
(2005) 08 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 554-SB of 1999

Kanwar Bhan and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2005) 4 RCR(Criminal) 914

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Advocate : S.N. Yadav, for the Appellant; P.S. Sullar, DAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Criminal Appeal 554-SB of 1999 was filed by Kanwar Bhan, Krishan and Randhir Singh. Kanwar Bhan died on March 27, 2002 therefore his appeal has abated. This surviving Appellants in Criminal Appeal 554-SB of 1999 are Krishan and Randhir Singh.

Criminal Appeal 633-SB of 1999 has been filed by Som Dutt.

2. The Appellants has faced trial before the learned Additional Sessions Judge, Karnal for gang rape upon Sushila (16-17) (PW-5) daughter of Ram Kumar (PW-6). They were found guilty u/s 376(2)(g) I.P.C. and sentenced to rigorous imprisonment for ten years. The Appellants have filed these appeals to challenge their respective convictions and sentences.

3. Ram Kumar (PW-6) was a Government servant posted at Ulaha, District Fatehabad while his family, consisting of wife and three children lived at Bal Rangran, District Karnal. Ram Kumar used to visit his family once or twice in a month. Sushila aged 16-17 was his eldest daughter. On August 19, 1997 Ram Kumar's wife had gone to Jundla to fetch medicines for her son Sant Lal and stayed there for night with her niece. She had left Sushila (PW-5) and her

younger sister Reena (10) at home. On August 21, 1997, Ram Kumar was informed by this brother Om Parkash that his daughter Sushila was missing from the house. Ram Kumar returned to the village and looked for his daughter among his relations but could not find her. He came to know that Kanwar Bhan of the village was also missing and that Sarpanch Ranjit Singh had seen them both at the bus stand on August 20, 1997 to take the first bus. The matter was reported to the police on August 27 and case was registered. Sushila was recovered from the custody of Kanwar Bhan on October 4, 1997.

4-5. Sushila's version of the occurrence is that on the night of August 19/20, 1997 Kanwar Bhan came to her house and took her out on the pretext of going for a stroll. He gave her something which made her drowsy and she became semi-unconscious. Kanwar Bhan took her to Delhi to the room of his friend Som Dutt. When Sushila regained consciousness, Kanwar Bhan raped her. On the next date Som Dutt also raped her. She remained in Delhi for over four days. During this period, Som Dutt raped her only once while Kanwar Bhan did so every day. After three or four days she was made to smell something again, she became unconscious and was brought to Panipat. At Panipat she was kept in Krishan's room and was again raped by Kanwar Bhan. On the next day, she was raped by Krishan. She was confined in the room for a month and was raped by Kanwar Bhan every day. On October 3, 1997 Dhira (Randhir Singh) came to the room at about 4 p.m. He sent Kanwar Bhan to watch a circus and himself raped Sushila. In nutshell, the prosecutrix had alleged continuous rape by Kanwar Bhan at Delhi and Panipat but the other three raped her only once, Som Dutt at Delhi, Krishan on the first day at Panipat and Dhira on the last day at Panipat.

6. Kanwar Bhan was arrested on October 4, 1997 by A.S.I. Satya Pal Singh (PW-11) and Sushila was recovered from his custody. Sushila was medico-legally examined by Dr. Shashi Prabha (PW-9) at 2.15 P.M. on October 4, 1997. The Medical Officer recorded that Sushila was 16 years of age. After recording physical characteristics, the Medical Officer examined Sushila for injuries but found no mark of injury on the body. The Medical Officer also did not find any injury on the buttocks, back, thighs, lower abdomen and perineum. Labia majora and minora was healthy. Vagina admitted two fingers easily. An old healed hymen tear was present. Two slides were prepared from the discharge found in the posterior fornix and sent for examination. On the basis of the report of the Forensic Science Laboratory, the Medical Officer came to the opinion that there was possibility of sexual activity. Randhir Singh and Krishan were arrested on October 8, 1997 while Som Dutt was arrested on October 23, 1997. All the four accused were medico-legally examined and were found capable of performing sexual intercourse.

7. Statement of the prosecutrix was also recorded by the learned Magistrate, Karnal u/s 164 Code of Criminal Procedure According to the birth certificate, the prosecutrix was born on May 10, 1981 which meant that she was about a few months over 16 years of age in August 1997.

8. After completion of the investigation, the accused were sent up for trial. At the trial charge was framed under Sections 363, 366 and 366-A I.P.C. (against Kanwar Bhan), 376 I.P.C. (against Kanwar Bhan), 376(2)(g) I.P.C. (Kanwar Bhan and Som Dutt), 376 I.P.C. against Som Dutt, Krishan, Randhir Singh and 376/120-B I.P.C. (Krishan and Randhir). They pleaded not guilty and claimed to be tried.

9. At the trial, the prosecution examined Dr. O.P. Arora (PW-1) District Health Officer, who produced the birth certificate of Sushila, Dr. H.C. Bhatia (PW-2), who had conducted the medico-legal examination of the four men, ASI Ranjit Kumar (PW-3), Sh. Mahender Singh, Judicial Magistrate (PW-4), Sushila (PW-5), Ram Kumar (PW-5), ASI Baljinder S Ingh (PW-7), C. Sunil Kumar (PW-8), Dr. Shashi Prabha (PW-9), H.C. Ram Pal (PW-10) and ASI Satya Pal Singh (PW-11) and closed the evidence.

10. The accused were examined without oath u/s 313 Code of Criminal Procedure They denied the various items of prosecution evidence which appeared against them and pleaded false implication.

11. Jai Gopal (DW-1), Head Master Govt. High School, Bal Rangran testified that Sushila's date of birth, as per school record, was August 14, 1980. Sarpanch Ranjit Singh appeared as DW-2. He testified that on August 20, 1997 at about 6 A.M. he had seen Sushila and Kanwar Bhan waiting for a bus for Panipat at 8 A.M. On the same day he came to know that Sushila was missing from the village but he learnt about Kanwar Bhan missing from the village on August 27, 1997.

12. The learned trial Judge found Kanwar Bhan guilty under Sections 363/366/366-A I.P.C. for having kidnapped Sushila from the lawful guardianship of her parents and taking her to Delhi with an intention to force her to illicit intercourse. Kanwar Bhan was also convicted under Sections 376 and 376(2)(g) I.P.C. Similarly, Som Dutt, Krishan and Randhir Singh were also convicted u/s 376(2)(g) I.P.C. All the accused were sentenced to rigorous imprisonment for 10 years u/s 376(2)(g) I.P.C. and to lesser terms under other provisions. The sentences were directed to run concurrently. There were sentences of fine as well.

13. The statement of Sushila (PW-5) is difficult to disbelieve. She left home with Kanwar Bhan on August 19, 1997 and went with him to Delhi. There Kanwar Bhan committed rape on her in a room owned by Som Dutt. Thereafter, on the following day Som Dutt raped her but he did so only once. She was then brought to Panipat after four days and kept in a room belonging to Krishan. Here she was again raped by Kanwar Bhan on the first day and on the next day by Krishan. On the last day she was raped by Randhir Singh @ Dhira.

14. The corroboration for the above story comes from the statement of Sushila's father Ram Kumar (PW-6), who testified that his daughter was missing from the house from the night of August 19/20. He further stated that she had been by Sarpanch Ranjit Singh (DW-2) at the village bus stand on the morning of August

20 in the company of Kanwar Bhan. The Sarpanch quite categorically stated that he had seen them at 6 A.M. and had come to know few hours later at 8 A.M. that she was missing from her house. Later he found that Kanwar Bhan was also missing. It is not difficult to put two plus two together. Sushila (PW-5) had left her home with Kanwar Bhan and was recovered after about six weeks from the custody of Kanwar Bhan. Therefore, during this entire period she remained with Kanwar Bhan and this part of her story has been corroborated. The medical corroboration is also forthcoming in this case from the statement of Dr. Shashi Prabha (PW-9).

15. Sushila (PW-5) was subjected to lengthy cross-examination in which she stated that Kanwar Bhan was a resident of her village but was not known to her. When Kanwar Bhan had come to her house, her sister Reena was asleep. She did not remember the mode of conveyance by which they travelled from Bal Rangran to Delhi and which were the stations that came on the way. She regained consciousness only when she reached Delhi at 8 P.M. on August 20. While at Delhi Som Dutt @ Somi used to arrange for food. There were other families living in that house.

16. Similarly, Sushila did not remember by which transport she was brought from Delhi to Panipat. The room where she stayed at Panipat was also in a residential locality. Cross-examination does not appear to have made much of a dint in Sushila's testimony.

17. The prosecution had successfully established that Sushila (PW-5) had been continuously raped by Kanwar Bhan (deceased) and by Som Dutt, Krishan and Randhir only once each. The main question to be considered in this case is whether the solitary act of rape can be termed to be gang rape or not. The prosecutrix did not say that on the occasions when Som Dutt, Krishan and Randhir had raped, she had also been raped by Kanwar Bhan. However, it is not the case that all four had together raped her. Indeed Som Dutt, Krishan and Randhir had never met or raped the prosecutrix together. Therefore, it is difficult to hold that these accused had committed the offence of gang rape. They had only raped the prosecutrix once each and that too when they were alone with her. The prosecutrix may have been in the custody of Kanwar Bhan or under his control but on no occasion rape was committed on her by two men, one after the other.

18. As a result of the above discussion, the prosecution version is accepted but the offence of gang rape does not seem to have been established. The three Appellants were not found guilty of gang rape punishable u/s 376(2)(g) I.P.C. but of rape simpliciter punishable u/s 376 I.P.C.

19. The appeal is partly allowed. The conviction of the Appellants is converted from one u/s 376(2)(g) I.P.C. to one u/s 376 I.P.C. and sentence is reduced from ten years to seven years rigorous imprisonment. They shall also pay a fine of Rs. 10,000/- each and in default of payment of fine, they shall undergo rigorous

imprisonment for six months. Fine, if recovered, shall be paid as compensation to prosecutrix Sushila.

Appeal partly allowed.