
(2005) 01 P&H CK 0189
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 762-SB of 1997

Kapoor Singh alias Kapoora	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2005) 2 RCR(Criminal) 240

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Ramesh Hooda, for the Appellant; Bijender Dhanker, A.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, J.—Yet another weakling child of tender age of 5/6 years has fallen a prey to the beastly sexual lust of the present Appellant on March 22, 1996. On the date of occurrence, the Appellant was about 22 years of age.

2. I have chosen to describe the prosecutrix in this case as victim in view of recent judgment rendered by Hon"ble Apex Court in State of Karnataka v. Puttaraja, 2004(1) RCR(Crl.) 113.

3. The victim is daughter of Randhir Singh (PW-7) a daily wage labourer, who was working in a sand quarry in the area of village Palri Khurd (District Sonapat), his children used to bring his morning meal (breakfast) and even lunch to the said quarry in routine. Inder (PW-8) son of Tara Chand also used to work with him.

On 22.3.1996, when he and Inder came out of the quarry at about 9.30 A.M. as still then his children had not reached with the meals. He heard shrieks of a child from the side of the nearby field of one Phool Singh. Both of them rushed towards the source from where the shrieks were coming. They saw that the present Appellant was raping the five year old daughter of Randhir Singh. After

seeing Randhir Singh and Inder the Appellant fled away from the spot. Randhir Singh immediately proceeded towards the police station when on the way SI Mahabir Singh (PW-14), SHO, police station Rai met him at Bahalgarh chowk, and his statement (Ex. PF) was recorded. The same was forwarded to the police station with the endorsement (Ex. PF/1), whereupon the formal FIR (Ex. PL) was got registered.

4. On the same very day, the victim was got medico-legally examined by Dr. R.R. Mittal (PW-1), who observed as under:

On examination, she was frightened. Her clothes were stained with blood and she was weeping.

No secondary sexual characters were developed.

Examination of vulva: Bleeding was present. Labia majora and minora were lacerated. Second degree perineal tear with bleeding.

Laceration of perineal muscles was present. Vaginal lower 1/3rd was lacerated and bleeding was present.

5. This witness prepared certain sawbs from the vaginal track, handed over to the concerned police official for sending the same to the Forensic Science Laboratory. On the basis of the report of the Forensic Science Laboratory, this witness opined that the rape has been committed upon the victim.

6. The radiological examination of the victim was conducted by Dr. Promilla Jain (PW-11) and as per her report (Ex. PK), the victim was of the age of 5/6 years.

During investigation, blood-stained earth was lifted from the place of occurrence. On 24.3.1996, the Appellant was arrested by SI Mahabir Singh. Pursuant to the disclosure statement (Ex. PD) made by him, he got his pant and burshirt, which he was wearing at the time of occurrence, recovered. The same were taken into possession. The Appellant was got medico-legally examined from Dr. Rakesh Girdhar (PW-1), who opined that he was capable of performing sexual intercourse. The statements of the witnesses were recorded. After completion of investigation, the Appellant was sent up to face trial.

7. The report (Ex. PH) of the Forensic Science Laboratory indicated that the Pyjama, Jumper, pant and blood-stained earth were stained with human blood. Blood was also detected on the vaginal swab. However, semen could not be detected thereon. Human semen was detected on the Kachha.

8. The Appellant was charged u/s 376 IPC by the trial Court. He stands convicted for the said charge and has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,000/-, in default thereof to suffer further RI for two months. Aggrieved by the impugned judgment of conviction and sentence, he has preferred the instant appeal.

9. The prosecution examined 14 witnesses in order to substantiate its charge

against the Appellant. I do not feel the necessity of entering into detailed discussion with regard to each of them at this stage. The case of the prosecution in the main rests upon the statements of Randhir Singh and Inder Singh P Ws, who are the eye-witnesses to the occurrence as both had rushed to the scene of crime immediately after hearing the shrieks of the victim.

10. Mr. Hooda was attempted to create a doubt about the presence of both the aforesaid eye-witnesses at the spot by pointing out certain infirmities in their statements, which would be dealt with by me at the relevant stage. Besides this, medical evidence is to be effect that the victim was got medico-legally examined same day. The said evidence is also detailed in the above paras. The investigation conducted by SI Mahabir Singh (PW-14) has also been alluded to in the preceding part of the judgment.

11. It is worth noting here that the victim was not examined by the prosecution during investigation. However, during the trial, an application was moved u/s 311 Code of Criminal Procedure for summoning her. The same was allowed vide order dated 3.6.1997. Pursuant to the said order, she was produced in the Court on 9.6.1997. The zimini order passed by the trial Court on that day reveals that despite great efforts made by the court, the learned Public Prosecutor and even by her father, the victim was not able to speak even a single word, nor even could disclose her name. The trial Court ordered her discharge, after satisfying itself that she was not capable of being examined as a witness.

12. Another fact needs reference is that during cross-examination, a specific question was put to PW-7 Randhir Singh with regard to conversation in his house when Ravinder (DW-5) brother of the Appellant and other persons were there in which he had stated that the Appellant was named as rapist merely on the basis of suspicion. An audio tape (Ex. D1) in cassette player (Ex. D2) was played to establish his voice during the trial. But Randhir Singh categorically denied his voice in the said tape. The aforesaid two exhibits now form part of the judicial record in this case. The record reveals that an application was thereafter moved before the trial Court for recording the sample voice of Randhir Singh in order to get it compared from the voice expert of the Office of Director Indian Institute of Technology, New Delhi. But Randhir Singh refused to give his sample voice. As it was difficult to understand the Haryanvi dialect in its real sense, the whole of the said conversation in Ex. D1 was got reduced/translated into simple H Indi by the trial Court. There is a reference in this regard in para 10 (interior pages 15 & 16) of the impugned judgment.

13. In his statement u/s 313 Code of Criminal Procedure when the incriminating evidence was put to the Appellant, he refuted all the evidence and pleaded innocence and took the plea that he was going towards his house from his field when he saw the prosecutrix in injured condition in the lap of one Smt. Raj Kumari, wife of Med Singh son of Phool, who was sitting in her field; that he thought that someone had probably committed rape upon her; that he found on the way Tek Ram son of Rizaq Ram going towards the quarry, where father of

prosecutrix used to work as labourer; that he (Appellant) asked Tek Ram to give this message to Randhir Singh, father of the girl; that Tek Ram conveyed this incident to Randhi/complainant; that thereafter Randhir went to the place of occurrence and found his daughter lying in lap of said Raj Kumari; further that he has been falsely implicated on the basis of mere suspicion.

14. In his defence, the Appellant produced Tek Ram (DW-1), Mahender Singh (DW-2), Surinder (DW-3), Hari Ram (DW-4) and Ravinder (PW-5) from his village.

15. I have heard Mr. Ramesh Hooda, learned Counsel for the Appellant and Mr. Bijender Dhanker, AAG, Haryana. With their assistance, I have perused the entire record minutely.

16. In order to demolish the prosecution, Mr. Hooda, vehemently argues that the prosecution has not been able to prove its case against the Appellant beyond the shadow of reasonable doubt as Randhir Singh, father of the victim was not clear at the time of lodging of the report about the identity of the assailant and as such whole of the prosecution case is shrouded in mystery. Dwelling upon his argument, Mr. Hooda contends that in the statements of Randhir Singh and Inder P Ws, there are material discrepancies which uproot the case of the prosecution; that both of them were in fact not present and have been subsequently introduced to strengthen a weak case being the most interested witnesses. The learned Counsel then contends that besides the infirmities in the statements of these two witnesses, another fact damaging the prosecution case is that Inder Singh PW is also from the community of Randhir Singh and as such he was a very comfortable witness of the complainant side. The main discrepancies pointed out by the learned Counsel are as under:

(i) Randhir Singh PW states that when he and Inder went to the source from where the shrieks were coming, he found accused Kapoor Singh raping his daughter by laying her on the ground and after the accused noticed them, he fled away leaving his daughter, whereas Inder PW states that when they were 4/5 paces from the accused, he ran away and that he did not see the accused lying over the victim.

(ii) Randhir Singh PW states that they tried to catch hold of the accused but failed, whereas Inder PW stated that they did not pursue the accused because they had to take care of the child.

(iii) Randhir Singh PW states that the salwar of his daughter was blood smeared whereas Inder PW says that no cloth was spread under the girl when they saw her lying on the ground.

(iv) The offence of rape was committed in the wheat crop, whereas as per statement of Maman Chand Patwari (PW-4), the land was vacant and no crop was there on it.

17. Relying heavily on the aforesaid discrepancies, Mr. Hooda states that these

two witnesses, in fact, had not seen the occurrence at all and have been imported subsequently.

18. The learned Counsel in the same strain submits that the defence plea is strengthened by cogent evidence produced by the Appellant in order to show that from the very beginning, Randhir Singh was in the dark as to who was the actual assailant; that even in his audio-conversation (Ex. D1), Randhir Singh admits at one stage that he had a suspicion and also concedes that he did not see the Appellant either committing rape upon his daughter or running away from the scene after committing the crime; that he also concedes that Tek Ram had told him that he had seen the Appellant running from the place of occurrence, after committing the offence. From this, the learned Counsel wants to urge that Randhir Singh and Inder P Ws stand discredited and as such no reliance should be placed on their substantive statements recorded during trial. Mr. Hooda further contends that the said conversation has been rejected by the trial Court without any basis, observing that he (the trial Judge) could not make a clear picture in his mind on account of inability to understand the dialect. He then contends that refusal by Randhir Singh to give the sample voice should also be considered against the prosecution and an adverse inference should be drawn in this regard.

19. Mr. Hooda also submits that since the victim was not cited as a witness initially and was summoned subsequently u/s 311 Code of Criminal Procedure on an application moved by the prosecution, the fact remains that while appearing in the witness-box, she has not raised even a finger towards the Appellant. According to the learned Counsel if Randhir Singh and Inder P Ws are taken as false witnesses to the occurrence, the prosecution is left with no evidence muchless convincing against the Appellant in order to prove the charge of rape and as such he deserves acquittal.

20. In the alternative, Mr. Hooda submits that the case of the Appellant calls for a lenient view with regard the quantum of sentence for the reasons that the trial relates to the year 1996, when he was of the age of 21/22 years; that by now he has got married, having children and is settled in his family; that sending him to jail once again at this juncture would not only ruin his career but also is going to adversely affect his entire family; that the Appellant has already remained in custody for 4 years and nearly 7 months.

21. Repudiating the submissions made on behalf of the Appellant, the learned State counsel contends that though the victim was not in a position to depose in Court against the Appellant, yet this fact by itself would not be a ground to reject the prosecution case in its entirety. He then contends that the victim in this case, who was hardly of the age of 5/6 years, when appeared in the witness-box was so frightened that despite the best efforts made by the trial Court, the Public Prosecutor and even by her father, she could not utter a word. There is nothing abnormal in it. Mr. Dhanker then submits that the case of the prosecution is unfolded by Randhir Singh, father of the victim and Inder, another eye-witness,

who happened to be with him at that time. May be there are some discrepancies in their statements as pointed out by the learned Counsel for the Appellant, yet the same are not of such a grave nature as to damage the prosecution case. A few discrepancies are bound to occur with the lapse of time, he so contends. On the point of audio-conversation (Ex. D1), the learned State counsel submits that it appears to be a clever move on the part of the Appellant, to get all this done after the filing of the challan; that Randhir Singh complainant was not aware of any such conversation and for this reason he had refused to give sample voice; that the trial Court has rightly not taken the said conversation into account for the reason that it has no adverse effect on the basic case of the prosecution. The conviction as recorded by the trial Court, thus, deserves to be upheld, Mr. Dhanker so submits.

22. On sentence part, the learned State counsel contends that the Appellant does not deserve any lenient tilt keeping in view the gravity of offence.

23. After hearing the rival contentions of either side and perusing the entire record minutely, I am of the view that the prosecution has been able to establish its case against the Appellant to the hilt and his conviction, deserves to be re-affirmed.

ated above, the case of the prosecution rests upon the statement of Randhir Singh (PW-7), father of the victim and Inder (PW-8), who happened to be present near the place of occurrence, i.e. the fields of Phool Singh. Admittedly, the said fields are quite nearer to the sand quarry where Randhir Singh and Inder were working. It is stated by Randhir Singh PW that in routine, the children also used to go to the said quarry. The presence of Randhir Singh and Inder cannot be doubted in any manner as they had gone for normal daily job. The statement of Randhir Singh is corroborated by Inder Singh. It is emphatically said that he is also from the community of Randhir Singh. In my considered view, this argument is absolutely without any substance. Randhir Singh and Inder P Ws being daily wage used to go to the sand quarry to earn their livelihood. So was the position on the day of occurrence also. Thus, there is no reason to doubt their presence. Though, certain discrepancies, as indicated in the preceding paras, have crept up in their statements, yet the same are not such that may shatter the basic substratum of the prosecution case. These minor discrepancies are just ignorable. The learned Counsel has also made an attempt to create a doubt about the place of occurrence by showing that according to some of the prosecution witnesses, there were wheat crops at the place of occurrence, whereas according to Maman Chand Patwari (PW4), the land was vacant. This discrepancy again would not be of such a serious nature which may create any suspicion in the mind of the Court especially when SI Mahabir Singh the Investigating Officer has categorically stated that he had lifted blood- stained earth from the fields of Phool Singh. According to the report of Forensic Science Laboratory (Ex. PH), the same is said to be smeared with human blood.

25. In view of the aforementioned discussion, I find no reason to disbelieve the

testimony of Randhir Singh and Inder P Ws, who were present at the site at the time of occurrence.

26. Much has been said by learned Counsel for the Appellant on the conversation in the audio cassette (Ex. D1) and non-examination of the victim in Court.

27. In this context, I have carefully scrutinized the defence evidence. The defence as projected by the Appellant is that he saw daughter of Randhir Singh in the lap of Smt. Raj Kumari and thought that probably someone had committed bad act with her and as such being a good citizen, he immediately informed Tek Ram DW, from where the latter proceeded to the quarry where Randhir Singh was working to inform him. Tek Ram when stepped into the witness-box as DW1 has deposed that he was working as a labourer in the sand quarry; that at about 9-00/10-00 A.M. Kapoor Singh met him on the way when he was going to the said quarry and informed him that daughter of Randhir Singh was raped and was lying in the fields 6/7 acres from the said quarry and as such he informed Randhir Singh about this.

28. The other 3 defence witnesses namely Mahender Singh, Surinder, and Hari Ram in order to corroborate the statement of Tek Ram DW1 have stated that they were also working in the said quarry and in their presence Tek Ram had informed Randhir Singh about the rape upon his daughter and her lying in the fields of Phool Singh. From the defence evidence itself, one fact is very clear that the daughter of Randhir Singh was raped in the fields of Phool Singh. Therefore, one limb of his argument developed by the Appellant's counsel attempting to create a doubt about the place of occurrence falls on the ground.

29. Another defence witness namely Ravinder (DW5) brother of the Appellant states that on 14.8.1996 he had gone to the house of Randhir Singh to convince him that his brother had not committed rape upon the victim and that he (Randhir Singh) should not pursue the case. He then states that when he reached the house, he also found Nirmala wife of Randhir Singh, Raj Wanti, wife of brother of Randhir Singh and one Rattan present. He at that time had taken with him a pocket size tape recorder operated with battery cells and during conversation, Randhir Singh had admitted that he had not seen the Appellant committing rape upon his daughter or running away from the scene after committing the crime. This witness has, however, identified his own voice when the tape-recorder was played before him.

30. I have once again re-scanned the entire statement of Randhir Singh PW7. In his cross-examination, this witness has stated that Ranbir, brother of the Appellant and his mother Savitri had come to him for a compromise, after registration of the case; that at that time his wife was also present in the house; that several persons including Rattan, his uncle had also assembled in the house. This witness also admits the presence of his brother's wife Raj Kumari. He then states that pressure had been put upon him to compromise the matter but he had refused. From the statement of Ravinder (DW5), it is clear that he had gone

to the house of Randhir Singh in August 1996, may be for the purpose of convincing the latter. This all is admittedly done after the challan was filed in the Court. The record reveals that the case was committed to the Court of Session in July 1996. It is quite possible that in the presence of certain persons of the village Randhir Singh, father of the victim might have succumbed to the pressure of others. One can understand that during some hot discussion in the house in the presence of certain persons, he might have given some stray/irrelevant statement without caring as to what would be the outcome thereof. In my considered view, taking the tape recorder in his pocket by the brother of the Appellant was nothing but a clever move, may be on the advice of some one so as to use the same at the relevant stage of trial. Another fact which demolishes the defence plea is that in case the Appellant had been implicated falsely, his family members would have raised hue and cry right from the beginning i.e. when the case was registered against him in March, 1996. He was arrested within 2/3 days of the occurrence. No complaint in writing has been lodged with the higher authorities in this regard. This fact itself speaks volumes of the fact that there is no falsity in the involvement of the Appellant in this case and the subsequent development if any after filing of the challan, is there in the shape of a conversation recorded in the audio cassette Ex. D1, in my view, cannot advance the defence plea at all. Refusal to give sample voice by Randhir Singh, father of the victim in this eventuality pales into insignificance.

31. For the purposes of satisfying myself, I have also seen the simple Hindu translation of the Haryanavi dialect recorded in the aforesaid cassette. I can very well understand the same. The learned trial Court has rightly observed that it does not give out a clear picture about the substance of conversation. No doubt, at a few junctures in the tape, Randhir Singh states that there is nothing in his hand. Haryanvi dialect, the extract thereof is reproduced below:

Jab maine tere aage yee baat kahi thi, ab hamare haath me ke hi ? Savitri se: Bhai haath me tere hai vo to Randhir tere haath me hai.

32. At other few places also, the conversation shows the trend towards a compromise.

33. As stated above and admitted by Randhir Singh also that certain persons including Ravinder Singh had come to their residence for the purposes of effecting a compromise but he had refused to enter into the same. From this, there remains no doubt that whatever is said in the audio cassette Ex. D1 is an effort to effect a compromise.

34. The argument advanced by Mr. Hooda that since the victim has not identified the Appellant in Court even when summoned u/s 311 Code of Criminal Procedure is again of no consequence especially in the circumstances when I have already believed the testimony of Randhir Singh and Inder as reliable. The victim in this case is of the age of 5/6 years at the time of commission of rape. It appears that she was under great trauma. This could be the reason that after a lapse of 15/16

months of the incident also, she was not in a position to even raise a finger of accusation towards the Appellant. The conduct of the victim does not create any doubt in the mind of the Court so far as involvement of the Appellant is concerned.

35. The defence led by the Appellant is on a very slippery footing and is of no help to him. It is worth mentioning here that Raj Kumari, wife of Med Singh son of Phool Singh, who according to the defence plea was sitting in her fields with the victim in her lap, has not been produced by the Appellant to strengthen his plea. The statements of the other witnesses, including Tek Ram DW are discrepant on all the material aspects.

36. The aforesaid discussion leads to the irresistible and unequivocal conclusion that the prosecution has been able to bring the guilt home to the Appellant beyond any shadow of reasonable doubt. Hence the conviction of the Appellant as recorded by the trial Court is affirmed.

37. Adverting to the quantum of sentence, the Appellant does not deserve even the least sympathy from this Court on this count. In *Dhananjay Chatterjee v. State of West Bengal*, 1994(1) RCR(Cr.) 429 (SC): 1994(2) SCC (Cr.) 358, the Hon''ble Supreme Court has observed that justice demands that the Court should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not keep in view only the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

38. Similarly in *Ravji alias Ram Chandra Vs. State of Rajasthan*, , the Hon''ble Supreme Court has observed that the court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong.

39. In *State of Karnataka v. Krishnappa*, 2000(2) RCR(Cr.) 459 (SC): AIR 2000 SC 1470, the Hon''ble Apex Court observed that sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

40. In *State of Rajasthan v. Om Parkash*, 2002(2) RCR(Cr.) 764 (SC), while showing no sympathy towards reduction in sentence, the Hon''ble Supreme Court has observed that the accused has played with the life of a child. In the said case the age of the girl was 8 years and that of the accused was 21 years. In the case in hand the victim is hardly of the age of 5/6 years.

41. I respectfully follow the view of the Hon''ble Supreme Court.

42. Taking into consideration the facts of the case in hand, the Appellant does not deserve any reduction in the quantum of sentence. He is thrice crused being untrue to himself, his family and the society. Consequently, the sentence of 10 years RI as awarded by the trial Court is also affirmed.

43. Resultantly, the appeal fails and is dismissed on all the counts.

44. The Appellant is stated to be on bail as his sentence was suspended during pendency of the appeal. He is ordered to be taken into custody forthwith to suffer the remainder of the sentence.

Appeal dismissed.