

(2007) 03 P&H CK 0187

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 455-SB of 1992

Sandip Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 9, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 376

Citation: (2007) 2 RCR(Criminal) 758

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Bipin Ghai, for the Appellant; M.S. Joshi, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

Judgment dated 3.12.1992 passed by learned Sessions Judge, Kapurthala, convicting accused-Appellant Sandip Kumar (hereinafter referred to as 'the accused') u/s 376 IPC and sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/-, and in default of payment of fine to further undergo rigorous imprisonment for one year, has been challenged by way of this appeal.

2. The factual matrix of the case is that on 17.11.1990, prosecutrix (name not disclosed), aged about 14 years, was going to have the coaching to the house of Ramesh Mallan and at about 7.30 A.M., when she reached near the house of the accused in Bhandari Mohalla, then the prosecutrix on the call given by the accused went to him. The accused dragged her inside the room and bolted the door from inside. After threatening to kill her by strangulation, she was made to lie on the cot and thereafter he raped her. The shrieks raised by her remained unresponded. After committing rape, the accused ran away. When she came out of the house while weeping, then her father came there per chance to whom she narrated the incident,

who took her to the police station and also got her medico-legally examined in Civil Hospital, Kapurthala, as lady doctor in Civil Hospital, Sultanpur Lodhi was not available. On the basis of the statement made by the prosecutrix, the accused was booked in case FIR No. 194 dated 17.11.1990, which was investigated into by the police. Ultimately, he was challaned in the case.

3. The accused was charged u/s 376 IPC to which he pleaded not guilty and claimed trial.

4. In order to seek conviction of the accused, the prosecution examined Dr. Barinder Gill (PW-1), Prosecutrix (PW-2), Gurcharan Singh, father of the prosecutrix (PW-3), Ramesh Chander Tara (PW-4), Dr. Ram Parkash (PW-5), P.R. Suman, Principal (PW-6) and SI Naginder Singh (PW-7). After giving up Dr. R.P. Bholla and tendering into evidence affidavits of MHC Sukhbir Singh and Constable Raj Kumar Ex. PH and Ex. PJ respectively, the prosecution closed its evidence.

5. When examined u/s 313 Code of Criminal Procedure the accused denied all the incriminating circumstances appearing against him and pleaded his false implication in this case. He further explained that his maternal aunt's husband Sudarshan Lal Bhandari is a political leader and he was implicated in this case on account of political rivalry. In defence, he examined Anil Kumar, Clerk, ADM Office (DW-1).

6. The trial ended into conviction. Hence this appeal.

7. I have heard Mr. Bipin Ghai, learned Counsel for the Appellant, Mr. M.S. Joshi, learned Deputy Advocate General, Punjab and perused the records of this case with their able assistance.

8. Before evidence of the prosecutrix is appreciated, it will be essential to determine if the prosecutrix was below 16 years of age at the time of incident. In this regard, P.R. Suman, Principal, who while appearing in the witness box as PW-6 deposed from the admission and withdrawal record of the prosecutrix that her date of birth was 18.7.1977. He has proved copy of the admission record Ex. PK. Besides him, the prosecutrix while appearing as PW-2 has given her age as 14 years as on 21.10.1991. The occurrence took place one year prior to that. Her testimony regarding the age, stands corroborated by her father Gurcharan Singh (PW-3). Though, a suggestion has been given to Gurcharan Singh, father of the prosecutrix (PW-3) that the prosecutrix was 18 years of age at the time of incident but no document worth the name has been produced on the record to rebut the evidence led by the prosecution. Dr. Barinder Gill (PW-1) who medico-legally examined the prosecutrix at the first instance also recorded her age as 14 years, therefore, there is no escape from concluding that the prosecutrix was certainly below 16 years of age at the time in incident.

9. Now coming to the other evidence, the prosecutrix, while appearing in the witness box as PW-2, has reiterated the entire version as set up by her in the FIR. She has categorically stated that the accused after dragging her in the room, bolted the room from the inside and committed rape upon her. There was no sufficient inordinate delay in lodging the FIR. Barring minor discrepancies not effecting the substratum of the case, no such glaring contradiction or discrepancy has been brought to my notice as to discredit the testimony of the prosecutrix as well as her father. Testimony of these two witnesses stands corroborated by Dr. Barinder Singh Gill (PW-1). They had no axe to grind against the accused. Nothing has been proved on record to show if there was any party faction or political rivalry on the basis of which the accused alleged his false implication.

10. Faced with the situation, learned Counsel for the Appellant has pleaded for leniency on the ground that the accused was young man of 22 years of age and the prosecutrix is already married.

11. Having given my thoughtful consideration to the aforesaid contentions, though this appeal is being decided after a pretty long time, yet we cannot ignore the agony suffered by the prosecutrix in her prime age. However, since the prosecutrix is stated to be already married, therefore, it would be expedient in the interest of justice to take a lenient view by making some modification in the judgment of sentence.

12. for the foregoing reasons, the appeal preferred by the Appellant is hereby dismissed with the modification that the sentence passed against the accused is reduced to five years. However, sentence of fine shall remain intact. Chief Judicial Magistrate, Kapurthala is directed to take necessary steps for procuring custody of the Appellant for serving remaining part of his sentence.

13. Order accordingly.