
(2015) 11 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : CRA No. D-352-DB of 2012

Sukhvir Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 207, 313
Penal Code, 1860 (IPC) — Section 201, 302, 307, 376

Citation : (2015) 11 P&H CK 0039

Hon'ble Judges : S.S. Saron and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Jigyasa Tanwar, Advocate, for the Appellant; Arshvinder Singh, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Ramendra Jain, J.—The accused has preferred the present appeal against the judgment of conviction dated 10.2.2012 holding him guilty under Section 302 and 376 IPC and order of sentence dated 11.2.2012 sentencing him to undergo imprisonment for life under Section 302 IPC and pay a fine of Rs. 10,000/-, in default thereof to further undergo rigorous imprisonment of one year. He was further sentenced to undergo rigorous imprisonment for ten years under section 376 IPC and pay a fine of Rs. 10,000/-, in default thereof to further undergo rigorous imprisonment of six months.

2. Both the substantive sentences were ordered to run concurrently.

3. The facts, relevant for decision of the appeal, are that on 8.3.2006, on receipt of secret information about the admission of Saroj Rani daughter of Gurdeep Singh, resident of village Jassain, Police Station Haibowal, District Ludhiana in DMC Hospital, Ludhiana in a burnt condition vide ruqa Ex. PW11/C through ASI Satwinder Singh, Incharge of Police Post Jagatpuri, SI/SHO Gurdeep Singh of Police Station Haibowal, Ludhiana accompanying ASI Satwinder Singh, Head Constables Charanjit Singh and Raj Kumar, Constables Charanjit Singh and Jit

Singh reached there and moved an application Ex. PW6/A to the Medical Officer Dr. Shivinder Sobti about condition of Saroj Rani to record her statement, whereupon, the doctor vide his endorsement Ex. PW6/B declared her fit to make statement. He, then recorded the statement of Saroj Rani Ex. PA to the effect that she had passed 8th standard. Around one year ago, she developed friendship with appellant-accused Sukhbir Kumar @ Sonu son of Inderjit Singh, resident of Mohalla Anand Nagar, Near Civil City. He impressed her and developed illicit relations with her without her consent. He used to force her to marry him to which she refused on the pretext that she was minor and that her parents would also not agree to it. On the fateful day around 2.00 p.m. on 8.3.2006, they met each other. The appellant-accused took her to his aunt's house and forced her to marry him. However, she told him that neither she would marry him nor she wants to keep any relations with him in future. Whereupon, appellant accused got infuriated and tore her clothes. He, then sprinkled petrol upon her and set her on fire. She ran hither and thither to save her life. In that process, she fell on the sand lying in the vacant plot. In the meantime, large number of people, including her relatives, gathered at the spot and got her admitted in DMC Hospital, Ludhiana. On her refusal to marry him, the appellant-accused had set her ablaze by putting petrol on her.

4. Her above statement was read over to Saroj Rani and after admitted the same to be correct, she thumb marked the same. Since, from the above statement, offence under Section 376 IPC was found to have been committed, therefore, making his endorsement Ex. PH, SHO Gurpreet Singh sent the same to the Police Station for registration of a case through Constable Harjinder Singh. Whereupon, formal FIR Ex. PW6/C was recorded under sections 307 , 376 IPC. On the same day, SHO Gupreet Singh, Investigating Officer moved an application Ex. PJ to the Duty Magistrate, Ludhiana for recording the statement of Saroj Rani. Learned Judicial Magistrate Ist Class made her endorsement Ex. PW18/A thereon and reached DMC Hospital, Ludhiana. Making her another endorsement Ex. PW18/B, she sought opinion of the doctor regarding fitness of Saroj Rani to record her statement. The doctor Sh. Shivinder Sobti vide his endorsement Ex. PW18/C declared her fit to make statement.

5. Mrs. Rajni Chokra, Judicial Magistrate Ist Class, Ludhiana recorded the statement Ex. PW18/D of the injured Saroj Rani to the effect that on the fateful day i.e. 8.3.2006, after cleaning the utensils, she was coming from Tagore Nagar. Sonu also came and took her to his aunt's house. She did not know her aunt's name. Sonu sent his aunt to another house. Thereafter, Sonu and his elder brother Sunny committed rape upon her without her consent. Sonu asked her to marry him, but she refused. Then he slapped her and tore her clothes. He proclaimed that he was son of a Brahman and thus she should listen to him. On her refusal, he set her on fire with match sticks of match box after pouring petrol on her. She ran from the Mohalla. One Satwinder Singh of her village put sand on her. Some boys and her co-villagers took her to the hospital. Action may be taken against Sonu and his brother.

6. After recording the above statement of injured Saroj Rani, the learned Judicial Ist Class Magistrate obtained certificate Ex. PW18/E of the Medical Officer Dr. Shivinder Sobti to the effect that the patient had given statement to her in a fit state of mind and that throughout the period her statement was recorded, she remained conscious and fit. Doctor also certified that right thumb impression of foot of Saroj Rani was taken as both the thumbs of her hands were in badly burnt condition. At the bottom of the statement of patient Saroj Rani, learned Magistrate gave her certificate Ex. PW18/F that her statement was true and correct.

7. The Investigating Officer visited the place of occurrence and prepared the rough site plan Ex. PL. He also recorded the statement of Balwant Singh Ex. PB. Some burnt hair and clothes were collected and sealed in a parcel with the seal "GS" and were taken into police possession vide recovery memo Ex. PW6/D. The MLR Ex. PW9/A and its diagram Ex. PW9/B were obtained. On return, the case property was deposited with the MHC. On 9.3.2006, he recorded the statements under Section 161 Cr.P.C. of PW2 Manjit Kaur, PW6 ASI Satwinder Singh, PW1 Balwant Singh and PW4 Major Singh. The appellant was arrested in the early hours of 9.3.2006 from T-Point Jassian and produced before the Court. He prepared his arrest memo Ex. PW6/F and personal search memo Ex. PW6/E. Intimation memo Ex. PM was prepared apprising his arrest. On 14.3.2006, the Investigating Officer accompanying Ram Saran, Draftsman visited the place of occurrence and got prepared site plan Ex. PBBB. The parcels containing burnt pieces of brassiere and Salwar of deceased Saroj Rani along with six small parcels, sealed by the doctor with seal DMCH, Ludhiana, were taken in possession vide recovery memo Ex. PW6/H. However, during treatment, Saroj Rani died on 14.3.2006. Accordingly, a ruqa Ex. PP was sent by DMC Hospital, Ludhiana to the Police Station Division No. 8, Ludhiana giving information in this regard. Offence under Section 302 IPC was added. On receipt of this information, Gurpreet Singh, SI/SHO along with other police officials, reached DMC Hospital, Ludhiana. The dead body of the deceased was handed over to him on 15.3.2006. The inquest report ExPD was prepared. The statements of Gurdeep Singh father of victim Saroj Rani Ex. PE, Major Singh, Sarpanch Ex. PG and Lakhbir Singh Ex. PO were recorded. The dead body was handed over to ASI Satwinder Singh along with application Ex. PW5/B for the purpose of conducting the post mortem examination from Civil Hospital, Ludhiana. After doing the needful, the dead body was handed over to PW3 Gurdeep Singh vide receipt Ex. PF. On 18.3.2006, production warrants of the appellant-accused for his medical examination were got issued for 21.3.2006. Vide application Ex. PR, the appellant was medico legally examined vide MLR Ex. PS at Civil Hospital, Ludhiana. On 31.3.2006, all the parcels were sent to Chemical Examiner, Patiala for analysis. Report of FSL Ex. PU was obtained, whereby it was opined that the samples of hair of deceased Saroj Rani could not be compared on account of laxity of such amenity. On completion of investigation, final report under Section 173 CrPC under sections 302 , 201 , 376 IPC was filed into the Court against the appellant.

8. Copy of challan as envisaged under Section 207 Cr.P.C. was supplied to the appellant. Since, the aforesaid offences were exclusively triable by the Court of Sessions, therefore, the learned Judicial Magistrate First Class, Ludhiana committed the case to the Court of Sessions, vide his order dated 26.7.2006.

9. After hearing learned counsel for the appellant and learned Public Prosecutor, the learned trial Court, on finding a prima facie case, charge sheeted the appellants-accused under Sections 302 and 376 IPC vide order dated 31.8.2006. The prosecution in support of its case examined as many as twenty witnesses, namely, PW1 Balwant Singh, PW2 Manjit Kaur, PW3 Gurdeep Singh, PW4 Major Singh, PW5 Dr. G.P. Mangla, PW6 Sub Inspector Satwinder Singh, PW7 Head Constable Raj Kumar, PW8 Head Constable Sarpal Singh, PW9 Dr. Varinder Pal Singh, PW10 Head Constable Chamkaur Singh, PW11 Dr. Shivender Sobti, PW12 Sadhana Sharma, PW13 Head Constable Judge Singh, PW14 Investigating Officer Gurpreet Singh, PW15 Dr. Rajinder Kumar Mittal, PW16 Head Constable Ram Saran, PW17 Dr. Promila Jindal, PW18 Mrs. Rajni Chokra, JMIC, Nakodar, PW19 R.N. Pandey and PW20 Dr. U.S. Sooch and relied upon certain documents.

10. After closure of the prosecution evidence, the statements of the appellant under Section 313 Cr.P.C. was recorded, putting entire incriminating evidence brought on record against him to which, he denied and pleaded his innocence. He opted to lead evidence in his defence, but did not lead any.

11. After hearing learned Public Prosecutor for the State and learned counsel for the appellant, learned trial Court convicted and sentenced the accused vide impugned judgment of conviction dated 10.3.2012 and order of sentence dated 11.2.2012, in the manner, indicated above in the opening part of this judgment.

12. Learned counsel for the appellant-accused argued that the impugned judgment is based on surmises and conjectures. The learned trial Court has failed to appreciate that the deceased Saroj Rani had kept on changing her version. There are four different versions of the victim Saroj Rani on record. Thus, it was unsafe to base conviction of the appellant by treating the different versions of the deceased as her dying declaration. Her parents, namely, PW2 Manjit Kaur mother and PW3 Gurdeep Singh father, have turned hostile. PW1 Balwant Singh, her uncle, also did not toe to the line of the prosecution and turned hostile. Hence, the learned trial Court has illegally and wrongly convicted the appellant.

13. We have given our thoughtful consideration to the matter.

14. Before we deal with the matter further, we may first have to look at the various versions regarding alleged rape of the deceased Saroj Rani. Initially, the deceased in her statement Ex. PA recorded on 8.3.2006 by SI/SHO Gurdeep Singh stated that the appellant had developed illicit relations with her without her consent and was forcing her to marry him. This statement did not find mention of any rape with the deceased Saroj Rani by any one. While conducting her medico legal examination vide MLR Ex. PW9/A by Dr. Varinder Pal Singh, the

alleged history given by the deceased is that she was burnt by 2/3 persons after pouring petrol on her around 4.00 p.m. on 8.3.2006. This time too, she did not level any allegation of rape or illicit relations with her by anyone. Thereafter, on the very same day, when her statement was recorded by PW18 Mrs. Rajni Chokra, Judicial Magistrate Ist Class, Nakodar, the deceased came with entirely a new version Ex. PW18/D, that appellant accused Sonu and his elder brother Sunny had committed rape upon her without her consent.

15. The above three different versions of the deceased Saroj Rani creates doubt about the complicity of the accused and their number.

16. There is another glaring feature in the instant case that the parents of the deceased, namely, PW2 Manjit Kaur mother and PW3 Gurdeep Singh father have turned completely hostile and did not support the prosecution version. In their cross examination too, by learned Public Prosecutor, they did not tow the line of the prosecution. PW2 Manjit Kaur deposed that she was Member Panchayat of village Jassian having four children. Her eldest daughter deceased Saroj Rani aged 14 years was studying in 8th class. On the fateful day around 4.00 p.m. she had received telephonic message from an unknown person that her daughter was lying in a burnt condition in Sandhu Nagar. Before she reached the spot, many people had gathered there and taken her daughter to the hospital. She had not seen her lying in the area of Sandhu Nagar. Her daughter had not stated anything to her. Police had done nothing in her presence. In her cross-examination by learned Public Prosecutor, she denied having stated to the police that her deceased daughter had any illicit relations with the appellant-accused or that she had given any statement Ex. PC to the police and that she had stated to the police that the appellant-accused had committed rape upon her daughter and had her set ablaze by pouring petrol upon her, on her refusal to marry him. In her further cross examination by learned defence counsel, she deposed that she was not allowed to meet her daughter by the police. The doctor advised her to stay outside. The police obtained her signatures on two/three blank papers. After the occurrence, she came to know from the people that one Sonu of Bachittar Nagar had been pressurizing her daughter and he had also one brother named as Sunny. The police had detained that Sonu, but later on under pressure, it let off the actual culprit and did not investigate the matter in a fair and proper manner. She did not know the accused (appellant) present in the Court nor had she seen him earlier.

17. Similarly, PW3 Gurdeep Singh father of deceased Saroj Rani, too deposed that the accused was not having any intimacy with his daughter nor was he known to them. His daughter was burnt by one Sonu having a brother named Sunny, residents of Mohalla Bachitar Nagar. After the occurrence, the police had arrested the said Sonu, but later on he was let off for the reasons best known to it. At the time of admission of his daughter in the hospital, she was "unconscious". When SHO Gurpreet Singh reached the hospital for recording her statement, at that time also his daughter was unconscious. She never named the

accused (appellant) present in the Court having caused any burn injuries. He did not know as to on whose instance, the accused present in court was implicated in the present case. It is pertinent to mention here that the above deposition of PW3 Gurdeep Singh is contrary to the medical evidence, because in the MLR the deceased Saroj Rani has been shown as "conscious" and "fully responding".

18. PW1 Balwant Singh, grand-father of the deceased Saroj Rani, also turned hostile. In his examination-in-chief, he deposed that Saroj Rani daughter of his nephew Gurdeep Singh had got recorded her statement in his presence and she had thumb marked the same and it was also signed by him. This witness has gone to the extent of identifying his signatures on the statement of Saroj Rani Ex. PA. He also deposed that Saroj Rani was conscious at the time of recording her statement.

19. His above deposition is completely contrary to the deposition of PW3 Gurdeep Singh that his daughter was unconscious at the time of her admission in the hospital. More so, in cross examination, PW1 Balwant Singh made a summer sault by deposing that he had received information that daughter of his niece had set her ablaze. Before their arrival, Saroj Rani had already been shifted to the hospital by the police. When he reached there, Saroj Rani was in the emergency room. He did not meet her in the hospital, because the doctor did not allow him to meet her. Since, he was not permitted to meet her, so nothing was told by her to him. No statement of Saroj Rani was recorded in his presence. However, he had met the police outside the emergency. The police had obtained his signatures on three-four blank papers. When he reached at the spot, the people already gathered there had told him that Saroj Rani had set herself on fire. He had not given any statement to the police.

20. From the above depositions of three witnesses, it can safely be inferred that no statement of the prosecutrix was ever recorded in the hospital.

21. The things did not rest here. The prosecutrix in her initial statement Ex. PA, recorded by the Sub Inspector Gurpreet Singh, Investigating Officer, alleged that she was set on fire by Sukhvir Kumar @ Sonu (appellant-accused) after tearing her clothes. However, while conducting her medico-legally examination vide MLR Ex. PW9/A, she disclosed to the doctor that she was being burnt by two-three persons by pouring petrol on her. Thereafter, while recording her statement by the learned Judicial Magistrate First Class (Ex. PW18/D), she retracted from her above earlier versions.

22. Due to above major contradictions in the statements of the prosecutrix, it is quite difficult to ascertain that which one of her statements is correct. At the same time, her different versions at different times create dent in the prosecution story.

23. PW5 Dr. G.P. Mangla, Medical Officer, Civil Hospital, Ludhiana in his cross-examination deposed that whenever a burns patient is admitted in the hospital, generally I/B fluids, anti biotics, analgesics and local applications of anti septic

medicines are given. To combat pain some analgesic injections like fortwin or pethadine are given to the patient to relieve the pain. Whenever, these injections are given, patient generally gets sedated. When patient gets sedated means patient loose his/her consciousness.

24. From the above deposition of the doctor, it can safely be inferred that Saroj Rani at the time of giving her statement Ex. PA and Ex. PW18/D might be in sub conscious or in a semi conscious state of affair being under the influence of sedatives. In case titled Surinder Kumar Vs. State of Haryana, , the statement of deceased was recorded under the influence of fortwin and pethadine injections. In these circumstances, it was held that it cannot be accepted that the same was recorded in normal alertness. In the instant case thus, it is quite possible that any of the statement of deceased may not be true and correct to prove the prosecution case to the hilt.

25. In case titled Amol Singh Vs. State of M.P., , it has been held that if there are more than one dying declarations, they should be consistent and then only they can be relied upon. Since, in the instant case alleged dying declarations of deceased are not in conformity with each other, therefore, it is not safe to base conviction of the appellant-accused.

26. In case titled State of Punjab Vs. Parveen Kumar, , there were two dying declarations of the deceased. In first dying declaration, only husband was implicated, but in the second, all the family members i.e. parents, sister of her husband, were implicated. There was no corroboration available to any of the dying declarations. Hence, both the dying declarations were rejected and the acquittal of the accused was upheld. In the instant case, also as discussed above, there are different dying declarations of the deceased without any corroboration, as her parents and grand-father have turned hostile, therefore, the appellant-accused can rightly be acquitted.

27. In Criminal Appeal No. 2174 of 2009 titled "Upendra Pradhan v. State of Orissa" the Hon"ble Supreme Court has held that when two views can be culled out from perusal on the versions of law, the view which favours the accused should be taken. Since, in the instant case, when there is no definite evidence against the appellant-accused to prove his guilt, beyond any shadow of doubt, we feel that the learned Trial Court has wrongly convicted and held him guilty, more particularly, when prosecution witnesses PW2 Manjit Kaur and PW3 Gurdeep Singh, parents of the deceased, have deposed before the Court that actual culprit Sukhvir Kumar @ Sonu was resident of village Bachhiter Nagar, contrary to the residential address of the appellant-accused as of Anandnagar, near Civil City Police Station Haibowal Ludhiana.

28. Hence, it can safely be held that the prosecution has miserably failed to connect the appellant-accused with commission of crime by establishing his correct identity. In other words, the prosecution has failed to establish on record that the appellant-accused was the same person, who was named by PW2 Manjit

Kaur and PW3 Gurdeep Singh, parents of the deceased, as Sukhvir Kumar @ Sonu resident of Bachhiter Nagar.

29. No other point was urged before us.

30. In view of discussion above, the appeal is allowed and the appellant-accused is acquitted of the charges attributed to him by giving him benefit of doubt. The impugned judgment dated 10.02.2012 and order of sentence dated 11.02.2012 are set aside with the observation that the prosecution has miserably failed to prove its case against him.

31. The appellant if not wanted in any other case be set at liberty forthwith.