

(1998) 09 P&H CK 0119
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 379-SB of 1995

Hoshiar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Citation : (1998) 4 AICLR 680 : (1999) 1 FJCC 532 : (1998) 4 RCR(Criminal) 562

Hon'ble Judges : R.L.Anand, J

Advocate : Shailender Singh, U.K. Agnihotri, Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. This criminal appeal filed by Hoshiar Singh and Kuldip has been directed against the judgment and order dated 27th January, 1995 passed by the Court of Additional Sessions Judge, Rewari, who convicted the appellants under Sections 376 and 306 of the Indian Penal Code, and each of the appellants was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 500/ for the commission of offence under Section 376 of the Indian Penal Code, and in default of payment of fine each one of them was ordered to undergo further rigorous imprisonment for a period of one month. Both the appellants were further ordered to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 500/ for the offence punishable under Section 306 of the Indian Penal Code, and in default of payment of fine each one of them was ordered to undergo further rigorous imprisonment for a period of one month. Both the substantive sentences of imprisonment were ordered to run concurrently.

2. Brief facts of the case are that Kumari Bala could not bear the humiliation caused by the ravishment of her person and she doused herself with kerosene and set herself ablaze after one hour of the alleged rape. She expired at Medical College and Hospital, Rohtak on the morning of November 13, 1992 after suffering for a period of almost two weeks and a half. The death was due to the direct result of the 80% burns sustained by her in the burning incident.

3. Machinery of the State was moved on receipt of a wireless message from the Medical College and Hospital, Rohtak, at Police Post, Medical College, Rohtak. A.S.I. Jai Narain went to the Hospital and moved application before the Medical Officer to learn about the condition of Kumari Bala but the doctor opined that the patient was unfit to make statement. He then settled down in favour of recording the statement of Smt. Kamla, mother of the victim.

4. Smt. Kamla wife of Shri Mange Ram informed the Police that she had gone to the fields owned by Shri Omi Thakur of her village on October 27, 1992 along with her husband Mange Ram and her daughter Bala a girl of fourteen years of age, who at that time was studying in VIII Standard in the school. The purpose of visit was to harvest "Guar" crop. Kumari Bala was directed by her mother to carry a bundle of Guar to the house and return with tea for them and the daughter complied with the directions, but she did not turn up. After some time, Madan son of Shri Sadhu Ram rushed to the fields of Omi Thakur and informed the couple that their daughter Kumari Bala doused in kerosene had set herself ablaze. The parents of the girl rushed to their house, but only to find their daughter fully burnt and lying unconscious. She was immediately shifted to the Hospital at Dadri for medical aid.

5. As per the version of Smt. Kamla, her daughter regained consciousness in the Hospital and informed her that as she reached the pond of the village at about 2.30 p.m. on that day. Hoshiar son of Ram Pat and Deep son of Suraj Bhan, both residents of village Bahu, intercepted her. Deep pressed her mouth, whereas Hoshiar held her by her hands and dragged her to a nearby Chhappar belonging to Shri Ram Singh son of Shri Gopal Thakur of that village. Hoshiar stood guard outside whereas Deep caught her by her hands and broke open the string of her Salwar and laid her on the ground and raped her. Thereafter, Deep went out to stand guard whereas Hoshiar committed the sexual act by force. She rented out crises in the air for help, upon which both of them slipped away from there. As Kumari Bala lay shouting in despair in the Chhappar, two boys approached her and learnt about the entire incident. They then escorted her to her house.

6. Kumari Bala allegedly could not bear the humiliation and feeling totally disheartened at being ravished, doused herself in kerosene and torched herself. She suffered 80% burns in the incident and was given treatment at Medical College and Hospital, Rohtak, but she could not survive beyond 7.00 a.m. of November 13, 1992.

7. The Police registered a case against the accused and investigated the matter.

8. Dr. Meenakshi (P.W.19) carried out medicolegal examination of Kumari Bala and declared that there was absolutely nothing to rule out rape. The Forensic Science Laboratory report (Ex.PU) revealed that there was human semen on the swabs and the slide prepared with the smear of the vagina of the victim. Semen was also found on the undergarments recovered from the person of both the accused.

9. On the completion of the investigation of the case, both the appellants were chargesheeted under Sections 376 and 306 of the Indian Penal Code in the Court of Illaqa Magistrate, who supplied copies of the documents to them, and vide commitment order dated 10th March, 1993 both the appellants were committed to the Court of Session to face the trial.

10. Vide order dated 13th May, 1993 learned trial Court framed charges under Sections 376 and 306 of the Indian Penal Code against the appellants, the charges were read over and explained to the appellants, who pleaded not guilty and claimed trial.

11. In order to prove the charges the prosecution examined as many as 14 witnesses, namely, Shri J.S. Dahiya, Duty Magistrate Ist Class, Rohtak (PW.1); Shri Bal Kishan, Headmaster, Govt. Girls High School, Bahujholri (PW2); Shri Jage Ram (PW3); Shri Madan Lal (PW4); Smt. Kamla (PW.5); Dr. Mahender Dhiraj, Medical Officer, Primary Health Centre, Jatusana (PW.6); Shri Rakesh Kumar (PW.7); Shri Mange Ram (PW.8); Shri Lilu Ram Patwari (PW.9); Head Constable Ganpat Ram (PW.10); A.S.I. Jai Narain (PW.11); Shri Ram Avtar Yadav (PW.12); Shri Brij Lal (PW.13) and Dr. Amarjeet Singh Rathi, C.M.O., Medical College Hospital, Rohtak (PW.14). The prosecution also tendered into evidence the report of the Forensic Science Laboratory (Ex.PU).

12. The statements of the accused were recorded under Section 313, Cr.P.C., and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied those circumstances and stated that they had been falsely implicated in this case. In defence the accused examined two witnesses, namely, D.W.1 Shri Ramanand and D.W.2 Shri Ram Singh.

13. The trial Court relied upon the prosecution evidence and convicted and sentenced the appellants in the manner stated above. Aggrieved by this conviction and sentence, the appellants have filed the present appeal, which I am disposing of with the assistance rendered by Shri U.K. Agnihotri, learned counsel appearing on behalf of the appellants, and Shri Shailender Singh, D.A.G., Haryana, who appeared on behalf of the State.

14. Unfortunately, in this case Kumari Bala did not appear before the Court. But her conduct is admissible piece of evidence under Section 6 of the Indian Evidence Act when she narrated the whole tale of woe to her mother Smt. Kamla. She also gave her dying declaration (Ex.PA/1) recorded by Shri J.S. Dahiya, P.W.1. So far as the position of law is concerned, the dying declaration is not only the admissible piece of evidence, but it can also be acted upon if the Courts come to the conclusion that it was a spontaneous version given by the deceased. A reading of Ex.PA/1 would show that Kumari Bala had herself stated that on the day of occurrence on the way two Gundas, namely, Deep and Hoshier confronted her and both of them dragged her towards the Chhappar. First of all Deep put her hand on her mouth and broke opened the string of her salwar and committed rape upon her. At that time Hoshier was guarding the occurrence and

thereafter Hoshiar committed rape upon her and after committing rape upon her, both of them left her in the deserted condition. It has been further stated by the deceased prosecutrix that she cried and wailed and hearing her voice two boys came there, who escorted her to her residence. It has also been stated by the deceased that she thought that her honour and virginity had already been looted and exploited and she would not be in a position to show her face to the world. That was the reason that she poured kerosene oil upon her and set herself ablaze. Before recording the dying declaration, learned Magistrate has certified that Miss Bala was fit to make a statement and this certificate has also been countersigned by Dr. Deepak Prakash indicating that Miss Bala was in a position to make her statement. The counsel appearing on behalf of the appellant has not been able to show that the dying declaration (Ex.PA/1) was a manipulated one and that the girl was under the influence of her parents at the time of giving her statement. It is unfortunate that even after 50 years of independence, our small daughters are ravishly raped by certain superior sections of the society. Hers is a case where a small child of 14 years was allegedly raped by two appellants and they have taken the benefit of loneliness of the girl. The statement (Ex.PA/1) was enough for the trial court and is sufficient for me also to act upon it as I have come to the conclusion that her statement was spontaneous. Even otherwise there is sufficient corroboration to the version, which has been given by Miss Bala, when I look to the statement of her mother Smt. Kamla, who appeared as P.W.5. Smt. Kamla has stated as follows :

"I and my husband inquired from her as to what has happened with her. She told that Hoshiar and Kuldeep had committed rape upon her. She told that she was caught by her hand and laid on the road and then she was taken to Chhappar of Ram Singh where Kuldeep committed rape first and then Hoshiar committed rape upon her."

15. The statements of these two ladies find corroboration from the medical evidence furnished by Dr. Amarjeet Singh (PW.14). According to this doctor, who examined, on 28.10.1992 at 6 p.m. she told him that she was subjected to rape by two persons of her village on 27.10.1992 and due to that reason she got herself burnt. Dr. Meenakshi appearing as P.W.19 stated that she medically examined Kumari Bala and according to her, the hymen of the prosecutrix was ruptured; fourchette was torn from which fresh ooze of blood was seen. She has given her report (Ex.PX) and further she has deposed that the deceased was subjected to rape. This opinion was formulated after seeing the report of the Director, Forensic Science Laboratory. P.W.2 Shri Bal Kishan, Headmaster, has also certified that he handed over date of birth certificate (Ex.PB/1) to the Police and as per the school record Kumari Bala was born on 17th June, 1978. Thus it can be safely concluded that she was less than 16 years of age as on 27 the October, 1992. Even the statement of Shri Ramesh Kumar (P.W.7) neighbourer strengthens the case of the prosecution. According to this witness, on the day of occurrence, he went to the house of the father of the prosecutrix. When Bala came into senses, she told as follows :

"Bala told that about 2.30 p.m. she was going to field for fetching Bharota. Kuldeep and Hoshiar met her on the way near johri, Kuldeep caught hold her hands, Hoshiar closed her mouth, took her to a Chhappar of Ram Singh, Kuldeep committed rape upon her after breaking string of her Salwar, while Hoshiar guarded outside the Chhappar. Then Hoshiar committed rape upon her when Kuldeep remained outside the Chhappar. She further told that she was raising cry after she was raped and two school boys came to her and inquired as to which village she resides and who she was. She told that she was the daughter of Mange resident of Bahu. Those two school boys escorted upto Bhatta and then she reached at her house. She further told that she having been raped was feeling ashamed and for that reason she committed suicide by sprinkling kerosene oil on her clothes and by putting fire."

The testimony of Shri Mange Ram (P.W.8) is yet another strong link in the story of the prosecution, which not only proves allegation of rape but also allegation of abetment with regard to the death of Kumari Bala. Learned counsel for the appellant has not been able to point out any circumstance from which I am able to come to this conclusion that the dying declaration given by the deceased before the Judicial Magistrate was a fabricated document or that she was not in a position to make her statement. Rather the statement of Kumari Bala is being corroborated by natural witnesses, i.e., the parents and the neighbour residing in the neighbourhood of the house of Shri Mange Ram. The capability of the appellants to perform sexual intercourse has also been proved on the record. The post mortem report further shows that the cause of death in this case was due to 80% burns sustained by Kumari Bala, who could not tolerate the act of shame committed upon her by the appellants.

16. In this view of the matter, I do not see any merit in this appeal so far as conviction aspect of the case is concerned as not only offence under Section 376, Indian Penal Code, but also the offence under Section 306 of the Indian Penal Code is made out.

17. In the alternative it was argued by the learned counsel for the appellants (sic) are in their youth and they might have committed the offence under the stress of perversity. He submits that some leniency in the matter of sentence may be shown to the appellants.

18. Keeping in view the fact that the appellants are young boys and they might have become the target of lust, the substantive sentence of the appellants under Section 376, Indian Penal Code, is reduced from 10 years to 8 years each. The sentence awarded to the appellants under Section 306, Indian Penal Code is, however, maintained. Both the sentence shall run concurrently.

19. With the above modification in the sentence under Section 376, Indian Penal Code, the appeal of the appellants is hereby dismissed.