
(2009) 04 P&H CK 0371

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 241-DBA of 2008

State of Haryana

APPELLANT

Vs

Balwan

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2009) 4 RCR(Civil) 45 : (2009) 5 RCR(Criminal) 436

Hon'ble Judges : Uma Nath Singh, J; Daya Chaudhary, J

Bench : Division Bench

Advocate : Naveen Malik, DAG, for the Appellant; R.S. Shoeran, for the Respondent

Final Decision : Dismissed

Judgement

Uma Nath Singh, J.—This appeal by way of leave to appeal arises out of a judgment of acquittal dated 15.10.2007, passed by learned Sessions Judge, Bhiwani in Sessions Case No. 50 of 9.10.2006 (Sessions trial No. 128 of 9.10.2006) under Sections 376/511, 323 and 506 IPC.

2. The brief facts of prosecution case leading to filing of this appeal are that on 20.8.2006, prosecutrix Sudesh (PW3) had made an application (Ex.PC) before the S.H.O., P.S. Sadar, Bhiwani stating therein that she is married with Anil Kumar and has a small one year old daughter. She had gone to the fields with her niece for cutting grass. When she was engaged in cutting the grass, accused Balwan came from behind, grappled with her and tried to rape forcibly. When she resisted, the accused gave a fist blow on her lip, pressed her neck, and felled her on the ground. The prosecutrix then called her niece who rushed to the spot. Having seen her niece coming, the accused fled away from the spot while holding threat to the prosecutrix that if she told anything about this incident, then he would kill her. The prosecutrix then narrated the entire story to her husband and went to the police station being accompanied by him where they submitted an application (Ex.PC) making request for the registration of a case against the

accused. Hence, a formal FIR (Ex.PC/1) was registered at P.S. Sadar, Bhiwani against the accused-respondent under Sections 376/511, 323 and 506 IPC, by SI Bani Singh (PW5). The prosecutrix was then sent to General Hospital, Bhiwani for medico-legal examination alongwith application (Ex.PD), where she was medically examined by Dr.Naresh Kumar Garg (PW6) vide MLR (Ex.PG). SI Bani Singh (PW5) went to the spot and prepared a rough site plan of the scene of occurrence (Ex.PE), and also got it photographed. He also collected the Sickie (Ex.P10), a pair of slippers (Ex.P 11), some damaged crop of Bajra and grass (Ex.P 12), and a plastic chaddar (sheet) (Ex.P9), and took them into possession vide recovery memo (Ex.PF). The accused was arrested on 24.8.2006 and was put to medico- legal examination in General Hospital, Bhiwani. Dr. Gianender Singh (PW1) examined the accused vide MLR (Ex.PA), and noticed as under :

(i) Pubic hairs were well developed; (ii) both testicles were present in scrotum; (iii) penis was well developed; (iv) on manipulation of penis, erection was present, and (v) no injury was seen on genital parts.

In the opinion of doctor, there was nothing to suggest that the accused was unable to do the sexual intercourse.

3. Investigating officer SI Bani Singh (PW5) during the course of investigation, recorded the statements of witnesses, got prepared a scaled site plan (Ex.) and after the completion of investigation, presented a challan in the Court of competent jurisdiction against the accused-respondent. Accused Balwan was charged-sheeted by learned Sessions Judge, Bhiwani under Sections 376, 511, 323 and 506 IPC, to which he pleaded not guilty and claimed trial. The prosecution examined as many as six witnesses, namely Dr. Gianender Singh (PW 1) who medico-legally examined the accused; Photographer Ajit Singh (PW2), Prosecutrix Sudesh Kumari (PW3), Eye Witness Monika (PW4), Investigating Officer SI Bani Singh (PW5) and Dr.Naresh Kumar Garg (PW6) who medico-legally examined the prosecutrix.

4. Accused-respondent Balwan, during his examination u/s 313 Cr.P.C., denied the prosecution allegations and stated further that he has been falsely implicated in this case. At the relevant time, he used to cultivate the fields of one Lillu Brahman, and the cattle of complainant party would destroy the crops standing in his fields. The prosecutrix also used to destroy the crops in his fields while cutting grass for fodder and whenever he objected to that, she quarreled with him and only for that reason, she framed him in this case. However, the accused-respondent Balwan could not lead any evidence in his defence. On conclusion of trial, as learned Sessions Judge could not find any dependable evidence, he recorded the impugned judgment of acquittal.

5. Learned Deputy Advocate General, Haryana, contended that there is sufficient material on record to substantiate the prosecution case and the learned Sessions Judge while recording the acquittal of accused has not correctly appreciated such evidence. She further contended that the prosecutrix (PW3) and her niece eye

witness Monika (PW4) have fully supported the prosecution case, which is supported by the medical evidence, particularly the injuries noticed on the person of prosecutrix and further, there was nothing to suggest that the accused person was unable to do the sexual intercourse.

6. On the other hand, learned counsel for the respondent-accused submitted that both the prosecution witnesses namely, PW3 and PW4 are related to each other and there are material improvements in their testimonies. Further, the injuries noticed on the person of prosecutrix are also simple in nature and there is no injury found on her private part so as to establish the element of rape. Moreover, the prosecutrix is an educated married lady and she has tried to improve her case in the Court by introducing new stories over the statement given to the police in her application (Ex.PC). Thus, according to learned counsel, the impugned judgment passed by learned Sessions Judge, is fully justified.

7. We have heard learned counsel for the parties and perused the appeal record.

In view of the rival submissions, we need to carefully reappreciate the evidence adduced by the prosecution in order to find out cogent incriminating materials, if any, which may necessitate our interference with the judgment of acquittal. We have already noticed the evidence of Dr. Gianender Singh (PW1). As regards the testimony of Ajit Singh (PW2), a Photographer by profession, he has stated that he was running a Photo Studio under the name and style of Gora Photo Studio at village Nandgaon. On 20.8.2006, on the asking of police, he had taken 4 snaps of the scene of occurrence situated in village Jharwai. He has proved the photographs (Ex.P 1 to Ex.P4) as well as their negatives (Ex.P5 to Ex.P8). In his cross-examination, he has stated that the scene of occurrence was about 2 kms away from his shop and he had charged a sum of Rs. 80/- for taking these photographs from one Sumer Singh on that day itself. He has also deposed that the said Sumer Singh, who had made the payment to him, was present outside the Court. Sudesh (PW3) is the complainant. She has deposed that on 20.8.2006, she had gone to collect fodder from the fields along with her niece Monika and when she started collecting grass, accused Balwan came from behind and grappled with her. However, she got herself freed, but even thereafter, he caught hold of her again and felled her on earth and then tried to rape her. When she tried to release herself, he gave bites on her lips and both the cheeks, and then pressed her throat and gagged her mouth. Thereafter, she started crying, and then the accused pressed her breast, tore her clothes, and tried to penetrate his male organ into her private part. When she cried, the accused gagged her mouth and sat upon her. On hearing her crying, her niece Monika (PW4) came to the spot, and on seeing her, the accused ran away from the spot. However, while going, he held threats to the effect that if she reported the matter to anyone, he would finish her. In reply to Court question, she stated that she was not aware of the contents of the application (Ex.PC) as her condition was very bad at that time as the accused had tried to rape her. She also stated that she had signed the application (Ex.PC) on being asked by the police. In her cross-examination, when

she was confronted with her original complaint (Ex.PC) wherein these improved facts were not mentioned, she was not in a position to give any answer. However, she has denied the defence suggestion that she was deposing falsely; that her cattle used to destroy the crops standing in the fields of one Lillu Brahman when she used to collect grass; and that on being restrained from entering that field, she got a false case registered against the accused. Similarly, Monika (PW4) though supported the version of PW3 given in Court, yet on being confronted with her earlier statement (Ex.DA), was found to have made a lot of improvement in her Court statement. SI Bani Singh (PW5) is the Investigating Officer, who has proved the investigation part of the case. In his cross-examination, he has admitted that Sudesh (PW3) had come with an application (Ex.PC) while being accompanied by her husband Anil (not examined), Monika (PW4), Sumer Singh (not examined) and 4-5 co-villagers. He has also admitted that prosecutrix (PW3) neither produced her torn shirt allegedly being worn at the time of occurrence, nor did she disclose anything in that regard before him. Even the doctor did not produce/hand over the shirt of the prosecutrix to the police. Dr. Naresh Garg (PW6) who medico-legally examined the prosecutrix (PW3) found the following injuries :

1. Diffused swelling of size 3 x 3 cms on upper lip.
2. Abrasion of size 3 x 2 cms on right cheek.
3. Diffused swelling red mark on right side of the neck. Patient was advised ENT opinion.
4. Abrasion of size 2 x 1 cm on left side of the neck.
5. Complain of pain on right thumb.
6. Complain of pain on right hand.
7. Complain of pain on the chest.

Initially injury No. 3 was kept under observation. After going through the X- Ray report, all the injuries were declared to be simple in nature. The probable duration of these injuries was within 6 hours and the weapon used was found to be a blunt one. In his cross-examination, PW6 has admitted that there was no mark of injury noticed on the person of prosecutrix corresponding to the injuries Nos. 5 to 7. He also admitted that the possibility of other injuries being received by way of fall on a hard surface, cannot be ruled out.

8. In the premises discussed herein above, we notice that the prosecutrix, being a literate lady, has introduced a different story altogether during the trial. She has made material improvements in her Court statement over the contents of application (Ex.PC) given to the police. Besides, she has also admitted that she was not aware of the contents of the application (Ex.PC) which she had signed only on the asking of police. Similarly, her niece Monika (PW4) has also made substantial improvements in her Court statement over her earlier version. The

torn cloth which the prosecutrix was wearing at the time of incident, was not produced before the police, and even her husband, who had accompanied her to the police station for lodging a report, has also not turned in the witness ox. Besides, the injuries noticed on the person of the prosecutrix also did not suggest the factum of rape and the doctor has opined that the same could be received by fall on some hard surface.

9. In view glaring improvements as the aforesaid, and the dearth of cogent evidence, we are not inclined to interfere with the impugned judgment of acquittal. Moreover, our view is fortified by the ratio of judgment of Hon''ble the Apex Court that if two views are possible the one taken by the trial Court in favour of an accused for recording acquittal would be the acceptable and possible view. Some of the judgments of Hon''ble the Apex Court, on the point of interference with the orders of acquittal are reported as : (i) 2002 (3) RCR (CrL.) 861 (Harijana Thirupala and others v. Public Prosecutor, High Court of A.P., Hyderabad; (ii) 2004 (2) RCR (CrL.) 940, (Shingara Singh v. State of Haryana and another), and (iii) State of U.P. Vs. Gambhir Singh and Others, .

Hence, this Criminal Appeal No. 241-DBA of 2008 is dismissed as being devoid of merits.