

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRIMINAL APPEAL NO. 227-SB OF 1989

Dalbir son of Harkesh, aged 21 years, Labourer, resident of Danda Kheri.

Versus

The State of Haryana.

Present: Shri K.S.Dhaliwal, Advocate, for the appellant.

Shri S.S.Goripuria, Deputy Advocate General,
Haryana, for the respondent-State.

R.S.Madan,J

1. The accused-appellant stands convicted and sentenced under Section 376 of the Indian Penal Code and was ordered to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default of payment of fine to undergo further rigorous imprisonment for two years, vide orders dated 24/ 27.03.1989, passed by learned Additional Sessions Judge, Jind. The appellant was further ordered to undergo rigorous imprisonment for a period of 2 years under Section 324 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. In brief, the prosecution case is that on 11.9.1988 at about 3 P.M. Smt.Saroj Devi (PW-7) daughter of Bhalle Ram, aged 20-21 years, a married woman, went to her fields for bringing a bundle of jawar and when she was cutting jawar accused Dalbir having a knife with him caught hold of her from behind and made her to prostrate on the ground and after breaking the string of the salwar, he gave two injuries on both of her hands and committed rape upon her against her wishes. During the process of committing rape he went on giving

blows with the knife on both the left and right side of her breast as well as in the middle of her breast just below neck and over her right loin. In total he gave 8 injuries. On hearing cries Smt. Sheela Devi, Kashmiri Devi and Sat Pal, were also cutting jawar in the nearby fields came to her help but seeing them, the accused managed to run away. Thereafter, the prosecutrix was brought home and there she narrated the incident to her parents and then she was brought to Civil Hospital, Jind where she was medico legally examined by PW-3 Dr. Mrs. Rita Garg who noticed as many as 7 injuries on her person. All the clothes of Smt. Saroj were soaked with blood. Public hair were matted and blood stained but no injury was present on the genitalia. The lady doctor took two vaginal swabs and sealed them with her seal in Phials and also prepared a parcel of salwar Ex.P-6, Shirt Ex.P-7 and Dupatta P-5 and sealed those with her seal. These articles along with copy of MLR Ex.PC were handed over to ASI Ram Dhan who had come to the Hospital on telephonic information sent by PW-1 Dr. C.L. Garg. After obtaining the opinion Ex.PB of Dr. C.L. Garg that the prosecutrix was fit to make the statement, the ASI recorded her statement and after making an endorsement Ex.PW11/A, thereon, sent the same to the police station where on the basis of the endorsement, FIR was registered under Sections 376 and 324 of the Indian Penal Code, by HC Balwan Singh. Then ASI Ram Dhan went to the village but on account of darkness, he visited the spot on the next morning along with the villagers and the eye witnesses, namely, Sheela Devi, Kashmiri Devi and Satpal. He prepared the visual site plan Ex.PT and took into possession broken pieces of bangles under memo Ex.PL attested by Satpal, Sheela and Kashmiri Devi Pws. The seal after use was handed over to Satpal. Thereafter, the ASI recorded the statements of Satpal, Sheela Devi and Kashmiri Devi. On 13.9.1988 the ASI got the place of occurrence photographed

from HC Raghbir Singh, police photographer. The photographs Ex.P-9 to P-14 and their negatives P-15 to P-20 were taken into possession. On that very day the accused was produced by his father and he was also got medico legally examined from Dr.C.L.Garg PW-1 at 5.15 PM. The accused was found to be well built and nourished and there was nothing to suggest that he was not able to do sexual intercourse. The doctor found a lacerated wound 1.5 cm x 2 cm on the palmer aspect of right hand in between thumb and index finger. Kurta Ex.P1 and the underwear Ex.P2 belonging to the accused were prepared in a parcel and handed over to the police. Copy of MLR of accused is Ex.PA. Kurta had blood stains. On 15.9.1988 accused made his disclosure statement Ex.PO in the presence of Jora Singh and Kali Ram that he had kept concealed the knife inside his residential kotha and could get the same recovered and in pursuance of that statement he got recovered knife Ex.P-8 of which sketch Ex.PP was prepared and after making it into a sealed parcel was taken into police possession vide memo Ex.PQ attested by Jora Singh and Kali. Visual site plan Ex.PV of the place of recovery was prepared. The parcels of clothes of the accused and the prosecutrix along with swabs and one plastic bangle belonging to the prosecutrix were sent to the Serologist who vide his report Ex.PV found Salwar, shirt , chuni and bangle belonging to Saroj Devi stained with blood stains. However, the underwear belonging to the accused did not have any blood stains and semen could not be detected on the salwar, lady shirt, chuni, vaginal swabs and the underwear. Vide report Ex.PW the Serologist found that blood was of human origin and of group A on the salwar, lady shirt, Chuni and bangle. On the kurta, the origin of blood was found to be human but blood group was inconclusive. Of course traces of blood were detected on vaginal swabs but blood could not be detected on account of in-sufficient material. On receipt of these reports from the

Serologist, challan was presented in the court. It is pertinent to mention here that the lady doctor sent her additional report Ex.PD on 14.9.1988 to the effect that there was one more injury on the person of Smt.Saroj and that injury was that there was a wrist drop on the left side.

3. On appearance of the accused before the learned Judicial Magistrate, the case was committed to the court of Sessions Judge, who in turn assigned the same to the Additional Sessions Judge, Jind.

4. The learned Additional Sessions Judge, Jind after going through the report under Section 173 Cr.P.C. and the material placed on the record, prima facie was of the view that a case under Sections 376 and 324 of the Indian Penal Code was made. Accordingly, charge was framed to which the accused pleaded not guilty and claimed trial.

5. In order to bring home the guilt of the accused, the prosecution has examined 11 witnesses.

6. PW-1 Dr.C.L.Garg telephonically informed the police of P.S.Jind regarding the admission of Smt.Saroj Devi in the Civil Hospital, Jind. On an application moved by the police he gave his opinion Ex.PB at 7.15 PM to the effect that she was fit to make the statement. This witness medico legally examined accused Dalbir at 5.15 P.M. on 13.9.1988 and found a lacerated wound 1.5 cm x.2 cm over palmer aspect of right hand in between thumb and Index finger. He submitted his report Ex.PA and handed over to the police the clothes of the accused after making them into a sealed parcel. He further stated that there was nothing to suggest that the accused was not able to perform the sexual intercourse. Smt.Saroj Devi was also admitted in the Hospital by this doctor.

7. PW-2 Dr.Gita Garg, medico legally examined the prosecutrix on

11.9.1988. She found 8 injuries on her person. 7 injuries were detected on 11.9.1988 whereas the 8th injury was detected by her on 14.9.1988. She sent the supplementary report Ex.PD. The witness did not find any injury on the genitalia of the prosecutrix. There was no internal injury in the uterus. Ex.PC is the copy of the MLR and Ex.PC/1 is the pictorial diagram showing the seat of the injuries. The witness opined that all the injuries on the person of the prosecutrix could have been caused with the knife Ex.P8 shown to her in the court. The witness admitted that the time written in the MLR is 6.40 PM but by making over-writing that had been changed to 7.10 P.M.

8. PW-3 Dalbir Singh, Draftsman prepared the scaled site plan Ex.PF of the place of recovery of knife on 5.10.1988. He also prepared the scaled site plan Ex.PG of the place of occurrence on 5.10.1988.

PW-4 HC Raghbir Singh took the photographs of the place of occurrence on 13.9.1988 and after developing he gave the photographs Ex.P9 to Ex.P14 with their negatives Ex.P15 to Ex.P20 to ASI Ram Dhan, which were taken into police possession.

9. PW-5 Constable Bahadur Singh is a witness to the taking into possession swabs, clothes, and other belongings of the prosecutrix., In the cross-examination this witness admitted that ASI Ram Dhan reached the hospital at 7 P.M. on 11.9.1988 and the statement of the prosecutrix was recorded at 7.15 P.M.

10. PW-6 Balwan Singh got the accused medico legally examined from Civil Hospital, Jind on 13.9.1988.

11. PW-7 is the prosecutrix. She narrated the incident in detail fully described in the earlier part of the judgment.

12. PW-8 Sheela Devi is one of the eye witnesses who were attracted

to the scene of occurrence. She stated that on hearing the cries of Saroj Devi, she along with Kashmiri Devi and Satpal reached at the spot and they saw the accused committing rape with the prosecutrix.

13. PW-9 Kashmiri Devi is also an eye witness and corroborated the case of the prosecution.

14. PW-10 Jora Singh is the witness to the disclosure statement made by the accused, during interrogation by the police on 15.9.1988 and the accused in pursuance of his statement got the knife Ex.P8 recovered from the pointed place.

15. PW-11 ASI Ram Dhan is the investigating officer. He also completion of all the formalities, presented the challan against the accused in court.

16. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and all the incriminating evidence against against him was put to him, to which he denied and pleaded false implication. He further stated that he was arrested on 11.9.1988 when he was sleeping in his house false implication.

17. In defence, the accused examined DW-1 Baljor Singh, Store Keeper, General Hospital, Jind, who brought the bed head ticket of Smt.Saroj and stated that the prosecutrix was admitted in the hospital on 11.9.1988 at 4.30 P.M with injuries on her person.

18. After going through the prosecution evidence and hearing the learned counsel for the parties, the learned Additional Sessions Judge passed the order of conviction and sentence, as already indicated above.

19. I have heard the learned counsel Shri K.S.Dhaliwal, Advocate, for the appellant and Shri S.S.Goripuria, Deputy Advocate General, Haryana.

20. At the very out-set, learned counsel for the appellant contended that from the facts and circumstances appearing in the case, no case under Section 376 of the Indian Penal Code, is made out against the accused. In support of his contention, reference was made to the report of the Serologist Ex.PB according to which no human semen's were found in the exhibits, which is reproduced as under:-

Laboratory Examinations

Laboratory examinations were carried out to detect the presence of blood and semen on the exhibits. Blood thus detected was further subjected to serological tests to determine its species of origin and group. Based upon these examinations, the results obtained have been analyzed as given below :-

1. i) Exhibit- 1a(salwar) and Exhibit 1-b (Lady's shirt) were stained with numerous large and small blood stains. Semen could not be detected on these exhibits.
- ii) Exhibit -1c (chuni) was extensively stained with blood. Semen could not be detected on this exhibit
2. Traces of blood were detected on Vaginal Swabs (Exhibits- 3 and 4). Semen could not be detected on these exhibits.
- 3.1) Exhibit -4a (kurta) was stained with a few small blood stains. Semen could not be detected on this exhibit.
- ii) Human semen was detected on Exhibit -4b(Underwear). Blood could not be detected on this exhibit.
4. Exhibit-5 (chhuri) was stained with blood stains on both the surfaces of its blade.

Note:-1) Result of serological analysis of blood are attached herewith.

2) After the examination, the exhibits along with their original wrappers have been sealed with the seals of AD/Serology/FSLH.

Sd/- K.P.S.Kushwaha) 30.1.1989.

21. The learned counsel for the appellant stated that so far as the

Ex.P1 to P-5 are concerned, no semen was detected on the clothes of the prosecutrix. Therefore, it is not a case of rape. So far as the Ex.P-1 and P-2 are concerned, human semen's were detected on the under-wear of the accused-appellant. The kurta was found to be stained with a few small blood stains. So far as the result of the Serologist in respect of Salwar is concerned, the same were stained with numerous large and small blood stains. Semen could not be detected on these exhibits. On Exhibit -1c (chuni) was extensively stained with blood of Group A. Semen could not be detected on this exhibit.

22. Learned counsel contended that in view of the report of the Serologist, it is not possible for an accused to commit rape as well as cause injuries to the prosecutrix with a knife. According to the prosecution story the prosecutrix was raped in a jawar field. She had resisted the attempts of the accused while committing rape but she did not suffer injuries on her back. Therefore, the story put forth by the prosecution is highly improbable and the same is not sufficient to record the orders of conviction and sentence in favour of the prosecution.

23. The learned counsel for the accused-appellant in order to get support of his contention placed reliance on Puttan Vs. State, 1972 Cri.L.J. 270. The authority cited by the learned counsel for the appellant is not applicable to the facts of the case in hand because in that case there was complete absence of any injury on the person of the accused and the prosecutrix, which shows that the prosecutrix in that case was a consenting party.

24. On the other hand, learned Deputy Advocate General, Haryana, Shri S.S.Goripuria, submitted that it is a case where the prosecutrix has not only suffered injuries at the hands of the accused but her modesty was also violated by the accused who in order to fulfill his lust for sexual intercourse had caused 8

injuries on the person of the prosecutrix, show that the prosecutrix was not a consenting party. It is not possible that a lady would come to open to put her honour at stake.

25. The evidence of the PW2 Dr.Geeta Garg, who medico legally examined the prosecutrix shows that there were 8 injuries on her person. It is not the case of the appellant that she suffered injuries of her own. As per the prosecution version as well as from the evidence of the eye witnesses, who were present near the place of occurrence, where the rape was committed upon the prosecutrix was having Jawar crop. It is more probable that the prosecutrix after suffering injuries at the hands of the accused with knife, she was not in a position to move. It was on this count that she did not suffer injuries on her back.

26. In this case it is proved from the evidence of PW-2 Dr.Geeta Garg that there were as many as 8 injuries on the person of the prosecutrix. She was shown the knife in the court, upon which she stated that the injuries on the person of the prosecutrix could be possible with that weapon. Further more, it is a case where the prosecutrix while appearing in the witness box in the cross examination specifically averred that while she was cutting jawar, two ladies and one Sat Pal were also cutting the Jawar Crop towards southern side of the field who on hearing the words Bachao Bachao, came there and on seeing them, the accused ran away. She further stated that it was on account of the injuries given by the accused on her hands, she was unable to resist the sexual assault by the accused.

27. No lady would ever involve her honour and modesty as it involves stigma to the family and also destroy her future prospects of married life. It was not suggested to any of the witnesses of the prosecution that the prosecutrix was a consenting party or that no rape was committed upon her.

28. After hearing learned counsel for the parties, I am of the view that the prosecutrix could not be taken to be a consenting party. She has supported the case of the prosecution after a lapse of 5 years from the date of incident i.e. 11.9.1988. Thus the brutal act of the accused has left a scar in her peaceful life which could not be washed away with the passage of time.

29. The other mitigating circumstance in the instant case is that the testimony of the prosecutrix has been fully supported by the other three eye witnesses, namely, Sheela Devi, Kashmiri Devi and Zora Devi, who were present in the nearby fields and were attracted to the scene of occurrence on hearing the raula raised by the prosecutrix.

30. All the eight injuries suffered by the prosecutrix during the course of sexual assault by the accused left a permanent scar on her person to remind her this ghastly act of the accused which she can never forget throughout her life.

31. Accordingly, I do not find any merit in this appeal and the same is hereby dismissed.

July , 2006.
Malik

(R.S.Madan)
Judge