
(2003) 09 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 66-SB of 1994

Harpal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Citation : (2004) 1 AICLR 255 : (2004) 1 CCJ 47 : (2004) 1 RCR(Criminal) 480

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. T.S. Sangha, Advocate. Mr. Sultan Singh, AAG, Haryana.,
Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. This order shall dispose of Criminal Appeal 66SB of 1994 and Criminal Appeal 150SB of 1994 as both these appeals have been filed by the accusedappellants against the judgment and order dated 29/31.1.1994, convicting accusedappellant Harpal under Section 376, IPC, and accused appellant Nawal Singh @ Nalwa under Section 366, IPC, and acquitting their coaccused namely Narinder Kumar @ Pappu Brahmjit and Bipin Kumar @ Lala.

2. The facts in brief are that on 14.6.1992, Chatar Lal, complainant, made statement Ex.PJ, before SI Om Parkash at 6.30 p.m. on the bridge of the Agra Canal. In the said statement, it was alleged by Chatar Lal that he was a labourer and that on the previous day i.e. on 13.6.1992 at about 9 p.m., his daughter Kumari Maya, prosecutrix, aged 16/17 years, had gone towards Pahar to ease herself and when she did not return for quite sometime, they searched for her and during search they came to know that accused Nalwa and accused Bipin @ Lala had abducted/kidnapped her by alluring her and also threatening her and that they had been searching for Kumari Maya as also accused Bipin @ Lala and Nalwa but could not find them. It was alleged that he was sure that his daughter had been kidnapped/abducted with the intention of committing sexual intercourse with her or in order to compel her to marry. It was alleged that accused Nalwa was running a doctor's shop in the village and that accused Bipin

@ Lala and accused Nalwa were friends. It was alleged that action be taken. On the basis of said statement, Ex PJ, formal FIR, Ex PO was registered in Police Station old Faridabad at 7 p.m. on 14.6.1992 under Sections 363/366, IPC, and the special report had reached the Judicial Magistrate at Faridabad on the same day i.e. on 14.6.1992 at 11 p.m. at his residence. On the next day i.e. on 15.6.1992, SI Om Parkash apprehended Kumari Maya, prosecutrix, and accused Bipin Kumar and accused Nalwa. He formally arrested accused Bipin and accused Nalwa and got them medicolegally examined. On 17.6.1992, he got the statement of the prosecutrix recorded under Section 164 Cr.P.C. On 22.6.1992, accused Narinder was arrested in this case from near the Agra Canal. Earlier on 15.6.1992, SI Om Parkash had prepared rough site plan, Ex.PN, and Ex PQ, on the pointing out of the prosecutrix and had taken into possession certificate, Ex PR, from the father of the prosecutrix, vide recovery memo Ex.PK. SI Om Parkash had also got Kumari Maya Devi medicolegally examined and had also got her xrayed. On 17.8.1992, SI Om Parkash arrested accused Brahmjit and got him medicolegally examined. He also got accused Harpal medicolegally examined. After completion of investigation, challan was submitted in the Court.

3. All the five accused were charged under Sections 363/366, IPC, while accused Narinder @ Pappu, Harpal and Brahmjit were also charged under Section 376, IPC, while accused Nalwa and accused Bipin were also charged under Section 506, IPC, to which charges all the accused pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined various witnesses. Thereafter the statements of the accused under Section 313, CrPC, were recorded, in which they denied the prosecution allegations against them and stated that they were innocent and had been falsely implicated in this case. However, no evidence was led by the accused in their defence. After hearing both the sides and perusing the record, the learned Additional Sessions Judge convicted and sentenced accusedappellants Harpal and Nawal Singh @ Nalwa as stated above, vide judgment and order dated 29/31.1.1994 while the remaining three accused were acquitted of the charges framed against them. Aggrieved against the same, accusedappellant Harpal filed Criminal Appeal 66SB of 1994 while accusedappellant Nawal Singh @ Nalwa filed Criminal Appeal 150SB of 1994 in this Court.

4. In have heard learned counsel for the parties and have gone through the record carefully.

5. Learned counsel for the accused appellants submitted before me that the prosecution had failed to prove that Kumari Maya Devi, prosecutrix, was aged less than 18 years at the time of the alleged occurrence. It was submitted that no cogent evidence was led by the prosecution to prove that Kumari Maya Devi was aged 18 years at the relevant time. It was submitted that on the basis of it, the present case appears to be a case of consent, especially when during medical examination, no injury and not even any sign of violence was found on her person. It was further submitted that even otherwise, no reliance whatsoever

could be placed on the testimony of Kumari Maya Devi and other prosecution witnesses inasmuch as according to the case of the prosecution, the occurrence in this case had taken place on 13.6.1992 whereas according to Kumari Maya Devi herself, she was recovered by the Police on 14.6.1992 itself and this discrepancy has not been explained by the prosecution. It was further submitted that there was inordinate delay in lodging of the FIR inasmuch as according to the case of the prosecution and even according to PW7 Chatar Lal, complainant (father of the prosecutrix) when he had searched for Maya in the village for 3 to 4 hours, he had met one Mohan PW who told him that he had seen Nalwa and his companion taking his daughter Maya on a scooter. It was submitted that inspite of this information having been received by Chatar Lal, PW, still the FIR was lodged by him with the Police on the next day at 7 p.m. It was submitted that no explanation whatsoever had been furnished regarding delay in lodging the report. It was further submitted that no reliance could be placed on the testimony of Kumari Maya inasmuch as in her statement before the Magistrate under Section 164, CrPC, she had named accused Harpal, Narinder and Brahmjit as the persons who had committed rape upon her whereas while appearing in the witness box as PW3, she had named only Harpal as the person who had committed rape upon her. It was further submitted that even though similar allegations were made against accused Nalwa and accused Bipin, with regard to kidnapping/abduction, yet accused Bipin was acquitted by the trial Court whereas accused Nalwa was convicted.

6. There is considerable force in these submissions of the learned counsel for the accused appellants. PW1 Dr. Renu Gambhir had medicolegally examined Kumari Maya aged 17 years on 15.6.1992 at 12.45 p.m. She found that her secondary sex character like axillary and pubic hair and breast were fully developed. She had started menstruating about four years back and her menstrual history was regular. She found that there was no external mark of injury on her body. On vaginal examination, the doctor found that her hymen was absent and it bled on touch. Otherwise, it was not bleeding and on touch, fresh oozing was present. She found that her vagina admitted one finger easily. Two vaginal swabs were taken and sent to FSL for semen detection. Her clothes were also made into a sealed parcel. In her opinion, sexual intercourse had taken place on her. On receipt of the report of the Chemical Examiner, Ex PB, she opined that Kumari Maya was subjected to sexual intercourse. During cross examination, she stated that the sexual intercourse could have been with consent also. She stated that there was no sign of violence on her person. She stated that if rape is committed on a young healthy female on rough uneven hard surface, some sort of scratches/abrasions should be there, but it was not a must.

7. PW3, Kumari Maya Devi, aged 17 years deposed that on 13.6.1992 at about 8.15 p.m., she had gone to jungle to ease herself and had taken a few steps when accused Bipin came there and thereafter accused Nawal also came from behind. She stated that accused Nawal told her to do as she was told and to accompany them otherwise they would kill her. She stated that she knew Nalwa

as he was engaged in medical practice in her village while accused Bipin was a closed friend of Nalwa and therefore, she also knew him. She stated that accused Bipin had caught hold of her from behind and they forcibly pushed her on the road where a scooter was parked. She stated that accused Bipin started his scooter while accused Nalwa gagged her mouth and forced her on the scooter and they drove the scooter towards village Bhupani and on the way near Kheri turning, where there is a road by the side of Canal, they took her there. She stated that on reaching there, accused Bipin asked accused Nalwa that he should keep guard on her while he (Bipin) would go to get some petrol for the scooter. She stated that it was jungle area and that meanwhile a person came there on a cycle and she pointed towards accused Harpal, present in the Court as the person who came there on cycle. She stated that accused Harpal inquired from accused Nalwa as to who was the girl who was with him, upon which accused Nalwa replied that she was his uncle's daughter and they were going to their relations' place. She stated that after sometime, accused Bipin came there while accused Harpal continued to remain there. It was alleged that on seeing Harpal, accused Bipin asked him as to how he was there, addressing as Harpal Bhai and thereafter accused Harpal and Bipin moved a few paces and had talked amongst themselves and thereafter accused Bipin asked her to accompany accused Harpal saying that if she would not do so, he (Harpal) would kill them. She stated that she started weeping, whereupon accused Bipin slapped her and asked her to accompany Harpal. It was alleged that accused Bipin started the scooter while accused Harpal forced her on the same while accused Nalwa took Harpal's cycle and followed the scooter. She stated that they took her to a hut at a considerable distance and accused Harpal took her inside the hut while the remaining two accused remained standing outside and in the hut, accused Harpal raped her against her wishes. She stated that she started weeping and offered resistance but in vain. She stated that she was kept in the hut by accused Harpal for about two hours and thereafter accused Harpal came out of the hut and told Bipin and Nalwa to take her away and then they took her on the scooter to jungle leaving Harpal there. While she was staying in the jungle for a long time and Nalwa and Bipin started discussing alliance to sell her in UP and when she objected, they threatened her to keep silent or to face death. She stated that when said Nalwa and Bipin started taking her in the jungle by the side of village Dadsia, it was dawn time and when they were taking her on the road, she noticed a Jeep in which 45 Police officials were present and they overpowered the accused and also apprehended her when she had raised alarm and the Police took all of them to the Police Station where her statement was recorded and she was medicolegally examined and her clothes were taken into possession by the doctor. She stated that her statement was also recorded by the Magistrate. She stated that except the three accused named above, none else had committed any crime with her and she had not seen the other coaccused namely Brahmjit and Narinder @ Pappu and they had not done anything to her. She stated that in her statement before the Magistrate, she had named all the five accused but she had named the other two accused namely Brahmjit and Narinder @ Pappu at the

asking of the Police. During crossexamination, she stated that her brother and her father were not there along with the Police when she was recovered by the Police. She stated that accused Nalwa was doing medical practice in their village for about one or two months prior to the occurrence and during this period, she had visited his clinic twice for taking medicines. She stated that prior to the occurrence, she had not met accused Nalwa at any other place except when she had gone to his clinic. She stated that her house was situated in the midst of the village Abadi and she had gone to a distance of 1015 paces from her house to ease herself. She stated that prior to the present occurrence, she had no occasion to meet accused Bipin and had never a talk with him and that was the first day when she had seen accused Bipin. She stated that it was dark at the place where she had gone to ease herself. She stated that she had raised alarm the moment she was caught from behind and had also resisted. She stated that she had gone all alone to ease herself on that day. She stated that nobody responded to her alarm at that time. She stated that even though she had never met accused Bipin earlier but she knew that the person who had caught hold of her was Bipin, a friend of Nalwa. She stated that accused Nalwa had closed her mouth with his hand and had not otherwise gagged it. She stated that she continued to resist both the accused to get herself free. She stated that during this struggle, neither her clothes were torn nor she sustained any injury while Nalwa had pressed her mouth with full force. However, her lips started giving her a lot of pain but she did not know whether any mark of violence appeared on her cheeks or not. She stated that it was accused Nalwa alone who forced her on the scooter by pushing her with both his hands. She stated that at that time, she raised alarm but no one was attracted. She stated that there were many villages in between the place where the scooter was parked and village Bhupani. She stated that she knew that there was a Police post in village Bhupani. She stated that accused Nalwa continued to keep his hand on his mouth. She stated that at Kheri turning, when the scooter was stopped, accused Harpal had come there within five minutes of accused Bipin leaving the place for petrol. She stated that at that time, her mouth was not closed by Nalwa and she had not raised any alarm but had otherwise inquired from Nalwa as to where she was being taken upon which Nalwa had told her to keep silent and had also threatened her.

She stated that she was 8th class pass but did not remember the date of birth. She stated that they were five brothers and sisters and did not know the age of any of her brothers and sisters. She stated that she did not know who got her admitted to the school for the first time and also did not know the age of her parents even approximately. She stated that she had given her age as 17 years by approximation and could not say whether her age might be 19 years or 20 years. She stated that she had passed her middle standard examination in 1991 but did not know her age when she was admitted in the school. She stated that she came to know the name of the cyclist when Bipin addressed him as Harpal. She stated that she did not know Harpal earlier and she had seen him on that day for the first time. She stated that it was still dark when she had noticed the

Police Jeep and the head lights of the Jeep were on. She stated that two accused who were holding her at that time, on noticing the Police Jeep, ran away toward the jungle. The Police chased them and apprehended them. She stated that it was still dark when the Police had brought these two persons. She stated that the Police had given their names as Nalwa and Bipin and it was only on the telling of the Police that she came to know the name of Bipin and otherwise she did not know his name. She stated that in her statement before the Magistrate, she had not stated about the cyclist meeting them or that he was addressed as Harpal Bhai by Bipin. She stated that she had not told the Police or the Magistrate that Bipin had asked her to accompany Harpal otherwise Harpal would kill them nor she had told the Police or the Magistrate about Bipin giving beatings to her and asking her to accompany Harpal. She stated that on that night, she was taken only to one hut. She stated that there was no cot in the hut and the floor was not even. She stated that accused Harpal forcibly took off her clothes but in that process her clothes were not torn. She stated that she tried her best to save herself but in the process, she had not sustained any injury nor Harpal had received any injury during her resistance. She stated that accused Harpal had committed sexual intercourse with her only once and he had completed the sexual intercourse in half an hour. She stated that he continued to lie along with her till she was taken out of the hut. She stated that she came out of the hut of her own. She stated that she was made to sit in the middle of the scooter when she was taken from the hut. She stated that after driving the scooter for about half an hour, they started towards the jungle and after sometime, they moved towards the road. She stated that they stayed at that spot for about two hours and then they moved toward the road on foot and at a distance of half killa, the Police met them. She stated that she had reached the Police Station before sun rise and that her brother and father were called to the police Station. They came there at about 8 a.m. She stated that they remained at the Police Station whole day and night and she was medicolegally examined on the next day. She denied the suggestion that no such incident of the type ever took place or that she was never raped by Harpal or that Bipin and Nalwa had never abducted her. She denied the suggestion that the entire case was fabricated. She stated that she had stated before the Magistrate that accused Harpal had raped her but had not given the details as these were not asked from her.

8. PW7, Chatar Lal, complainant (father of the prosecutrix) deposed about lodging of the report with the Police when he found that his daughter was missing and Mohan, PW, had told him that he had seen Nalwa and his companion taking his daughter Maya on a scooter. PW7 also deposed about his daughter having been recovered by the Police. He stated that he had also handedover certificate Mark 'A' regarding the date of birth saying that it was a transfer certificate from the school and the Police had taken the same into possession vide recovery memo Ex.PK. He stated that he did not know the name of Nalwa and had not given the name of Bipin to the Police when he got recorded his statement Ex.PJ with the Police. The request of the Police to crossexamine this

witness was declined by the Court. During cross-examination on behalf of the accused, he stated that he was married in the year 1961 and his first issue was born in 1964. He stated that eight children were born, out of whom, three had died and five were alive. He stated that he was not sure whether he got the birth or death of the children recorded in the register of the Chowkidar nor he tried to verify as to whether the date just of birth of Maya was recorded in the Chowkidar's register or not. He stated that he did not remember the date of birth of all of his eight children nor he remember the date of death of his three children. He stated that he had not given any certificate to the school authorities in support of his version regarding the date of birth of Maya while admitting her in the school. He stated that the Police had recovered Maya in the early hours of the morning of 14.6.1992. He stated that infact they reached the Canal at about 3 a.m. and he was with the Police when Maya was recovered along with Nalwa. He stated that Maya was not having any injury on her person and said that the Police took Maya with it and they had also accompanied the Police and they had reached the Police Station along with Maya about 6 or 7 a.m. and thereafter Maya remained in the Police Station for the entire day while he had left her in the Police Station and came back to his village. He stated that his statement, Ex PJ, was reduced into writing by the Police in the evening of 14.6.1992 at about 6 or 6.30 p.m. long after Maya had been recovered. He stated that in his statement, he had got it recorded that it was Mohan, PW who had informed him that Maya had been taken away by two persons on a scooter. He was confronted with the statement, Ex PJ, where it was not so recorded. He denied the suggestion that Maya was aged more than 18 years at the time of the occurrence or that she had left the house of her own accord.

9. PW10 SI Om Parkash deposed that on 14.6.1992, Chatar Lal PW1 made statement, Ex PJ, before him and on the basis thereof, formal FIR Ex. PO, was recorded in the Police Station. He stated that on 15.6.1992, he had apprehended Kumari Maya Devi, prosecutrix, along with Bipin and Nalwa and that he had obtained certificate, Ex PR, from the father of the prosecutrix, vide recovery memo, Ex PK. During cross-examination, he stated that Chatar Lal PW met him at 6.30 p.m. on 14.6.1992 when he made statement, Ex PJ before him. He denied the suggestion that the prosecutrix was already in the Police Station since the morning of 14.6.1992. He stated that except the school certificate, he had not seen any other document regarding her age. She stated that the prosecutrix along with Nalwa and Bipin was apprehended by them at about 2.30 p.m. on 15.6.1992. He denied the suggestion that he had detained the prosecutrix in the Police Station for the entire day or 14.6.1992 and also the night intervening 14/15.6.1992. Ex PR is the school leaving certificate regarding the date of birth of Kumari Maya Devi as 24.1.1973, having passed middle standard examination.

10. From the entire evidence, led by the prosecution, referred to above, in my opinion, it would be clear that the prosecution had miserably failed to prove that Kumari Maya Devi was aged less than 18 years at the time of the occurrence. Merely on the basis of the school leaving certificate, Ex PR, showing that one

Maya Devi daughter of Chatar Lal was having date of birth as 24.1.1973, it could not be said that Kumari Maya Devi, prosecutrix, in this case was born on 24.1.1973 or that she was aged less than 18 years at the time of the occurrence. No evidence was led by the prosecution to connect the school leaving certificate, Ex PR, with Kumari Maya Devi. Furthermore, no efforts were made either by the complainant or by the Police to know as to whether her date of birth was recorded in the Chowkidar's register. Furthermore, neither the prosecutrix namely Maya Devi while appearing in the witness box as PW3 could give the ages of her brothers and sisters nor PW Chatar Lal, complainant could give the ages of his children. Thus, merely by saying that Kumari Maya Devi was ages 17 years, in my opinion, it would not be enough to hold that the prosecution had been able to prove on the record that Maya Devi was aged less than 18 years at the time of the occurrence. This is especially so when as per the Radiological report, Ex D1, got conducted by the Police, her radiological age was found between 17 to 19 years. In my opinion, the prosecution had failed to prove that Kumari Maya Devi was less than 18 years at the time of the present occurrence.

11. From the evidence led by the prosecution in the form of statement PW3, of Kumari Maya Devi and the narration of sequence of events narrated by her in her statement before the Court, in my opinion, it would be clear that it was a clear case of consent. As referred to above, PW1 Dr Renu Gambhir did not find any sign of violence on the person of Kumari Maya Devi nor she had any external mark of injury on her body. This is especially so when according to Kumari Maya Devi, she had struggled during the time when rape was being committed upon her and the occurrence had taken place on the floor of the hut which was uneven and her clothes had been removed. Even the clothes, worn by her were not torn in the process when the accused had allegedly removed the clothes from her person forcibly. Furthermore, no reliance whatsoever could be placed on the testimony of PW3 Maya Devi when she stated that she was threatened by the accused and her mouth was gagged with hand and was also given slaps. As referred to above, there was no sign of any violence on her person at the time when she had got medicolegally examined on 15.6.1992. Infact, no reliance could be placed on the testimony of Maya Devi inasmuch as before the Magistrate she stated that three persons had committed sexual intercourse with her forcibly whereas in the Court, she named only accused Harpal as the person who had committed rape upon her and stated that she had given the name of other two persons at the asking of the Police.

12. There is another aspect of the matter which requires to be considered. According to the Police, Chatar Lal, PW, made statement, Ex P5, before it on the evening of 14.6.1992 and that on the next day i.e. on 15.6.1992 during day time, Kumari Maya Devi was recovered by the Police from the custody of the accused Nalwa and accused Bipin. However, PW3, Kumari Maya Devi, had categorically stated that she was recovered by the Police on the next morning after the occurrence inasmuch as the occurrence took place on 13.6.1992. She was recovered by the Police on the early morning of 14.6.1992. Even Chatar Lal,

PW, father of the prosecutrix deposed that the Police had recovered Maya from the custody of Bipin and Nalwa on the early morning of 14.6.1992. He stated that after she was recovered by the Police, he had made statement, Ex PJ, before the Police on the evening of 14.6.1992 and also the night intervening 14/15.6.1992. In my opinion, from the statements of PW3, Maya, and PW7, Chatar Lal, it is clear that no reliance whatsoever could be placed on the case of the prosecution that Kumari Maya was recovered by the Police on 15.6.1992 at the day time or that the statement of Chatar Lal was recorded by the Police on the evening of 14.6.1992 and by that time, Maya had not been recovered by the Police. In my opinion, the contradictions between the case of the prosecution, as is brought out from the testimony of PW10, Om Parkash, and from the statements of PW3 and PW7, in my opinion, it would create a doubt with regard to the case of the prosecution about the manner in which Kumari Maya was recovered by the Police and on which date. If the case of the prosecution is taken as correct, there is a gap which has remained unexplained inasmuch as nothing has come on the record to show as to what happened between the morning of 14.6.1992 and upto day time on 15.6.1992 inasmuch as PW3 Maya had also not given any explanation in this regard. On the other hand, she categorically stated that she was recovered by the Police on the early morning of 14.6.1992.

13. In view of the detailed discussion above, in my opinion, the prosecution has miserably failed to prove the allegations against the accused appellants to uphold their conviction. On the other hand, in my opinion, it is a fit case where the accusedappellants are entitled to acquittal. Accordingly, I accept both the appeals and acquit accusedappellants Harpal and Nawal @ Nalwa of the charges framed against them.

Appeals allowed.