
(2004) 04 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 809-SB of 1999

Leela Ram

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Citation : (2004) 3 RCR(Criminal) 423

Hon'ble Judges : Nirmal Singh, J

Advocate : Mr. Arihant Jain, Advocate. Mr. B.S. Sewak, Deputy Advocate-General, Punjab., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This appeal is directed against the judgment/order dated 21.8.1999 passed by learned Additional Sessions Judge, Patiala vide which the appellant Leela Ram has been convicted and sentenced to undergo R.I. for seven years and to pay a fine of Rs. 1000/. In default of payment of fine, he was further sentenced to undergo R.I. for three months under section 376 IPC. The appellant was further convicted and sentenced to undergo R.I. for six months under section 506 IPC. It was ordered that both the sentences shall run concurrently.

2. The case of the prosecution is that Smt. Sazda alongwith her husband Harun Khan were residing in a rented room in the house of Leela Ram. Harun Khan is a rickshawpuller and he used to leave the house in the morning and come back at 7/8 p.m. On 13.2.1998 Harun Khan went to his work as usual. At about noon time, Sazda was all alone in the house. Sita, wife of Leela Ram had gone to the school to deposit the fee of her children. At that time, Leela Ram came to the house and closed the outer door of the courtyard and came in the room of prosecutrix and committed rape and also threatened her that in case she raised an alarm, she would be killed with knife. After that, the accused went upstairs and prosecutrix remained in her room. On the next day i.e. on 14.2.1998 at 2 p.m. prosecutrix narrated the incident to Smt. Rozy, her maternal aunt. Then Smt. Rozy told the incident to her husband Kudratullah and then they went to

Police station to lodge the report. Statement of the prosecutrix was recorded on the basis of which formal FIR Ex. PJ/2 was recorded by ASI Darshan Singh.

3. After the completion of investigation, challan was presented in the court of Illaqa Magistrate against the accused. The case was committed to the court of Sessions being exclusively triable by the said court.

4. From the perusal of documents relied upon by the prosecution and hearing learned counsel for the accused and Public Prosecutor for the State, the learned trial Court chargesheeted the accused under section 376 read with section 506 IPC to which he pleaded not guilty and claimed trial.

5. In support of its case, the prosecution has examined PW1 Dr. Pamela Chopra. She had medically examined the prosecutrix.

PW2 Dr. Sanjay Mathur. He has medically examined the accused Leela Ram on the request of the police Ex. PF.

PW3 ASI Darshan Singh. He has recorded the formal FIR.

PW4 Sazda, prosecutrix.

PW5 Mohd. Kudratullah. He is witness to the effect that on 14.2.1998 prosecutrix who is his sister's daughter came at their residence and narrated to Rozy, his wife that Leela Ram had committed rape with her. Then he alongwith Rozy and prosecutrix went to police station.

PW6 Rozy wife of Kudratullah. Prosecutrix has narrated the incident to her on the next day and she accompanied her to the police station.

PW7 ASI Tejpal Singh. He had partly investigated the case. He prepared the rough site plan Ex. PK.

PW8 Harun Khan, husband of the prosecutrix.

PW9 Inspector Rajwinder Singh.

PW10 ASI Malkiat Singh. He has recorded the statement of the prosecutrix on the basis of which formal FIR was recorded.

PW11 Bhupinder Singh, Draftsman. He prepared the site plan Ex. PM.

6. The prosecution gave up Jitender Pal as having been won over by the accused and Mohammad Salim, PWs as unnecessary and closed the evidence.

7. When the accused was examined under section 313 Cr.P.C. to explain the incriminating circumstances appearing in the prosecution evidence, he denied simplicitor and alleged false implication and pleaded that he has been falsely implicated at the instance of husband of prosecutrix on the pretext that he (Leela Ram) wanted to vacate the room given at rent to the husband of the prosecutrix but Harun Khan was not ready for the same.

8. The accused was called to lead evidence in his defence but he did not lead any evidence.

9. Mr. Arihant Jain, learned counsel for the appellant assailed the judgment of the trial Court on the ground that the trial Court has not appreciated the evidence on record in its right perspective. He submitted that as per the prosecutrix, the occurrence had taken place on 13.2.1998 but she had lodged the report with the police on 14.2.1998 and there was no explanation for this delay. He further submitted that prosecutrix has admitted that her husband came in the evening but she did not tell him about the incident rather on the next day, she went to her maternal aunt Rozy and narrated her the incident. He contended that this delay has been consumed by the prosecution to concoct a false story and to introduce false witnesses. He submitted that appellant has been falsely implicated in the case because he had asked the husband of prosecutrix to vacate the room, rented to him. He further submitted that there was no corroboration to the testimony of prosecutrix. He pointed out that if the occurrence had taken place at day time and in front of the house, there was a road, then if the prosecutrix would have raised an alarm, the people must have attracted to the spot. He further contended that the version given by the prosecutrix is untrustworthy that her bangles were broken at the time of incident and she has received scratches and injuries on her arms but as per the doctor, there was no mark of injuries on the arms of prosecutrix.

10. Mr. B.S. Sewak, learned Deputy Advocate General on the other hand has submitted that prosecutrix had no motive to falsely implicate the appellant. He further submitted that appellant seeing the prosecutrix all alone in the house committed rape with her under the threat of killing her. He pointed out that when there was no enmity between the appellant and prosecutrix, then delay in lodging the FIR is immaterial.

11. The delay ipso facto is not fatal to the case of prosecution. Delay is only fatal when prosecution concocts a false case and introduces false witnesses to rope in innocent persons as accused with some ulterior motive.

12. The delay in this case stands fully explained. Prosecutrix has deposed that she could not raise alarm as the appellant has given threat to kill her and Harun Khan. On the next day, she narrated the incident to her maternal aunt Rozy, who resided in Kartar Colony, Nabha. Rozy, PW6 has deposed that on 14.2.1998 Sazda came to her house and told that Leela Ram by showing knife to her had committed rape with her and threatened her that in case she told to anybody, her husband would be killed. Then Rozy narrated the entire incident to her husband PW5 Mohd. Kudratullah, who accompanied the ladies to the police station to lodge the FIR. Sazda may not have told her husband about the incident on the same day due to some fear in mind that her husband might give her beating. In our society, after such heinous crime, the victim even does not disclose to her husband or parents due to the fear that the parents or husband may not take it that she was a consenting party and was responsible for such an

act and that she may not be thrown out of the house. The rape victims disclose to their parents, husbands or other relations when they have no fear in their minds that the former will not take it ill and they will believe their versions as true. In the instant case, before disclosing the incident to her husband, the prosecutrix went to her maternal aunt on 14.2.1998 (on the next day of occurrence) and narrated the entire incident to her. Then Rozy too narrated the incident to the husband and all of them went to the police station to lodge the FIR. The prosecutrix belongs to lower strata of society. Instead of taking any action on her complaint, the police has put pressure on her to effect a compromise with the appellant. Sazda while appearing as PW4 has deposed in her statement that police had given beatings to her on the ground that she was telling a lie. Harun Khan, PW8 has deposed in his statement that they have given the information to the police but instead of writing the report, the Thanedar gave beatings to his wife as a result of which, she urinated in the pajami. This shows that police has tried to suppress the crime which has been committed against the weaker sex of society. Harun Khan, husband of the prosecutrix, a rickshawpuller belongs to Bihar and he alongwith his wife came to Punjab for their livelihood. They have no motive to falsely implicate the appellant.

13. In view of the above discussion, the delay in lodging the FIR is immaterial.

14. The next contention of learned counsel for the appellant that without corroborating the statement of the prosecutrix, her version cannot be relied upon, is devoid of force.

15. In the sexual offences, the evidence of the prosecutrix must receive the same weight as is attached to an injured in cases of physical violence as it has been held in *State of Maharashtra v. Chandraprakash Kewalchand Jain*, 1999(1) RCR(Cr.) 411 .

16. The evidence of prosecutrix can be relied upon even without corroboration of medical evidence if it is of worth reliance. As it has been observed in *Madho Ram and another v. The State of U.P.*, AIR 1973 Supreme Court 469. In para 11, it has been observed as under :

"The principles that have to be borne in mind by courts when considering evidence of the prosecutrix, have been clearly laid down by several decisions of this court. It has been considered to be an accomplice. As a rule of prudence, however, it has been emphasized that courts should normally look for some corroboration of her testimony in order to satisfy itself that the prosecutrix is telling the truth and that a person, accused of abduction or rape, has not been falsely implicated. The view that, as a matter of law, no conviction without corroboration was possible has not been accepted. The only rule of law is the rule of prudence namely the advisability of corroboration should be present in the mind of the Judge or the Jury, as the case may be. There is no rule of practice that there must be in every case, be corroboration before a conviction can be allowed to stand. As to what type of corroboration may be required when the

court is of the opinion that it is not safe to dispense with that requirement, it has also been laid down that the type of corroboration required must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence with which a person is charged."

17. In the instant case, Sazda has given minute details of the occurrence with regard to date, time, place and manner, in which the occurrence took place. The prosecutrix was cross-examined at length by the defence but they have failed to impeach her testimony. As it has been noticed above, the prosecutrix has no motive to falsely implicate the appellant. The defence taken by the appellant that husband of the prosecutrix was not vacating the room rented to him is not believable.

18. The appellant has given the room on rent to the husband of the prosecutrix two months prior to the occurrence.

19. If the appellant himself required the room for his personal use, he would not have rented it out for a short period of two months. It seems that appellant himself had concocted a story that he asked the husband of the prosecutrix to vacate the room and, therefore, he has been falsely implicated.

20. The contention raised by learned counsel for the appellant that prosecutrix was the consenting party does not appeal to reason in the facts and circumstances of the case. No doubt, there were no marks of injury on the person of the prosecutrix as per PW1 Dr. Pamela Chopra but that does not mean that the prosecutrix was the consenting party. PW1 Dr. Pamela Chopra has deposed in her statement that in her opinion the injury could not be there if consent of the victim had been obtained by force.

21. In the instant case, the prosecutrix belongs to State of Bihar and is the wife of a rickshawpuller. The appellant belongs to State of Punjab and the landlord of the house where the rape was committed. The appellant finding the prosecutrix all alone in the house, under the threat of killing her, had committed rape. After committing the act, the prosecutrix was again threatened with the death of her husband, in case she narrated the incident to anybody. It shows that the appellant took advantage of a poor lady of 17 years present all alone in the house and satisfied his lust. Therefore, it cannot be said that prosecutrix was the consenting party.

22. Even otherwise, the prosecutrix has given the minute details of the occurrence. Her version was fully corroborated by the evidence of Mrs. Rozy, PW6, her maternal aunt, whom she narrated the entire occurrence. The learned trial Court has rightly come to the conclusion that appellant was the person who has committed rape upon Sazda and has rightly convicted and sentenced him R.I. for 7 years under section 376 read with section 511 IPC.

23. For the reasons recorded above, there is no merit in this appeal. The same is dismissed. The appellant is on bail. His bail bonds and surety bonds stand

cancelled. He be taken into custody to undergo the remaining portion of his sentence.