

(2003) 08 P&H CK 0160

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 269-SB of 1989

Islam

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 22, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2003) 9 CriminalCC 445 : (2004) 1 RCR(Criminal) 895

Hon'ble Judges: Jasbir Singh, J

Bench: Single Bench

Advocate: Ashish Kapoor, for the Appellant; G.P.S. Nagra, AAG, Haryana, for the Respondent

Judgement

Jasbir Singh, J.

Appellant has filed this appeal against judgment dated 1.5.1989, vide which he was convicted for commission of an offence u/s 376 IPC and sentenced to undergo rigorous imprisonment for seven years and was directed to pay a fine of Rs. 250/-. In case of default of payment of fine, he was to further undergo RI for three months.

2. It was case of the prosecution that on 14.9.1988, prosecutrix Sabra Begum aged about 13 years, was present alone in her house. At about 2.00 p.m. appellant/accused, having trespassed in the house, had forcibly took the prosecutrix inside the room and after gagging her mouth made her to lie on a cot and committed rape upon her without her consent and against her wishes. It was further alleged that as a result of excessive violence committed by the appellant/accused, the prosecutrix started bleeding and also became unconscious. She also raised due and cry, which attracted one Mohd. Iderish (PW4) to that place. Appellant/accused then ran away from there after scaling over the wall. A neighbor named Akhtari was called to the house of the prosecutrix. Arrangement was also made to provide her necessary medical aid.

3. It is further case of the prosecution that at the relevant time, father of the prosecutrix and gone to Hathin, and was not available. Mother of the prosecutrix had gone to Faridabad for attending some official duty regarding training being imparted by the education department. Prosecutrix narrated the entire story to her father, when he came back to his house at .4.00 p.m., on that very date. Her father went to Faridabad on 15.9.1988 and narrated to entire incident to his wife Jamila, who then returned to her house and saw her daughter in a very bad shape. Matter was brought to the notice of village Panchayat. However, when no action was taken, a written complaint Ex.PB was made by Jamila, mother of the prosecutrix, to the police on 21.9.1988, which led to the registration of FIR in this case.

4. Prosecutrix was medico-legally examined by Dr. Partibha Arya on 21.9.1988. Doctor found no mark of external injury on her private parts and on her body. Her Salwar, vaginal swabs were sent for examination to the Director, Forensic Science Laboratory, Madhuban and report Ex.PB revealed that salwar was stained with numerous large and small human blood stains and swabs were stained with blood as well as human semen.

5. After completion of investigation, final report was submitted by the investigating agency in the competent court for trial. Appellant/accused was then charge-sheeted. Prosecution led evidence to prove his guilt and on completion of prosecution evidence, statement of appellant/accused was recorded under the provisions of Section 313 Cr.P.C. wherein he denied all the allegations levelled against him and pleaded his false implication, due to party faction in the village. He led no evidence in defence.

6. Trial Court, after appraisal of evidence on record, came to a conclusion that guilt of the appellant/accused was proved on record and accordingly, he was convicted and sentenced, as found mentioned in para 1 of this order. Hence, this appeal. Shri Ashish Kapoor, Advocate appearing on behalf of the appellant has vehemently contended that the conviction and sentenced awarded to the appellant, in view of the evidence on record, was not justified. He, by referring to the statements of PW2 and PW4, tried to contend that both these witnesses are discrepant, so far as the question regarding delay in lodging the FIR is concerned. He further contended that at the time of medical examination, doctor found no marks of injury on the person of the prosecutrix and doctor also opined that the prosecutrix was habitual to sexual intercourse. Counsel contended that this fact had been overlooked by the trial court. It has further been argued that the age of the prosecutrix, as per the report of the Radiologist, was 16 to 17 years. By referring to above mentioned facts, regarding age and delay in recording the FIR, counsel contended that it could be a case of consent and as such, conviction and sentence of the appellant was not proper. He further stated that the appellant/ accused, at the time of alleged commission of offence, was of 16-1/2 years of age, a child. He had already undergone about 17 months of imprisonment, as such, leniency be shown to him and he be given a

chance to rehabilitate himself in life. By stating this, counsel prayed that appeal be allowed and judgment, under challenge, be set aside.

7. Shri Nagra appearing on behalf of the respondent/State has vehemently controverted the arguments raised by counsel for the appellant. Shri Nagra contended that commission of offence by the appellant was proved on record. He, by referring to the statements of Sabra Begum, prosecutrix, stated that she had supported the version of the prosecution and her testimony could not be shattered despite her vigorous cross-examination. He further stated that other witness PW2, Jamila, mother of the prosecutrix and Md. Iderish, PW4 had fully corroborated the statement of the prosecutrix, as such, there is no scope to give any benefit to the accused of small contradictions existing here and there in the statements of witnesses. He further stated that delay in recording the FIR was fully explained on record and the explanation was most authentic and probable. He prayed that already minimum sentence has been awarded to the appellant and he needs no further concession from this Court. He prayed that appeal be dismissed.

8. With the help of counsel for the parties, records were perused. It is apparent from the records that the prosecution story fully stands established from the statements of Sabra Begum (PW3), Jamila (PW2) and Md. Iderish (PW4). PW3 in her statement before the court had given a vivid description of the entire incident as to how the appellant/accused entered the house, took her forcibly to a room, gagged her mouth and then sexually exploited her, despite her resistance. PW4 Md. Iderish in his statement had stated that he was attracted to the place due to noise being raised by the prosecutrix. He also saw the accused running away from the spot after scaling over the wall of the house.

9. Shri Kapoor, appearing for the appellant, has failed to indicate any discrepancy in the statement of the prosecutrix to disprove the alleged occurrence.

10. Their Lordships of Supreme Court in *State of Rajasthan v. Om Parkash*, 2002 (3) CCC 64 (S.C.) : 2002 (2) RCR (Criminal) 764, while dealing with a case u/s 376, opined as under:-

The conviction for offence Section 376 IPC can be based on the sole testimony of a rape victim is well settled proposition. In [State of Punjab Vs. Gurmit Singh and Others](#), referring to it, [State of Maharashtra Vs. Chandraprakash Kewalchand Jain](#), this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr. Justice A.S. Anand (as His Lordship then was), speaking for the court, that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling

reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

11. Counsel for the appellant has failed to show that the testimony of the prosecutrix was not reliable in this case and suffers from any major discrepancy because of which, further corroboration was needed. In fact, in this case, there existed corroboration to the statement of the prosecutrix in the shape of testimony of other witnesses.

12. Objection of counsel for the appellant that delay in lodging the FIR was fatal to the prosecution, is also devoid of any force and no benefit of the same can be given to the appellant. It had come on record that when offence was committed, father and mother of the prosecutrix were not available at the spot. Father came in the evening and he was informed regarding the incident. Mother was away to Faridabad in connection with some official duty. Father went to her the next day and brought to her notice the entire occurrence. She came back to the village. Matter was reported to the Panchayat. When no action was taken for some days, a written complainant was made to the police officials, which led to registration of the case. In cases of offence u/s 376 IPC, as honour of the family is always involved, its members will have to decide whether to take the matter to the court or not and such like considerations naturally cause some delay in lodging the FIR. In this case, sufficient explanation had been given as to under what circumstances delay was caused.

13. Next contention of Shri Kapoor that since at the time of medical examination, no injury was found on the person of the prosecutrix and her age as per report of Radiologist was 16-17 years and as such, appellant be given benefit of the same, has no legs to stand. Defence has failed to prove on record anything to show that it was a case of consent. Mere non-existence of injuries on the person of the prosecutrix does not amount that it was a case of consent. Admittedly, in this case, medical examination was done after about 8 days and there is every likelihood of any injury, to be healed during that period. Furthermore, due to non-existence of injuries on the person of the prosecutrix does not entitle the appellant to get any benefit, as there is not evidence on record to suggest that she ever consented to the commission of offence, as alleged by the appellant.

14. Keeping in view the facts and circumstances mentioned above, this court feels that prosecution had successfully proved the commission of offence by the appellant, as such, conviction of the appellant is upheld.

15. Counsel for the appellant has stated that the appellant was a young boy at the time of alleged occurrence and he had already undergone about 17 months of imprisonment, as such, sympathy be shown to him and he be given a chance to

rehabilitate himself in life. The alleged occurrence had taken place on 14.9.1988. Appellant was arrested in this case on 5.10.1988. He faced agony of trial till 3.5.1989. During his trial and after his conviction, he had undergone about 17 months of imprisonment. Appeal is pending in this court since June, 1989. It is also an admitted fact that the appellant was a young boy of 16-1/2 years of age at the time of alleged occurrence. May be due to his young age, without knowing the consequences, he had committed that offence. Now, he is a grown up man and residing with his family, as per information supplied, in a peaceful manner, this court feels that he deserves some leniency.

16. Keeping in view facts and circumstances of the case, sentence awarded to the appellant is reduced to four years. However, punishment of fine is maintained.

17. With the above mentioned modifications, appeal is disposed of.