

**(2008) 08 P&H CK 0174**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 730-SB of 1998

Parveen Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

**Date of Decision:** Aug. 12, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 342, 363, 366, 376, 506

**Citation:** (2009) 4 RCR(Criminal) 631

**Hon'ble Judges:** K.C. Puri, J

**Bench:** Single Bench

**Advocate:** Sidharth Sarup, AAG Haryana, for the Respondent

**Final Decision:** Allowed

---

**Judgement**

K.C. Puri, J.

This is an appeal directed by the accused/appellant against the judgment dated 4.6.1998 passed by Shri S.K. Gupta, the then Additional Sessions Judge, Ambala vide which he has been convicted u/s 376 IPC but has been acquitted under Sections 342, 363, 366 and 506 IPC.

2. The prosecution version, in brief, is that on 2.3.1996, Sat Pal, brother of the prosecutrix lodged FIR Exhibit PJ at Police Station Babain in District Kurukshetra alleging therein that on 20.2.1996, he and other members of his family had gone to the fields to harvest the crop of potatoes after leaving the prosecutrix and the wife of his brother Mahinder Kaur etc at the house. Mahinder Kaur went to the house of one Harbhajan Singh to bring Lassi. When she returned, she found the prosecutrix missing. The neighbours told her that the prosecutrix had gone to village Jhikar Hari to see a fair. Mahinder Kaur came to the fields and informed them about that fact. They searched her in the village and at other places, but here whereabouts could not be known. One boy named Karam Singh of their village and Mahinder

Singh, brother-in-law of Sat Pal's brother were also missing from the village. They suspected the hand of either of them in the kidnapping of the prosecutrix.

3. On 17.3.1996, Babli, wife of the accused came to the Police Station and presented application Exhibit PK alleging therein that the prosecutrix was living with her husband and she was not ready to leave him. She sought help from the police to get rid of her. In pursuance of that application, the prosecutrix was recovered from the house of the accused and her parents were informed. She made a statement before the police to the effect that on 20.2.1996, she had some dispute with her mother. She left the house in a fit of rage. She boarded a trolley and went to village Julheri to see a fair. After seeing the fair, she boarded a bus for going to Mustafabad. From Mustafabad, she boarded a train and reached Ambala Cantt. She was going on a road at Ambala Cantt, when she was followed by five or six boys, who teased her. She, out of fear, started weeping. Meanwhile, a red Maruti car driven by Parveen Kumar, accused stopped by her side. The accused asked her to sit in the car. As she was afraid of the boys following her, she sat in the car. The accused asked her whereabouts. She replied that she had no one and she might be left anywhere. The accused took her to the office of his employer, Mr. Gandhi, a Taxation Lawyer. Mr. Gandhi came out of his office and asked about her from the accused. The accused told him that she was his sister. Mr. Gandhi also sat in the car and they started for going to some other place. On their way, the accused left her at the house of Bhabhi of his wife telling her that he would come to take her at 5.00 PM. He came at 9-00 P.M. At that time, she was sleeping. He took her from there on his cycle. When she asked as to where he was going, he told her that he was taking her to his house. On their way, the accused committed sexual intercourse with her forcibly in a vacant plot. Then the accused took her to his house. The wife of the accused offered them meals. She was made to sleep by the accused in the room of his sister and mother.

4. The prosecutrix further alleged that next morning she asked the accused to let her go to her house. But, the accused threatened to kill her in case she told anything to his family members. After three or four days, she again asked the accused to allow her to go. Again, she was threatened and the accused told that he would marry her with his brother Subhash as said Subhash had some dispute with his wife. She was kept in the house forcibly. On that day i.e. 17.3.1996, the accused had some altercation with his wife Babli who reported the matter to the police.

5. On the basis of the statement of the prosecutrix, formal First Information Report, Exhibit PN was recorded at Police Station, Baldev Nagar. Investigation in the case was conducted and after completion of the same, challan was presented against the accused in the Court.

6. The accused was charge-sheeted. He pleaded not guilty to the charge and claimed trial.

7. In order to prove its case, the prosecution examined PW-1 HC Shiv Charna PW-2 Dr. Geeta Suri, PW-3 Dr. Bawa Singh, PW-4 Mukesh Kumar, Draftsman, PW-5, prosecutrix, PW-6 Om Parkash, father of the prosecutrix, PW-7 SI Sher Singh, PW-8 ASI Rameshwar Parshad and PW-9 Mukhtiar Singh, Head Teacher.

8. After the close of the prosecution case, the statement of the accused u/s 313 Cr.P.C. was recorded in which he denied the prosecution allegations and pleaded innocence. He took the plea that he was innocent and a false case had been registered against him.

9. In defence, the accused examined DW-1 Nutan and closed his defence evidence.

10. The learned trial Court, after appraisal of evidence, convicted the accused u/s 376 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year. The learned trial Court, however, acquitted the accused for offences under Sections 342, 363, 366 and 506 IPC.

11. Feeling aggrieved, the accused has preferred the instant appeal.

12. I have carefully gone through the record of the case and have heard the State counsel.

13. As per school record, the date of birth of prosecutrix is 20.11.1979 and the occurrence is stated to be of 20.2.1996. So, she was more than 16 years of age at the time of occurrence. The learned trial Court has not accepted the version of the prosecutrix that she was kept in the house of the accused forcibly or under threat. There is a definite finding of the learned trial Court that the prosecutrix resided in the house of the accused for more than 20 days with her free will. It has come on the record also that there was no latrine in the house of the accused and she used to go outside for easing herself. She had ample opportunity to go from the house of the accused. Although the prosecutrix has denied the suggestion that she has attended the fair but according to DW-1, the prosecutrix had purchased articles for her marriage anniversary. She further stated that they have gone to see a movie "Dilwale Dulhaniya Le Jayenge" at Ambala Cantt.

14. According to the prosecutrix, she had a quarrel with her mother and on that count she came out of the house. She further stated that she boarded a tractor-trolley and went to village Jhikar Heri. She boarded a bus for going village Mustafabad and from there, she went to Ambala Cantt. by train. She was going on the road at Ambala Cantt, when two or three boys followed her. She was scared. In the meantime, the accused came in a red car and she narrated the entire story. Accused Parveen gave her a lift and took her to the house of a lawyer. She has further stated that the accused parked his car outside his house and met Mr. Gandhi, Advocate. She was introduced as his sister. The prosecutrix has further

stated that she was dropped at the residence of his sister-in-law and assured to take her back at 5-00 P.M. It was further alleged by her that the accused came at 9-00 P.M and took her on his cycle. The accused raped her on the heap of crushed stones. She has further stated that she was taken by the accused to his house where she remained for 20 days under threat.

15. According to the prosecutrix, she was raped on crushed stones. She was having no injury when she was medico-legally examined. There was no mark of injury on her private parts. PW-2 Dr. Geeta Suri stated that hymen of the prosecutrix was torn. Margins did not bleed on touch. One finger could be easily passed. There was no bleeding or discharge staining the finger. The prosecutrix did not have any injury on any part of her body i.e. face, neck, breasts, abdomen or internal side of thigh. According to the prosecutrix, she has not narrated the factum of rape to any family member of the accused. Normally, the statement of the prosecutrix should be accepted. Even the trial Court has not accepted her version regarding keeping her in the house by the accused forcibly. In authority in case Narayan @ Naran v. State of Rajasthan, 2007 (2) RCR (Cri) 586 : 2007 (2) RAJ 488 , the prosecutrix did not narrate the incident of rape to the inmates of the house where she slept in the night and did not offer any resistance. She also went in a tractor. The accused, in that case, was acquitted.

16. In authority in case Rakesh v. State of Haryana, 2006 (4) RCR(Criminal) 505, the accused was acquitted as in that case, the prosecutrix travelled in a bus and did not narrate the occurrence to any one.

17. One another circumstance which goes against the prosecution, is that the prosecutrix has not raised any little finger for more than 20 days while residing in the house of the accused. When the prosecutrix was found missing, her brother lodged a report to the effect that she had been taken away by one Mohinder Singh and Mohan Lal. So, there is a different version by the family members of the prosecutrix at the initial stage. The needle of suspicion was initially at Mohinder Singh and Mohan Lal. The prosecutrix was aged more than 16 years. As discussed above, there was no mark of injury. It cannot be believed that in case the prosecutrix had been raped on the crushed stones, there would have been no injury on her back or any part of the body. So, the cumulative effect of all the circumstances leads me to the conclusion that even if it is assumed that the accused had intercourse with the prosecutrix, the same was with consent and it is a case of consent and cannot be branded as a rape.

18. In view of the above discussion, the appeal is accepted. The impugned judgment of the learned trial Court stands set aside and the accused stands acquitted.

19. A copy of the judgment be sent to the learned trial Court for strict compliance.