
(2003) 09 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 29-SB of 1991

Puran and another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2004) 1 AICLR 963 : (2004) 1 FJCC 212 : (2004) 1 RCR(Criminal) 11

Hon'ble Judges : Virender Singh, J

Advocate : Mr. P.S. Hundal, Advocate. Mr. Rajesh Bhardwaj, AAG, Haryana.,
Advocates for appearing Parties

Judgement

Virender Singh, J.

1. Puran son of Jwala and his wife Smt. Jalkaur have been convicted and sentenced by the learned Sessions Judge, Narnaul vide its judgment dated 9.1.1991 as under :

Puran

Under Section 376 IPC To undergo RI for 7 years.

Smt. Jalkaur

Under Section 376 read with section 114 IPC To undergo RI for 7 years.

2. Aggrieved by the impugned judgment of conviction and sentence, both the appellants have filed the present appeal.

3. The prosecutrix (Rajbala) was of the age of 141/2 years at the time of alleged occurrence which happened on 9.3.1990 at about 10.00 P.M. when Jalkaur appellant went to the house of Rajbala and asked her mother to send Rajbala with her to sing songs (Geet). (sic) following injuries on her body :

"1. Multiple abrasions on left cheek, scab present. Injury No. 1 was 1" below the lower eyelid.

2. Multiple abrasions 11/2" from injury No. 1.
3. Abrasions right cheek 1/2 x 1/2", two inches from the lower eyelid.
4. Abrasion 3/4 x 3/4" on the left thigh, scab present.
4. The doctor also took vagina swabs. The underwear of the prosecutrix was also taken into possession. On 12.3.1990 both the appellants were arrested. Appellant Puran was also medically examined on the same day by PW2 Dr. R.K. Chaudhary. He was found capable of doing sexual intercourse. His underwear was also taken into possession.
5. After completion of the entire investigation, both the appellants were challaned to face trial.
6. Puran appellant was charged under Section 476 IPC whereas his wife Jalkaur was charged under Section 376 read with Section 114 IPC.
7. The prosecution in order to prove its case has examined Dr. Mrs. Amarwati as PW1, Dr. R.K. Chaudhary as PW2, Prahlad Sharma Draftsman as PW3, Rajbala prosecutrix as PW4, her mother Smt. Santra as PW5, her father Jawahar Lal as PW6. In order to prove the age of the prosecutrix, Gurdyal Chand Sharma Headmaster has been examined as PW7, SI Rai Singh PW8 is the Investigating Officer.
8. The stand taken by both the appellants as emerges from the statements recorded under Section 313 Cr.P.C. is that they have denied the allegations in toto. Puran appellant has stated that he has been falsely implicated in this case on the ground that there was a fencing between his house and the house of the complainant party and the complainant party wanted to grab their land by removing the said fencing and when it was resisted by him, it resulted into the dispute between the appellants and the complainant party and for this reason both of them were falsely implicated in this case. However, no defence was led.
9. After appreciating the entire evidence on record, the learned trial Court has convicted and sentenced both the appellants as indicated above. Hence, this appeal.
10. I have heard Mr. P.S. Hundal, learned counsel for the appellants and Mr. Rajesh Bhardwaj, learned Assistant Advocate General, Haryana. With their assistance, I have also gone through the entire record minutely.
11. So far as age of the prosecutrix is concerned, Mr. Hundal has not assailed the finding of the trial Court on this count. Even otherwise, for my satisfaction, I have scanned the prosecution evidence in this regard and am of the considered view that the age of Rajbala on the date of occurrence as is proved from Ex. PG was 14 years and two months. She was born on 7.1.1976 and the date of occurrence is 9.3.1990.
12. The contentions advanced by the learned counsel for the appellants are that

the prosecution case as set up does not inspire confidence at all if it is tested on the touch stone of human probabilities. Strengthening his arguments, the learned counsel further contended that it is not possible that Jalkaur would render all help to her husband Puran to commit rape with Rajbala as alleged. Mr. Hundal then submitted that even otherwise, the prosecution has not projected any enmity between the two sides for which the wife could abet her husband to settle the score and as such the involvement of Jalkaur appellant is doubtful. He next contended that there is delay of three days in lodging the report with the police and this circumstance also weakens the case of the prosecution as possibility of false implication cannot be ruled out. Jalkaur thus deserves acquittal.

13. In the same breath it is further submitted that once the presence of Jalkaur is doubted, the basic edifice of the prosecution case qua Puran appellant also falls to the ground. Mr. Hundal otherwise while drawing my attention to the evidence of Dr. (Mrs.) Amarwati, PW1 where she has stated that there was no injury on vulva and vagina; vagina was admitting one finger, asserted that a false story has been coined against the appellants by projecting the prosecutrix.

14. Lastly, the learned counsel has prayed for reduction in the substantive sentence on the ground that the appellants have suffered the rigour of protracted trial.

15. Mr. Bhardwaj has refuted the arguments of Mr. Hundal vehemently and contended that Rajbala has received four injuries on her person while showing resistance; she was of the age of 14 years on the date of incident and there is no reason to disbelieve her statement on oath involving both the appellants in this immoral act.

16. After hearing rival contentions of both the sides and going through the entire record, I am of the view that there is no force in the arguments advanced by learned counsel for the appellants and the case of prosecution qua both the appellants is proved to the hilt.

My reasoning is set out as under :

17. The core of the prosecution case is ocular account unfolded by Rajbala PW4. I have gone through her statement. She on all counts has corroborated her earlier statement which is the basis of FIR Ex. PB. The entire episode then gets further corroboration from the statement of Santra PW5, the mother of Rajbala. I do not find any basic infirmity which would call for doubting the prosecution story. The delay of three days in reporting the matter is well explained. Their Lordships of the Apex Court in *State of Rajasthan v. N.K. (the accused)*, 2000(2) RCR (Criminal) 471 while dealing with delay in lodging the FIR in rape case have observed as under :

"We may however state that a mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to

seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution."

18. In *State of Rajasthan v. Narayan*, AIR 1992 SC 2004 : 1992(3) RCR(Cr.) 619 (SC) , it was also observed as under :

"True it is that the complaint was lodged two days later but as stated earlier Indian Society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police....." In *State of Punjab v. Gurmit Singh and others* (supra), this Court has held "The Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

19. *Harpal and another v. State of Himachal Pradesh*, AIR 1981 SC 361 is another judgment which can be followed in this regard.

20. The argument advanced by the learned counsel for the appellants that the prosecution story is highly improbable and it is not believable that Puran Singh appellant would commit such an act in the presence of his wife is repelled in the light of the fact that Jalkaur is one who had abetted the commission of offence and in fact actively participated in the nefarious act of her husband by bringing Rajbala on a false pretext of songs (Geet) and then gagged her mouth preventing her to raise an alarm. The statement of Rajbala is quite convicting on this aspect. The injuries on the person of prosecutrix speak volumes of the fact that there is no tinge of any adulterated fact. She has received multiple abrasions on both the sides of her cheek and thigh. Her version is that at the time of showing resistance, Puran appellant had given bites on her face. The chemical examiner report Ex. PB also amply strengthens the case of the prosecution as vaginal swabs, underwear of the prosecutrix and underwear of Puran appellant revealed human semen on them.

21. The defence of the appellants is very weak. It is absolutely baseless and cannot be given any weightage.

22. In my view, the prosecution has been able to prove the charges against both the appellants beyond any shadow of doubt and as such the conviction recorded by the trial Court is hereby confirmed.

23. So far as quantum of sentence is concerned, I am of the view that Puran appellant does not deserve any leniency in it. There is no mitigating circumstance in his favour except that he has faced the rigour of protracted trial of 13 years.

His wolfish act in committing rape with a minor girl of 14 years does not call for any sympathy. Sensitive approach of the Court is needed in such type of cases. Consequently, the substantive sentence of seven years awarded by the learned trial Court is hereby upheld in his case.

24. However, Jalkaur deserves some leniency on the point of quantum of sentence. At the time of conviction, Jalkaur was having three children as is clear from her statement recorded by the trial Court after she earned conviction. She was of the age of 23 years at that time. The children must have grown up by now.

25. Although, she participated actively in the commission of offence yet the facts and circumstances make out adequate reasons for reducing her substantive sentence from seven years to four years. It is ordered accordingly.

26. With the modification in quantum of sentence as observed above, the present appeal fails.

27. Let necessary steps be taken at once to take both the appellants in custody to serve out their remaining part of substantive sentence.