of the prosecutrix stated that he was working as Pump Operator and was blessed

with four children, eldest being Geeta, who was 16 years old and three sons Yoginder Kumar, Raj Kumar and Bachu Singh. Geeta was married to

Bhan Raj son of Raj Mal on 5.5.1990 at village Tumela and she came to their house from her in-laws about 18-19 days before the occurrence.

On 8.10.1991 the first informant had gone for his duty as usual and when he returned from duty in the evening he came to know that Rohtas son of

Raghubir, resident of village Tigaon had enticed away his daughter Geeta with the help of Kashmiri alias Palli wife of Ganga Ram. He searched for

his daughter, who did not meet him. During the search of his daughter, he came to know that Raju son of Kedar Nath was also involved in the

crime. He then requested the police to make search for his daughter.

3. In its endeavour to bring home the offence against the appellants, prosecution examined Dr. Anita Bansal as PW1, who stated that on

16.10.1991 at 5 P.M., she examined Geeta and on her examination, observed as under::

1. There was no external injury seen anywhere on the body.

2. Secondary sex characters were well developed as axillary hair, public hair, breast etc. and no external mark of injury seen.

3. Perineal examination: public hair: Normal, non-matted and no discharge was present. Labia majora and minora well developed and no mark of

injury was present. Hymen was not present and no point of fresh bleeding was seen.

PV Examination: Vagina admitted two fingers easily and uterous was of normal size anteverted fornices were free.

4. In her cross-examination, she stated that there were stains on the salwar of the prosecutrix but she could not say if those were semenal stains or

patient''s own discharge. This fact, she, however, stated could be ascertained by the Chemical Examiner. The prosecutrix could be habitual of

enjoying sexual intercourse and in her opinion there may or may not be possibility of rape as there was no sign visible of any injury. She further

stated that she had not advised the investigating agency for determination of her age radiologically. It is admitted position during the course of

arguments that there was no occasification test to determine the age of the prosecutrix.

5. Geeta, prosecutrix, who was examined as PW8, stated that she was married on 5.7.1991. Appellant ''''Kashmiri alias Pali used to meet her

sometimes in the fields, some times in the Nohra and some times at the house. Appellant Rohtas was a tailor in her village and she used to get her

clothes stitched from him. He was very thick with Pali alias Kashmiri-appellant. Whenever Kashmiri met her, she used to impress upon her to

marry accused-Rohtas and thereafter she would have well stitched clothes. On 8.10.1991 her father had gone for his duty and her mother had

gone to fields. Her younger brother had gone to the school and she was alone at the house. In their absence, appellant Kashmiri had come to her

house and asked her to show her ear rings, which had been given to her by her in-law in marriage. When she gave the ear rings, she put the same

on her ears and when she demanded the same back, she asked her to accompany her to the fields where she would hand-over the Kundals to her.

Out of fear, she accompanied her to the fields, where there was a tubewell and a kotha. In the Kotha, Rohtas-appellant was present, who forcibly

caught hold of her hand and dragged her inside the kotha. Kashmiri-appellant bolted the door of the Kotha of the tubewell from outside. Inside the

kotha, appellant Rohtas committed rape upon her twice against her consent. Thereafter, Kashmiri put a lock on the door and brought meals at

about 8 P.M. for her and Rohtas. Thereafter, Kashmiri kept them hidden in the field for the night. Kashmiri returned at about 4.30 A.M. next

morning along with a cycle. Rohtas brought her then to village Tigaon where she was kept inside the house and mother of Rohtas bolted the door

of the room from inside and put a lock on the same. She was kept confined there for two days and at night time, appellant Rohtas used to commit

rape upon her against her consent and whenever she protested against sexual assault, or that she would disclose the matter to anybody, Rohtas

and his mother used to give threat of life to her. Thereafter, she was taken towards Uttar Pradesh by Rohtas, the location of which was not known

to her. She was kept at several places for about six days and when they were returning from the side of village Dhankor near Jamna Ghat, the

police party met them in which her father and uncle were also there. She was then taken to Ballabgarh for medico-legal examination and from

Ballabgarh she was taken to village Tigaon. In her cross-examination, she stated that it had taken them 4-5 hours to go from the Kotha of tubewell

to reach village Tigaon on cycle and three villages fell in the way and many persons met them in the village but out of fear she did not raise any

alarm. She did not admit letter, Ex.DB having been written by her, even though she admitted that letter, Ex. DC was in her handwriting but the

same was got written from her under pressure of the accused. She did not admit having written letters, Ex.DD and DJ and denied the suggestion

that in fact all these letters were in her own hand. Letter, Ex. DC, she stated, was got written from her by the accused when he had taken her to

Uttar Pradesh. She, however, did not tell the police or her parents about the accused having pressurized her in writing letter, Ex.DC. The accused

used to make her roam on the roads. She could not give name of any city, village or town to which the accused took her. She would not remember

it she had gone to any photographer. She further stated that accused used to make her smell some medicines after which she used to lose her

senses. The accused forced her to get photographed with him. They were photographed four times. She did not tell anybody or the photographer

that the accused had abducted her because of fear of the accused. That day, that had travelled in a bus from morning to evening. They boarded a

bus from Delhi bus stand, after having reached Bus Stand Delhi. Thereafter, they boarded a bus bound for Uttar Pradesh of U.P. Roadways. The

accused took her to Bus Stop, Tigaon on a cycle and from bus stop to Ballabgarh in a three-wheeler and from Ballabgarh to Delhi in a bus. There

were many passengers in the bus from Ballabgarh and there were many persons at the Bus Stand, Delhi. There were many persons in the bus of

U.P. Roadways. At the time when photographs were taken, the accused had forced her to have some make-up. The accused had also taken her

to a temple outside the village, where also photographs were taken. She admitted, photographs, Ex. Dl to D3 to be the same which were taken but

she stated that the accused had forced her to join the photo-session. She stated that she was under matric but had studied for 12 years and she

was the eldest child of her parents. She could not know if she was aged 19-20 years. The prosecution also produced on record age certificates of

the prosecutrix vide Ex. PD and Ex. PW-13/B. While dealing with the said certificates, learned trial Judge has opined that the prosecutrix was

above the age of 16 years on the date of alleged occurrence.

6. There is no need to make a further reference of the prosecution evidence as the contentions of learned counsel for the parties are confined to the

medical examination of Geeta and her own statement made in the Court.

7. Mr. Yadav and Mr. Lakhanpal, learned counsel for the appellants, vehemently contended that the prosecutrix was a consenting party and being

above the age of 16 years, no case for kidnapping or rape is made out. There appears to be considerable merit in the contention raised by learned

counsel for the parties. No doubt, the prosecutrix was a married lady and must be used to sexual intercourse and, therefore, finding no injury on

her private parts may not indicate that she was not subjected to forcible intercourse. However, the fact that there was found no injury at any part of

the body of the prosecutrix despite the fact that she was repeatedly raped for number of days, would be a clear indicator to the fact that she was a

consenting party to the sexual intercourse and indulged into sexual intercourse with her consent. That apart, statement of the prosecutrix itself

would lead no one in doubt that she had accompanied Rohtas at different places voluntarily. It may be recalled that from village Jawan, where she

was initially raped during night, was taken to village Tigaon and kept there for number of days. From village Tigaon, she along with appellant

Rohtas went to Delhi and from Delhi to Uttar Pradesh and in the process, she remained with the appellant Rohtas for number of days where she

had an occasion to meet number of persons, be it in the bazars, buses or elsewhere. She photographed herself with the accused again on number

of occasions. There is no need to mention anything else as on the facts, as mentioned above, a complete case of consent is made out.

8. In view of the discussion made above, both the appeals are allowed. Order of conviction and sentence dated 15.7.1992 passed by learned

Additional Sessions Judge, Faridabad, is set aside and the appellants are acquitted of the charges framed against them.