

(2007) 10 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 120 SB of 1998 and Criminal Revision No. 461 of 1998

Mishra Singh and Another

APPELLANT

Vs

State of Punjab
 Sarbjit Kaur Vs Paramjit Singh and Others

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 173, 313
Penal Code, 1860 (IPC) — Section 366, 376(2)(G)

Citation : (2008) 1 RCR(Criminal) 631

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : A.P.S. Deol and Mr. Davinderbir Singh and Mr. Satish Bhanot, DAG, Punjab, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—This judgment disposes of Criminal Appeal No. 120-SB of 1998 and Criminal Revision No. 461 of 1998 arising out of the judgment dated 19.01.1998 passed by Additional Sessions Judge, Mansa. The accused Mishra Singh and Bhani Singh (hereinafter referred to as the accused) along with Paramjit Singh were tried under Sections 366/376(2)(g) of the Indian Penal Code(hereinafter referred to as the "Code"). Consequently, vide judgment dated 19.01.1998 passed by Additional Sessions Judge, Mansa Paramjit Singh was acquitted whereas the Appellants were sentenced to undergo RI for 10 years and to pay a fine of Rs. 1,000/- each u/s 376 (2)(g) of the Code and to undergo RI for 5 years each u/s 366 of the Code.

2. The factual matrix of the case as narrated hereinafter is that on 22.10.1995 at about 12.00 noon the prosecutrix (name not disclosed) aged about 14 years (a student of 8th standard) was coming to her house during recess in the school. At that time, her father Roop Singh had gone to attend his duty whereas her

mother Amarjit Kaur had gone to bring the fodder from the field. Thus while getting benefit of her being alone, both the Appellants came to her and took her away on the pretext that Amarjit Kaur was ill and was lying admitted in the Civil Hospital Khiala Kalan. Consequently, she accompanied them to the hospital but on reaching there the said fact was found to be false. However, both of them represented to her that she may have been shifted to Civil Hospital Mansa and took her to Mansa. At bus stand Mansa, while directing prosecutrix and Bhani Singh to stop there, Mishra Singh went to call Paramjit Singh accused(now acquitted) and Harinder Singh.

3. Thereafter all the four aforesaid persons in conspiracy with one another took her forcibly inside the house of Paramjit Singh where Harinder Singh and Mishra Singh committed rape upon her in the presence of Paramjit Singh and Bhani Singh. In the meantime some relatives of Paramjit Singh came, at this Mishra Singh brought the prosecutrix on the scooter of Paramjit Singh to her village Tamkot. On reaching her house, she disclosed her woeful story to her father Roop Singh and mother Amarjit Kaur. Consequently, they went to the police station where prosecutrix got recorded statement Ex.PF before SI Rupinder Kumar, on the basis of which FIR Ex. PF/2 was recorded.

4. The investigation was handled by SI Rupinder Kumar who went to the place of occurrence; recorded the statements of witnesses; sent the prosecutrix for medical examination; took into possession the medical examination report. He also took into possession vaginal swabs, packet containing clothes of victim i.e. salwar shirt and dupatta and sealed envelope containing request letter to Chemical Examiner; arrested the accused and on completion of investigation; report u/s 173 of the Code of Criminal Procedure was submitted. On taking cognizance they were charged under Sections 366, 376(2)(g) of the Indian Penal Code to which they pleaded not guilty and claimed trial.

5. The prosecution in order to substantiate the charge, has examined Dr. Asha Kiran, PW1, Dr. Rajinder Kumar Garg, PW2, Prosecutrix, PW3, Dr. Gurdarshan Singh, PW4, Bharat Bhushan Draftsman, PW5, SI Rupinder Kumar, PW6 and Joga Singh, PW7.

6. The accused persons in their statements recorded u/s 313 Cr.P.C denied the prosecution allegations. While pleading innocence, Mishra Singh further pleaded that there was a dispute between father of prosecutrix, his father and father of Bhani Singh. He has further stated that on 16.10.1995 he and Bhani Singh had an altercation with prosecutrix and her mother at bus stand Mansa and in that respect application was moved by her father on 17.10.1995 in the police station and that he and Bhani Singh were proceeded u/s 107/151 Code of Criminal Procedure

7. Accused Bhani Singh also took identical pleas. However, Paramjit Singh accused has pleaded that the present case was the result of political rivalry and that he was working in village Chakerian in those days and on that day he was

working as auction clerk i.e. on 16.10.1995 and on that day he was present on duty from 9AM to 5 PM.

8. In defence, the accused examined DW1 Surinder Pal Singh, Mandi Supervisor who deposed from the records that Paramjit Singh was working as Mandi Supervisor and used to attest the presence of the employees of the Market Committee Mansa, Bikkar Singh (DW2), Teacher Govt. Primary School Tamkot deposed from the admission register that the date of birth of Bhani Singh is 25.03.1981.

The trial ended in acquittal of Paramjit Singh and conviction of the Appellants. Hence this appeal.

9. At the very outset, the judgment of conviction has not been assailed. Even otherwise having gone through the records of the case it transpires that the occurrence as exposed by the prosecution stands duly established. The testimony of the prosecutrix stands corroborated by medical evidence. Dr. Asha Kiran, PW1 has categorically opined that the external orifice of the prosecutrix admitted one finger and hymen was torn at one place. There is evidence of healing of the tear. She gave the duration of the injury as six days. This evidence of the Doctor Asha Kiran fits in with the ocular version as the prosecutrix was subjected to rape on 16.10.1995 whereas she was medically examined on 22.10.1995. Dr. Asha Kiran has further opined that the tear heals usually within 5 to 6 days. Mere fact that no marks of violence could be detected on the private parts of the prosecutrix, is not sufficient to rule out the act of rape on the part of the accused.

10. So far as the delay of six days in lodging the FIR is concerned the same has been duly explained. The prosecutrix in her statement disclosed that she did not tell anybody about the occurrence on account of fear. In any case, on the happening of such event the family members are stunned and are hesitant to put the reputa of the family to peril. It is after the long discussions that they come out against the prosecutrix's victimisation. Prosecutrix an young girl could not be expected to concoct such a version which may be cause of her disrepute in the society and also she had no reason to accuse persons with whom she or her family had no animosity or hostility. Besides lengthy cross examination; her credentials could not be challenged, therefore, there is no reason to doubt her veracity.

11. Jora Singh, PW7 Social Studies Master Govt. High School Tamkot deposed on the basis of the school records that the prosecutrix was admitted in their school at serial No. 751 dated 22.04.1993 and her date of birth is recorded as 16.04.1982. It is not disputed at all that she was a student of 8th standard and the date of birth recorded in the school records has not been challenged by the accused in any manner, therefore, I have no reason to discard the testimony of Jora Singh (PW7) regarding the age.

12. I have scanned the records of the case. The trial Court appears to appreciated evidence in right perspective and there is no reason to disbelieve the

prosecutrix and other evidence on the record.

13. The only argument advanced by Mr. A.P.S Deol, Sr. Advocate is that the prosecutrix turned to her house on the same day; out of the two Appellants only Mishra Singh is alleged to have committed rape and in any case, the prosecutrix was sent back to her house on the same day. As such, some leniency in the quantum of sentence may be extended.

14. Having deliberated over the issue, the age of the prosecutrix is little less than 14 years, therefore, it can be said that her age was on the border line. Concededly the prosecutrix returned to her house on the same day and the case was registered against the accused after 6 days and Bhani Singh though was present in the room did not rape the prosecutrix. Consequently, it is a fit case where some lenient view could be taken.

15. For the foregoing reasons the appeal preferred by the Appellants is hereby dismissed with the modification in the sentence of Mishra Singh from 10 years to 7 years and that of Bhani Singh to 5 years u/s 376 2(G) IPC, however, the sentence of both the Appellants u/s 366 IPC will remain intact. It is further, made clear that no change is made in the sentence of fine.

Consequently, the revision petition No. 461 of 1998 is also dismissed.

Copy of the judgment be sent to the Chief Judicial Magistrate, Mansa for compliance.