
(1988) 08 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 408-SB of 1985

Ajmer Singh and anr.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-08-1988

Acts Referred:

Citation : (1988) 08 P&H CK 0081

Hon'ble Judges : A.L.Bahri, J

Advocate : D.V. Gupta, Atul Mahajan, D.S. Bali, B.S. Rana, Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. Ajmer Singh and Jai Prakash alias Neena were convicted by the additional Sessions Judge, Hissar vide his order dated August 26, 1985 under section 376 read with section 34, Indian Penal Code, and sentenced to rigorous imprisonment for ten years and to pay a fine of Rs. 500/ each; in default of payment of fine, they were ordered to further undergo rigorous imprisonment for six months.

2. The occurrence took place on January 15, 1985 at about noon time. The prosecutrix Saroj Bala, wife of Umed Singh, had gone along with husband's younger brother Rajesh aged about 11/12 years to the fields of one Lakhi Taj for cutting grass. While she was in the process of cutting the grass, the appellants appeared there and covered her with a khes (sheet) while Ajmer Singh accused held the prosecutrix and gagged his mouth with the sheet, Neena accused committed rape on her. Thereafter, in the same process the other accused committed rape on her. Rajesh P.W. I who tried to intervene, was threatened. He kept aside. The prosecutrix continued raising alarm which attracted Roshan P.W. On seeing him, both the accused ran away from the spot Saroj Bala, Rajesh and Roshan returned to the house. Rajesh was sent to village Meham to bring Umed. Rajesh returned in the evening, as Umed Singh was not available. In the morning Umed Singh also came. Next day, Umed Singh took his wife to hospital where she was medically examined. Police came to the hospital and recorded the

statement of the prosecutrix on the basis of which the case was registered vide F.I.R. No. 18 dated January 16, 1985 at Police Station Narnaul.

3. The police visited the spot, inspected the same and took into possession broken bangle pieces, the spot was got photographed. The two accused were arrested and their clothes were taken into possession such as underwears. Statements of Rajesh and Roshan P.Ws. were recorded and after completion of the investigation, the appellants were put up for trial.

4. In all the prosecution produced 13 witnesses including the two doctors and the three witnesses of the Occurrence. The accused took up the stand that they were falsely implicated as they being neighbours were objecting to the visits of Roshan, P.W. to the house of Saroj Bala who was residing alone. In defence, Badlu D. W.I was produced who stated that no incident took place and the appellants were falsely implicated and he made statement to the D.S.P. in this respect during investigation of the case.

5. The prosecutrix is aged about 17 years and is a married woman having good physique and fully developed body. This was so deposed by P.W. I Dr. Ranjna Kumari, who had examined Saroj Bala, the prosecutrix Exhibit P. A. is the copy of the medicolegal report. Apart from the fact that the doctor found that the prosecutrix was used to sexual intercourse, no injury on any part of the body of the prosecutrix was noticed. During cross-examination, the doctor stated that in the case of a married and grown-up woman, marks of violence may not be present in the internal parts. However, if the attempt was resisted, there could be abrasions on buttocks. The prosecution evidence thus is to be appreciated keeping in view the nature of, the medical evidence produced. P.W. 9 is the prosecutrix Saroj Bala. No doubt she had stated that sexual intercourse with her was done without her consent. She also stated that both the appellants, one by one, gagged her mouth and then committed sexual intercourse. She stated that her mouth was swollen in the process of gagging and this swelling remained for 4/5 days. Her evidence is belied by the medical evidence in this respect as on the following day she was medically examined by P.W.1 Dr. Ranjna Kumari and she did not notice any swelling on the mouth. Saroj Bala P.W. 9 further stated that while she was resisting the act of rape, her bangles of both the hands got broken and she suffered injuries on her hands. Again on this point her evidence is belied by medical evidence as P.W.1 Dr. Ranjana Kumari did not find any injury on her wrist or hands. As far as the introduction of the story of broken bangles is concerned, at this stage it may be mentioned that in the first information report there was no such story. It was thereafter that when the police reached the spot that broken bangles were taken into possession from the spot as shown lying there. This part of the story was subsequently introduced to lead corroboration to the main prosecution story. However, when Smt. Saroj Bala was medically examined by Dr. Ranjna Kumari P.W. 1, the police was not in the picture. It was thereafter that the medicolegal report was sent to the police station and police came and recorded the statement of Saroj Bala.

6. The occurrence took place in the fields where certain crops were standing. Even bushes were also there, as is apparent from the photograph Exhibit P. 3. If against this rough and hard surface, as is shown in Exhibit P. 3, the act of commission of rape was done, which was resisted by Saroj Bala who is having good health and physique being a grown up woman. Some kind of abrasions were bound to appear on her buttocks or back as well as on arms as the prosecution story is that both her arms were held to the ground by one of the accused when the other was in the process of committing rape. The absence of any injuries on the person of Saroj Bala further lends support to the defence version that in fact no occurrence took place as is alleged.

7. As to whether the prosecution story as put forth is believable or not the conduct of P.W. 10 Rajesh is also worth consideration. No doubt, he is a child aged about 11/12 years and it would be risky to rely upon his statement to base conviction of the appellants. Even if it is considered that he could understand what was being done, the least what was expected of him was that he would have also raised alarm when Saroj Bala herself was raising alarm's at that time she was being raped. According to Saroj Bala P.W. 9, the entire process of keeping her in that position lasted about half an hour and she wanted to get up and it is highly unbelievable that Rajesh who is closely related to her, remained a silent spectator and even did not raise alarm. The possibility of tutoring such a witness and to bring him to Court is not ruled out.

8. The other witness is Roshan P.W. 11. As per his evidence, he came to village Singhwa where the occurrence took place on that very day. on a cycle covering a distance of about 22 kms. although from his own village, the buses used to ply. As per his own evidence, he was a chance witness whereas, according to Saroj Bala P.W. 9, Roshan had come a day earlier and was staying with them. Roshan P.W. does not appear to be an independent witness. He is highly interested in the family of Saroj Bala, apart from being distantly related to her fatherinlaw. Even after the occurrence, Saroj Bala and her family had shifted to the village of Roshan and started living with him. This has been so stated by Roshan P.W. 11. This witness happens to be present at all the stages of the investigation. Even at the time of the recovery of broken bangles, the investigating Officer could not find any other witness from the village but Roshan P.W. who belonged to a different village and happened, to be present at that very moment. He attested recovery memos, Exhibits P.G. and PK. Vide Exhibit P.G, from the place of the occurrence, eight pieces of bangles were taken into possession and vide Exhibit P.K. two bangles of Saroj Bala, Exhibit P. 5 and P. 7, were taken into possession. The fact that the bangles were planted in the case has already been discussed above. The other discrepancy in the evidence is with regard to the actual act of commission of rape by Neena. According to him, the salwar of Saroj Bala was entangled in between her legs whereas according to Saroj Bala, the salwar was removed from the legs. His further evidence that hands of Saroj Bala were kept at 60 degree angle on the ground which were kept pressed by Neena through his knees is also incorrect as no injury was found on the hands which fact has also

been noticed above. After the occurrence, he had gone to village Meham for 2/3 hours where is also a police station but he did not make any report at Meham. He did not discuss this incident with anybody and he did not try to locate Umed Singh at Meham. This conduct on his part appears to be unnatural if he had actually seen the occurrence. He even did not disclose to his wife on reaching his own village about the occurrence.

9. At this stage, it would be relevant to refer to the plea of the accused. In brief, it is to the effect that the accused being neighbours had been objecting to the visits of Roshan to the house of Saroj Bala. They had complained to her father but no notice was being taken by them and on that account Roshan was feeling offended against them as he was having some kind of relations with Saroj Bala. This plea is partly established from the statement of Saroj Bala P.W. 9 herself. She admitted that the accused had been objecting to the visits of Roshan to her house. During crossexamination, she admitted that Roshan used to visit Singhwa village and used to stay at their house and the houses of both the accused are near her house. Both the accused and their father used to object as to why Roshan P.W. stayed in her house. She further admitted that her fatherinlaw, her husband and her husband's brother used to work at Hissar and at the time of incident, her husband used to work at Meham. She further stated that the accused persons had given a threat to Roshan P.W. on that day that if he would visit village Singhwa again, they would hand him over to the police. The only fact which she denied was that the accused were not suspecting that she was having illicit relations with Roshan. In view of the statement of Suraj Bala, as referred to above, no manner of doubt is left that the accused persons resented the visits of Roshan P.W. to the house of Saroj Bala and on that account Roshan P.W. as well as Saroj Bala felt annoyed. It was on that account that the accused have been raped in this case. It is not necessary for the accused to substantially prove their plea. Suffice it to say that if the accused succeeds in creating a doubt, they would be entitled to benefit of it.

10. For the reasons recorded above, this appeal is accepted. The order of conviction and sentence of the appellants is set aside. They are on bail. They are discharged from the bail bonds. Fine, if paid, is ordered to be refunded.