
(1996) 01 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 195-DBA of 1990

State of Punjab

APPELLANT

Vs

Parveen Kumar and others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 212

Hon'ble Judges : V.K.Bali, J and K.S.Kumaran, J

Advocate : T.P.S. Mann, P.S. Mann, Mehtab Singh, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. The State of Punjab has preferred this appeal against the acquittal of the three respondents herein, namely Parveen Kumar, Vinod Kumar and Satinder Kumar. These respondents faced trial before the Addl. Sessions Judge Gurdaspur in Sessions Case No. 95/1988 on a charge under Section 376 of the Indian Penal Code. After trial, the learned Addl. Sessions Judge found the case against the respondents doubtful and acquitted them.

2. The case of the prosecution is that on 19.6.1988. Santosh Rani (P.W.2.) went to the shop of Banna Halwai for purchasing milk and on the way, the first respondent Parveen Kumar called her and asked her to come into his glass shop, but Santosh Rani did not do so and went to her house. Next day, i.e., 20.6.1988 at about 8.00 a.m. when Santosh Rani was returning from the shop of Banna Halwai, the first respondent Parveen Kumar came from his shop and took her forcibly into glass shop where she was raped, at first by the first respondent, then by the other two respondents. Santosh Rani did not mention about this to anybody, including her mother and brother. Once again on 21.6.1988 at about 12 noon when she was returning after purchasing sugar from the depot of Rupa and reached the shop of the first respondent on the way, the first respondent Parveen Kumar once again caught hold of her and forcibly took her into the glass shop where once again she was raped by respondents 1 to 3. When she went back to

her house, she narrated the entire occurrence to her mother Ratni Devi (P.W.3.). On the next day, she was taken to the Civil Hospital Gurdaspur where she was examined by Dr. Paramjit Chaudhary who found no marks of violence on the body of Santosh Rani. But the doctor found her bymen was ruptured and the edges were slightly reddish and tender to touch. The vagina admitted two fingers and Santosh Rani felt pain on examination. The medicolegal report and the vaginal swab were handed over to Ratni Devi by the doctor.

3. Next day, i.e., on 23.6.1988, Santosh Rani gave a statement Ex. PB and the same was recorded by ASI Ayudhya Prakash (P.W.5). Harbhajan Singh ASI (P.W.6) investigated the case and arrested the accused.

4. The respondentsaccused denied the charge. Santosh Rani gave evidence about the alleged occurrence. The doctor who examined her deposed as P.W.1. The mother of Santosh Rani was examined as P.W.3. The police officer who recorded the statement of Santosh Rani was examined as P.W.5, while the investigating officer was examined as P.W.6. Dr. Chandanjit Singh of Police Hospital Gurdaspur was examined as P.W.7 to say that he examined the three respondentsaccused and found nothing to show that they were incapable of performing the sexual intercourse. As pointed out already, the learned Addl. Sessions Judge did not accept the case of the prosecution and acquitted the respondentsaccused. Therefore, we have now to see whether the State has succeeded in establishing the guilt of the accused.

5. We have heard the counsel for both sides. According to the evidence of Santosh Rani (P.W.2.), on 19.6.1988 itself, the first respondent Parveen Kumar called her into his shop and she refused to do so. If really that were so, she would have immediately reported about the same to her mother, which she did not do. According to PW2 Santosh Rani, on the next day, i.e., on 20.6.1988, she was forcibly taken into the glass shop of the first respondent Parveen Kumar and was raped by the three respondents one after another. P.W.2 stated in crossexamination that the glass shop of the first respondent is about 2 Killas away from the place where she was picked up by accused. She also admitted that there are 100 shops in the bazar. The investigating officer (P.W.6) admitted in his evidence that the place of occurrence is situated in the big bazar of Dina Nagar and that at about 12 noon, there is a big rush in the bazar. So, if really PW2 Santosh Rani was caught hold of and forcibly taken from a place 2 Killas away from the glass shop of the first respondent, then it would have attracted the attention of not only the shopkeepers in the bazar but also the passersby. PW2 Santosh Rani stated in her evidence that when she was forcibly being taken into the shop she did not raise any alarm. This is quite unnatural on the part of a girl who was allegedly taken forcibly by the first respondent into his shop. P.W.2 volunteered to state that the accused prevented her from doing so but she had not stated so in her statement Ex. PB recorded by the police. She stated that she did not raise any alarm inside the shop also. After the alleged rape by the three respondentsaccused, the petitioner did not on that day mention about this

incident either to her mother or brother or to any of the shop keepers. It is wholly improbable that PW2 Santosh Rani would have failed to raise any alarm when she was allegedly taken into the glass shop of the respondent accused or when she was allegedly raped by the respondents inside the shop. It is also improbable that she would have kept quiet without mentioning about this incident to anybody. Once again on 21.6.1988, P.W.2 claims that she was forcibly taken into the shop of the first respondent accused and raped by the respondents 13. This incident is alleged to have taken place at 12 noon. It is not as if the shops are closed on either of these two days. It is improbable that PW2 Santosh Rani could have been caught hold of and forcibly taken into the shop without attracting the attention of the other shopkeepers or the passersby. PW2 stated in her evidence that the accused threatened her that if she reported the matter to her parents, they would kill her brother and mother and that the accused were having two knives with them. But she has not stated so in her complaint to the police (Ex. PB). So, this statement of P.W. 2 for the first time in the evidence is clearly an afterthought.

6. Even after the alleged second incident of rape on 21.6.88, no complaint was given immediately to the police. Of course, mere delay in such matters cannot militate against the case if it was really true. But on 22.6.88, PW2 Santosh Rani accompanied by her mother went to the hospital and Santosh Rani was examined by the lady doctor (P.W.1) on the day at 12.30 p.m. The mother of Santosh Rani had not only collected the medicolegal report, as also the vaginal swab collected by the doctor. So, it is not as if PW2 and her mother were hesitant to give a complaint immediately to save the prestige and honour of the family as well as that of PW2 Santosh Rani. They had decided on 22.6.1988 itself to go to the hospital and get PW2 examined. That means that they were inclined to give a complaint and initiate action but yet the complaint to the police (Ex.PB) is alleged to have been given on 23.6.88 only. In such circumstances, the delay assumes importance as it gives room for consultation and manipulation. It is seen from the evidence of PW2 that one Gian Chand who has affiliation to one political party was on visiting terms with family of the prosecutrix after the death of her father. It is also seen from the evidence of PW2 that the accused belong to a rival political party and that it is Gian Chand who accompanied them to the police station and said that this case was to be made against the accused. In such circumstances, the contention of the respondents accused that the case is foisted against them at the instance of Gian Chand gains ground.

7. Further, though the complaint is stated to have been given to the police on 23.6.88, the evidence of PW2 Santosh Rani is that Gian Chand accompanied them to the police station on 20.6.88 and 21.6.88, i.e., the dates on which the respondents accused allegedly raped her. Then, there is no explanation as to why no statement was recorded from her on either of these dates. PW2 also stated that the accused were taken to the police station on 20.6.88 and kept in the police station for five/six days. This falsifies the case of the prosecution. The evidence of PW6 that the first and second respondents/accused were arrested on

28.6.88 and the third respondent/accused was arrested on 29.6.88, cannot be thus true.

8. This apart, PW2 stated in her evidence that she was made to lie on the ground and was raped by the three respondents one after the other. She stated that she tried to grapple with the accused while they were raping her and that there were scratches on her back and on other parts on the body but the doctor PW1 who examined her on 22.6.88 did not find any mark of violence on her body. Even though the hyman was found ruptured, the vagina admitted two fingers and the edges were slightly reddish and tender to touch. PW1 stated that if PW2 Santosh Rani was subjected to sexual intercourse for the first time, and there were three persons to commit sexual intercourse one after another, there would be bleeding from her private part. PW2 stated in her evidence that her salwar and shirt got stained with blood but no such blood stained clothes was recovered from her. The investigating officer PW6 stated in his evidence that no such blood or semenstained clothes were produced. Although he volunteered that he was informed by Santosh Rani and her mother that they had washed the clothes, they did not state so in their evidence. So, if we take into consideration the evidence of the doctor PW1, the evidence of PW2 Santosh Rani and that of the investigating officer PW6, it will be clear that the case of the prosecution is not free from doubt. Although the chemical examiner's report shows that there was semen on the vaginal swab, it does not conclude anything against the accused because, it is admitted by the doctor that the vaginal swab was given to the mother of the prosecutrix and not to the police. Therefore, no reliance can be placed upon the chemical analysis report to convict the accused/respondents.

9. Therefore, taking into consideration all these aspects we find that the learned Addl. Sessions Judge has rightly given the benefit of all these doubts, omissions and variations to the accused and acquitted them and that there are no reasons for interfering with the judgment of the trial court. In the result, the appeal fails and is accordingly dismissed.