
(2004) 11 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 403-SB of 1997

Rajpal	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 376

Citation : (2004) 13 CriminalCC 394 : (2005) 1 RCR(Criminal) 635

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : R.A. Sheoran, for the Appellant; D.S. Brar, AAG Haryana, for the Respondent

Judgement

Satish Kumar Mittal, J.—Appellants Raj Pal and his wife Sumitra have filed this appeal against the judgment and order dated 9.5.1997 and 12.5.1997, passed by Addl. Sessions Judge (II) Bhiwani, vide which Raj Pal has been convicted under Sections 376 and 120B IPC and sentenced to undergo 7 years imprisonment and Sumitra has been convicted u/s 342/120B IPC, and sentenced to undergo rigorous imprisonment for one year, respectively.

2. Appellant No. 1 Raj Pal was charged to have committed the rape on prosecutrix Kavita, aged about 13/14 years, in connivance with his wife, appellant No.2 Sumitra, in his house on 15.2.1995.

3. The FIR in this case was recorded on 17.2.1995 i.e. two days after the alleged occurrence, on the basis of the statement of the prosecutrix, who in her statement stated that she was 13/14 years of age and studied upto 3rd standard. She further stated that Raj Pal accused was her uncle in relation and his wife to visit their house. On 15.2.1995, accused Sumitra wife of Raj Pal came to their house in the day time and took the prosecutrix to her house on the pretext to iron the clothes. When she went to the house of accused, Raj Pal accused was already present there in the room. Sumitra asked her to close the door, because the persons are looking while passing from there. Thereafter, she

went out of the room and bolted the gate from outside at once. The prosecutrix further stated that Raj Pal accused caught hold of her hand and made her lie on a cot. When she raised noise, he put a cloth in her mouth. Thereafter, Sumitra reached outside the gate and the prosecutrix called her, but Raj Pal did not allow her speak. Thereafter, he forcibly committed rape on her against her wishes. After a short while accused Sumitra came outside the room and asked to open the door. Accused Raj Pal replied in positive and gave 3/4 bites on her cheeks and raped her. Thereafter, accused Sumitra opened the door and asked the prosecutrix not to tell about the occurrence to any body. The prosecutrix further stated that she did not tell about the occurrence to any body and kept covering her face with her shawl. On seeing her in fear position, her mother enquired about the reason of her perplexion again and again. She saw her face after removing the shawl and noticed the bites on her face. She enquired about the same. Then she disclosed the whole occurrence to her mother. Thereafter, she was taken to the police, where her statement was recorded.

4. The prosecutrix was medico-legally examined by Dr.(Mrs.) Amrita Bhardwaj, Medical Officer, General Hospital, Bhiwani, on 17.2.1995 at 4.50 p.m. She noticed the following three injuries on her face:-

1. There was contusion over right cheek, elliptical in shape, in upper part grooved with teeth margin reddish brown in colour.

2. Two semi-circular contusions over right cheek in lower part near angle of mouth 1 cm away from the angle of mouth, 4 cm in length, bluish discolouration in the surrounding area was present.

3. Two in number semi-circular contusion over left cheek near angle of mouth about 2 cm away from angle of mouth.

5. After examination, vaginal swab taken from vagina was sent for chemical examination. In the report of the Chemical Examiner, human semen was detected in vaginal swab. After completing the investigation, challan was presented in the Court and charges were framed against both the accused.

6. In support of the allegations, the prosecution examined 12 witnesses. Except Kavita prosecutrix (PW-9) and Sunita (PW-11), all the other witnesses are official witnesses. Chandi Ram and Kitabo, the parents of the prosecutrix, were not examined by the prosecution claiming them to be unnecessary. In their statement u/s 313 Cr.P.C. both the accused pleaded false implication, but did not lead any evidence in defence.

7. After considering the evidence, available on the record, the learned trial Court convicted and sentenced both the accused. Hence, this appeal.

8. Counsel for the appellants submitted that the learned trial Court, while convicting the appellants, relied upon the statements of the prosecutrix (PW-9), Sunita (PW-11) and Dr.(Smt.) Amrita Bhardwaj (PW-2). He submitted that on the basis of the statements of the aforesaid witnesses, the appellants could not be

convicted in this case. He pointed out that in this case, there is a major contradiction regarding the place of occurrence. As per the prosecution version as given in the FIR, the rape was committed by accused Raj Pal in his house, which is situated in the Abadi, but as per statement of the prosecutrix in the Court, the alleged occurrence took place in a kotha, which is situated in the field outside the Abadi. As per the statement of the Investigating Officer, the said kotha is owned by Ran Singh, a resident of the village. Counsel for the appellants submitted that in view of such evidence available on the record, the whole prosecution version is apparently false and concocted. He further submitted that accused Raj Pal and Sumitra were married six months prior to the date of the alleged occurrence and the prosecution version that accused Sumitra instigated her husband to commit rape on his niece is highly improbable, as normally no woman allows her husband to have sexual intercourse with another lady in her presence. He further submitted that in this case, except the statement of the prosecutrix, there is no other evidence indicating that accused Raj Pal had committed rape as no independent witness has been examined. Even parents of the prosecutrix, who were initially cited as prosecution witnesses, have not been examined by the prosecution for the reasons best known to it. Regarding the quantum of sentence, counsel for the appellants submitted that appellant No.1 Raj Pal has already undergone about four years of sentence and now the couple has two grown up children, therefore, it will not be in the interest of justice to send them inside the jail after nine years of the alleged occurrence.

9. On the other hand, counsel for the respondent-State submitted that the prosecution has fully established guilt against both the appellants and minor contradictions with regard to the place of occurrence cannot be given weightage, when the other evidence led by the prosecution is clear, trust-worthy and sufficient to convict the accused. In these circumstances, he submitted that there is no merit in this appeal and both the appellants have been rightly convicted by the learned trial Court.

10. After hearing counsel for the parties and going through the statements of the prosecution witnesses and the other evidence available on the record, it appears that there is major contradiction with regard to the place of occurrence. The prosecutrix Kavita, in her statement made before the police on 17.2.1995, on the basis of which FIR was lodged, has stated that she was taken by her aunt Sumitra, accused No.2, to her house on the pretext to iron the clothes. She further stated that when she went to the house of the accused, Raj Pal accused was already present there in a room. She was also sent to that room and it was bolted from outside by accused Sumitra. She further stated that in the said room, rape was committed on her by accused Raj Pal. It has come in evidence that house of the accused is situated in the Abadi. So, as per this statement, made by the prosecutrix before the police, the rape was committed on her in the house of the accused. Immediately after lodging of the FIR the Investigating Officer along with the prosecutrix and the parents who have not been examined visited the place of occurrence and prepared a rough site plan, which reflects

that the place of occurrence is a kotha having a kacha roof situated in the field. According to the statement of SI Rameshwar Kumar (PW-12), who is the Investigating Officer of the case, the said kotha belongs to one Ram Singh and is situated at a distance of 1-1/2 killas from the village abadi on the road side. The prosecutrix Kavita, while appearing as PW-9, in her cross-examination stated that the kotha, in which she was raped by accused Raj Pal, belongs to Ran Singh. It was only one kotha on the crossing of the roads, one leading to Behal and the other to village Dharan. She admitted that the kotha in question was adjoining the road and was situated near the bus stop, which was at a distance of 10/15 feet. She further stated that Abadi of the village was about 8-9 acres from the said kotha. She also stated that house of Raj Pal accused is on the Sewani road, which is 9-10 acres away from the said kotha. The prosecutrix further stated that no shop was existing in the vicinity of the said kotha. The prosecution has also examined Joginder Singh (PW-6), the Halqa Patwari, who prepared site plan of the place of occurrence on police request. In his statement, he has stated that the place of occurrence was pointed out by Chandi Ram, father of the prosecutrix and on his pointing out, the site plan was prepared. He stated that the place of occurrence is situated 8 karams away from the crossing of the road and he did not notice any shop on the crossing. In view of this evidence, the statement of Sunita (PW-11) who is nine years old girl, is not relevant.

11. From the aforesaid, it is clear that the place of occurrence i.e. kotha is situated at the out-skirt of the village Abadi on the road, and house of the appellants is situated within the Abadi. As per the above evidence, the alleged occurrence did not take place in the house of the accused, as alleged by the prosecution. If this is the position, then at least the version given by the prosecution that the prosecutrix was called by appellant No.2 Sumitra and taken to her house on the pretext of ironing the clothes, was sent in a room, where appellant No. 1 Raj Pal was present; bolted the door from outside and in the said room, rape was committed, appears to be not correct. From the evidence on record, it appears that appellant No.2 Smt.Sumitra has been falsely implicated in this case. She was not present at the time of the occurrence. However, from the evidence available on the record, it is clear that the rape was committed by appellant No.1 Raj Pal on the prosecutrix Kavita in a kotha situated in the field. The fact regarding committing of rape has been duly proved by the medical evidence, available on the record. Dr.(Mrs.) Amrita Bhardwaj (PW-2), who medico-legally examined the prosecutrix, has categorically stated before the Court that in her opinion based on the report of the chemical examination, the rape was committed on the prosecutrix. Three injuries noticed by her on the face of the prosecutrix also establish the version of the prosecutrix, where she stated that she was forcibly raped by appellant Raj Pal. There may be confusion and contradiction about the place of occurrence, but one thing is definite that rape was committed on the prosecutrix being the consenting party to the said rape is immaterial in this case, because her age at the time of the occurrence was only 13-14 years. Regarding her age, there is sufficient evidence available on the

record, which clearly establish that the prosecutrix was below 16 years of age at the time of occurrence.

12. The evidence of committing rape by the appellant Raj Pal on the prosecutrix is clear, cogent and creditworthy. Where the Court can distinguish the truth from falsehood, the mere fact that there is some contradiction in the statement of the prosecutrix about the place of occurrence cannot, by itself, be a sole basis to reject the testimony of the prosecutrix and consequently, reject the whole case. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is not less than conviction of an innocent. In my opinion, as far as appellant Raj Pal is concerned, it has been fully proved by the prosecution that he has committed the rape on a minor girl aged about 13-14 years. Therefore, I am of the opinion that he has been rightly convicted u/s 376 IPC by the trial Court. However, the prosecution has failed to prove guilt against appellant Sumitra, beyond shadow of reasonable doubt, for which benefit of doubt must be given to her.

13. Thus, appellant No.1 is convicted u/s 376 IPC and appellant No.2 Sumitra is acquitted of the charge framed against her.

14. Regarding the quantum of sentence of appellant No.1 Raj Pal, counsel for appellant submitted that though in this case, appellant Raj Pal has been given minimum sentence of seven years, but keeping in view the facts and circumstances of this case, he can be given the lesser sentence. The sentence awarded to him can be reduced to the already undergone, as now the appellant is having two grown up children and is the only bread earner of the family and if he is again sent to prison, it will adversely affect their life and career.

15. Keeping in view the facts that the victim girl, now married, as well as appellant are settled in life, having children, no indulgence of any criminal conduct after the said occurrence, age of appellant Raj Pal and the fact that he has faced protracted trial of more than nine years, I am of the opinion that ends of justice will be met if the sentence awarded to appellant Raj Pal is reduced to already undergone, as he has already undergone about four years of sentence. Ordered accordingly.