

******* Vs. State of Haryana**

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Court : Punjab and Haryana

Decided On : Apr-09-2014

Appellant : *****

Respondent : State of Haryana

Judgement :

CRA-S-1660-SB of 2003 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRA-S-1660-SB of 2003 Decided on:-April 9th , 2014. Karan SinghAppellant. Versus State of HaryanaRespondent. CORAM: Hon'ble Mr. Justice Dr. Bharat Bhushan Parsoon. ***** Argued by:- Mr. Ashit Malik, Advocate for the appellant. Mr. Gurvinder Singh Sandhu, AAG, Haryana. Dr. Bharat Bhushan Parsoon, J.

1. This appeal is directed against judgment of conviction and order of sentence, both dated 30.8.2003 passed by learned Additional Sessions Judge, Rohtak, vide which accused-appellant Karan Singh(hereinafter referred to as accused) was held guilty in a complaint case committed by Additional Chief Judicial Magistrate, Rohtak vide order dated 6.5.2003 for commission of an offence punishable under Section 376 read with Section 511 of Indian Penal Code (hereinafter mentioned as IPC) and was sentenced as under: Offence Sentence In default Under Section 376 RI for four years and fine RI for one year. read with Section 511 of Rs.5,000/- IPC Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -2- It was also ordered that in case of realisation of amount of fine, a sum of Rs.4,500/- shall be given to the prosecutrix

after the decision of appeal or after the expiry of the period of limitation thereof, as the case may be.

2. The prosecution version briefly put is as under:- On 26.9.1998 Smt. Rajbala (complainant) along with Smt. Bimla, her nanand (sister-in-law) had gone to provide fodder to their cattle heads in their gher. Complainant Smt. Rajbala had proceeded to answer the call of nature in the nearby Keekar grove. Smt. Bimla had accompanied her. She was little ahead of her bhabhi. Accused Karan Singh had been following Smt. Rajbala. Finding her alone, he caught hold of her. He pounced upon her and gagged her mouth with his hands. He started pressing her breasts and giving a push threw her on the ground. Acting fast, he loosened the string of her salwar and ventured to violate her person by sexual intercourse with her. He could not complete the task as the victim had raised hue and cry for help, attracting Smt. Bimla and yet another lady Smt. Bala wife of Ramesh, on the spot. Accused then took to his heels. Matter was reported to the police but when no action was taken, criminal complaint was filed by Smt. Rajbala. After consideration of preliminary evidence led by the complainant, the accused was summoned to face his trial for commission of the offence punishable under Section 376 read with Section 511 IPC. Turning down plea of the accused that no offence under Section 376 read with Section 511 IPC was made out and further that only offence triable against him on the allegations of the complaint was under Section 354 IPC, the case of the accused was committed to the Court of Sessions vide order of 6.5.2003 of Additional Chief Judicial Magistrate, Rohtak. The accused thus faced trial for commission of the offence punishable under Section 376 read with Section 511, as per charge framed against him on 2.6.2003 by the trial Court. Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -3- 3. To substantiate its case, the prosecution had examined HC Har Gian (PW1), who proved FIR No.330 which was registered against the accused for commission of the offences punishable under Sections 354, 452, 323 and 506 IPC with regard to earlier incident of 27.5.1998. Smt. Rajbala(victim) was examined as PW2, Smt. Bimla(eye-witness) entered the witness-box as PW3. PW4 HC Bhup Singh proved daily diary report (Ex.PC) of 26.9.1998 stating further that accused Karan Singh on complaint of Smt. Rajbala was arrested under Sections 107 and 151 Cr.P.C. as well.

4. Though the accused in his statement under Section 313 Cr.P.C., wherein incriminating material having come in prosecution evidence was put to him, had taken up a stand that he was having physical relations with Smt. Rajbala for the last three years but when such fact became public and her husband and devar had come to know of it, under their pressure she got the case registered against him and had also filed complaint (Ex.PB) even further. The learned trial Court rejected this version and finding the prosecution case to have been proved against the accused, holding him guilty, convicted and sentenced him thereafter.

5. In this appeal impugning the judgment of conviction and order of sentence, it has been claimed that there is inordinate and unexplained delay in bringing the matter to the Court thus revealing that a false version has been fabricated subsequently to fix the accused. It is averred that occurrence is of around 1:00 p.m. of 26.9.1998, when the appellant was in custody in a case under Section 107 and 151 Cr.P.C. and had been produced by the police before the Executive Magistrate. Referring to documents Ex.DA to Ex.DC, in this context, it is claimed that the trial Court completely ignored this fact. Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -4- 6. Questioning approach of the trial Court in placing undue reliance on statements of PW2 Smt. Rajbala and PW3 Smt.Bimla, it is alleged that both these witnesses in addition to being closely related to each other are highly interested in success of their case and the learned trial Court did not notice material discrepancies and conflicting statements made by them while deviating from their original stand. It is claimed that their testimony is full of improvements on vital aspects rendering them unreliable. It is averred that contents of complaint made by Smt. Rajbala (PW2) had largely been disowned while disclosing that such complaint was written by some police official. It is pleaded by the appellant that it was merely to rope in the accused. Praying for reversal of the impugned judgment of conviction and order of sentence, acquittal for the appellant has been sought.

7. Hearing has been provided to the learned counsel for the parties.

8. Accused as also the complainant and eye-witness belonged to the same village. Though, the complainant had come to the Court with a specific date, time and

place of commission of the offence against her person by the accused which largely is supported by PW3 Smt. Bimla her nanand. Completely denying the same the accused had come with a bold assertion, which in his own hands (as is appearing in his statement under Section 313 Cr.P.C. recorded on 16.8.2003), is to the following effect:- I am innocent and have been falsely implicated in this complaint case. I was having physical relations with Rajbala for the last three years and was also having sexual relations with her. When my relations with Rajbala became public, and when her husband and Devar came to know about this fact, under their pressure she got first case registered against me and thereafter filed this complaint Ex.PB.

. Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -5- 9. To reveal that the complainant had been acting under pressure of her husband and her devar in implicating the accused, the accused has examined Ravinder Singh, an official from the office of DC Rohtak as DW1. From record brought by this witness, he had deposed that a case under Sections 107 and 151 Cr.P.C. had been lodged against the accused on 26.9.1998 which was decided on 11.7.2000. Copy of complaint is Ex.DE and of order is Ex.DD. Vide application (Ex.DC) the accused is shown to have been produced before the Executing Magistrate dealing with case under Sections 107 and 151 Cr.P.C. on 26.9.1998. Plea of alibi has also been taken by the accused claiming that in a case under Sections 107 and 151 Cr.P.C., he was attending the Court of Executive Magistrate at the relevant time on 26.9.1998 and thus could not have been present in the fields where the occurrence is alleged to have taken place.

10. When this defence evidence is evaluated in the interface of the oculatory and documentary evidence of the prosecution, there does not remain any doubt that occurrence is of 23.9.1998.

11. Battered and bruised as she was at the hands of the accused, complainant Smt. Rajbala on arrival of her husband (after getting information about the occurrence), to his residence, taking him along had gone to the police station with expeditious despatch where she was asked to put her grievance in writing. As

neither she nor her husband were literate, one police official had scribed the application for her but it was not read over to her thereafter.

12. Copy (Ex.DE) of said application has been produced by the accused himself in his defence. Reading of the same reveals that allegations therein to some extent are in conformity with the averments in complaint Ex.PB which forms genesis of the trial of the accused, but major details are missing. Only scanty details are incorporated in application Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -6- Ex.DE. Though, it is pointedly mentioned in Ex.DE that when the complainant had gone to ease herself behind her plot in a secluded place after providing fodder to the cattle, finding her alone the accused had grappled with her and had ventured to juxtapose himself with her with fulfilment of his sexual desire as the end but neither the complete texture of the occurrence nor temperament of the event was fully detailed by its scribe in application Ex.DE. From the perusal of Ex.DE, it further transpires that it had been drafted casually.

13. When we move a little further to evaluate the action taken by the police on application Ex.DE, it becomes evident that seriousness as also intensity of application Ex.DE, even with scanty details whatsoever were available therein, was considerably diluted by the police and only 'calender' for security proceedings under Sections 107 and 151 Cr.P.C. was filed before the Executive Court. The accused was not even arrested for three long days and was produced in the Court only on 26.9.1998 and was then immediately released on bail. Proceedings thereof culminating in order Ex.DD of 11.7.2000 reveal that Executive Magistrate, Rohtak dealing with the case had also not taken it with the concern and attention the proceedings therein deserved and merely noticing that there was no appearance of the accused for sufficiently long time i.e. for more than one and half years and that on 11.7.2000 the complainant was also not present, the proceedings were closed, consigning the case to records.

14. When we appraise approach of the police to the entire issue, it becomes evident that issue did not engage the attention of the police, it deserved. Relevant portion of statement of the victim (PW2) in this context is re-produced as below:-

My husband has gone on Labour chowk and on his arrival in the evening, I alongwith my husband went to Police Post. Police personnel did not pay any heed to my complaint. One Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -7- person was standing outside Police Post, he scribed my application as I and my husband are illiterate. Then I came to Police Post Old Subzi Mandi. That application was scribed at my instance but when it was completed, it was not read over to me. He told me that he had recorded the contents, which were stated by me to him. When accused was not arrested, then I filed the complaint in Court which is Ex.PB and it bears my signature.. 15. In this context the victim is fully supported from eye-witness Smt. Bimla(PW3). Despite pointed cross-examination effected on these witnesses, nothing destroying their credit, despite the fact that both are illiterates, has emerged. Rather it has been noticed that mere the cross examination became scrutinizing and grilling on these witnesses more transparently and vibrantly has emerged the case of the prosecution; its innocent contours are also noticeable. In addition, it has also become evident that by giving completely a different colour to the entire controversy firstly by not recording complete details and secondly by devastatingly underplaying it, the police had done extreme harm to the cause of the victim. Had the victim not filed complaint Ex.PB, the things could have gone as the police way reflected in Calendera Ex.PB and order Ex.DD thereon.

16. It is clear that the defence has tried to take undue advantage of the fact of inadvertent wrong mentioning of date of occurrence in the complaint as also in her statement by the victim as 26.9.1998 instead of 23.9.1998.

17. With the evaluation of the chain of events, things have been put in proper perspective by the documentary evidence produced by the accused himself in his defence. Co-joint reading of the said documentary evidence in defence with oculatory account of the prosecution makes is patently clear that the occurrence is of 23.9.1998. Thus production of accused before the Executing Magistrate on 26.9.1998 whereas the occurrence is of 23.9.1998 does not to give any fillip to the defence version Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -8- that since he was in custody, at the relevant time, he could not have been present in the fields at 12:00

noon which is the time of occurrence.

18. So far as reliability of testimony of the victim and of other eye-witness is concerned, it has been vociferously challenged by the defence. In this regard, it is to be mentioned that victim of a sexual offence is more in the nature of an injured. As in a case of fight, she is also a labeled witness with the wounds of violation of her person. At this stage reference may be made to statement of the victim made during the trial. Relevant portion of the same is as under:- I had gone to our plot to serve fodder to cattle. After serving the cattle, I alongwith Bimla had gone to ease ourselves behind our plots. When I was to take position for easing and had not untied string of my salwar, accused Karan Singh came and grappled with me. I was made to lie on ground by him. String of my salwar was opened and he committed sexual intercourse with me. During the struggle, my bangles were broken. I raised hue and cry, which attracted sister of my husband namely Bimla. On seeing her, accused fled away from the spot. Bala also accompanied Bimla to the spot. Bala was also easing near Bimla. I was brought to my house by Bala and Bimla.. 19. Very close and subtle cross-examination was effected on this witness but she very innocently but effectively has countered the same. It would be of avail in this regard to refer to a portion of her cross- examination, which is as under:- It is correct that my statement was recorded before Magistrate, I have mentioned in my complaint Ex.PB as well as before the Magistrate on 12.11.1998 that accused opened the string of my salwar and committed sexual intercourse with me (confronted with both, where it is not so mentioned). In complaint Ex.PB it is mentioned that string of my salwar was opened and Bura Kaam Karne ke Lie Jabardasti Karne Laga. In her statement dated 12.11.1998, it is mentioned that after opening the string of salwar, he fell upon me, caught hold the teats and thrown me on ground and he laid down upon me, for committed rape (Self stated that accused had not completed Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -9-sexual intercourse but had touched my private parts). He could not complete sexual intercourse.. 20. Plea of the accused that no reliance can be placed on statement of Smt. Rajbala as she is not an eye-witness is also of no merit. In this context again there is need to make reference to a portion of cross- examination of Smt. Rajbala(PW2) which reads as under:- Bimla and Bala enquired from me

about the incident and they saw accused fleeing away, and I narrated about the incident to them, on their asking.. 21. From this part of cross-examination of the victim, it is manifest that Smt. Bimla had witnesses the accused while he was lying on the victim and was in the process of sexually squeezing her. No doubt on seeing Smt. Bimla and yet another lady Smt. Bala arriving near him, he had made his escape but the accused had duly been seen in the posture when he was attempting to rape the victim and when she was resisting such attempt and in such resistance she had received few injuries on her wrist due to breaking of glass bangles which she was wearing.

22. At this stage relevant portion of statement of Smt. Bimla(PW3 - eye-witness) is being given as under:- I alongwith Rajbala went to ease in Gitwar behind our gher. Bala met us there. I and my Bhabhi took separate positions for easing. There was gap between me and Rajbala. On hearing cries of Rajbala,I and Bala reached the spot and found Karan Singh lying on her. Rajbala was naked at that time. On seeing us, he took on his heels, holding his pyjama.. 23. Even in her case, cross-examination by the defence instead of diluting her credit even a little, has helped the prosecution case. Relevant portion of her cross-examination in this context is as under:- I and Bala reached to Rajbala simultaneously. On seeing us, when we were very close to Rajbala, accused ran awy. Salwar Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -10- was not completely removed but it was removed partially from the upper portion. I had stated in my statement dt.12.11.1998 that Rajbala was naked (confronted with statement dt.12.11.1998 where it is not so specifically mentioned. However, it is mentioned that salwar of Rajbala was opened and string had also been untied,and accused was trying to do bad work).

24. At this stage in addition to sustaining and strengthening of the ocularatory action by documentary evidence produced by the accused himself in the nature of application Ex.DC, calender Ex.DB and order Ex.DD, it is worth notice that the accused was relentlessly following the victim to destroy privacy and sovereignty of her person, notwithstanding the fact that the accused was married and had three children out of whom two were daughters. Victim is also a married lady having three grown up daughters.

25. This is second attempt of the accused to sexually violate person of the victim. Even earlier he had trespassed into the house of the victim. He had outraged modesty of the victim and FIR (Ex.PA) of 27.5.1998 under Sections 354, 452, 323 and 506 IPC is pending against him and he is facing trial. There is unassailed testimony of the victim that even after registration of the said FIR, the accused had been threatening her to withdraw her case and even been sending her panic signals asserting that she would not be left by the accused.

26. If we go by the defence version brought in evidence, it also becomes evident from Calender (Ex.DB) that when the victim had gone to parents of the accused asking them to put him on the right track, they being of higher caste had not only moved forward towards her pouncing upon her to physically harm her but had even threatened her that she would not be able to save herself from sexual exploitation at their hands. Despite the fact that her helplessness had been noticed in application Ex.DC as also in 'calender' Ex.DB, even though only scanty facts had been given therein, Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -11- the police had side-tracked the issue and dwarfing the seriousness of the offence as also of the facts whereby that one sided engine of oppression had been let loose by the higher caste accused and his family against her and when she had specially mentioned that no one was coming forward to help her she being of lower strata, nothing suitable or commensurate was done by the police. All such aspects have been dealt with in detail by the trial Court and learned defence counsel has not been able to ward off evil affect thereof the appellant. There are categorical findings of the learned trial Court against the appellant.

27. Delay in lodging the FIR which has repeatedly been hinted at by the appellant is not fatal to the case of the complainant because the delay has been very clearly and expressly explained by the victim and such explanation has even rightly been accepted by the trial Court. If we examine the chain of events it is rather found that in fact there has been no delay. On the date of occurrence itself i.e. 23.9.1998, on arrival of her husband the victim had approached the police wherein her allegations in the application had not been recorded completely and when she had found that no action was being taken by the police and the matter had not been

approached with seriousness it deserved, then she had filed the present complaint Ex.PB. Relevant portion of cross-examination of the victim for ready reference is reproduced as under:- After 15-20 days after the occurrence, I came to know that police is not taking action against the accused. During this period also, accused used to threatened me. I went to the police 3-4 times to complain but I was not heard.. 28. This case rather brings to the fore not only the twisted approach by the police in having given low profile effect to the sensitive issue of attempted rape on the victim of a caste lower than that of the accused but also reveals the arrogant and egoistic approach of the accused, who despite being an accused in yet another case registered against him at Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1660-SB of 2003 -12- the instance of the victim qua her alleged molestation, had been incessantly following her to destroy her moral and sexual integrity and had been proclaiming that he was having sexual relations with her for the last three years but she was under pressure of her husband etc. and hence they were getting him arrested. The defence has not been able to substantiate his plea at all. Rather, the prosecution has been able to substantiate the charge against the accused to the hilt. There being neither factual nor legal error in the impugned judgment and appeal of the accused being devoid of any merit, affirming the impugned judgment, the appeal is dismissed.

29. However, challenge to the order of sentence is concerned, the learned trial Court has already been very considerate towards the accused keeping in view the large family responsibilities and aged parents and had sentenced him to rigorous imprisonment only for a period of 4 years for commission of the offence punishable under Section 376 read with Section 511 IPC. Notwithstanding the fact that the accused is facing trial since long and now is in appeal but there are no signs of any remorse with the appellant, there is thus, no ground of reduction of sentence.

30. Per records, Karan Singh, appellant was released on bail by this Court during the pendency of the appeal vide order dated 30.07.2004. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith. The period for which the appellant had remained in custody shall be set off. (Dr. Bharat

Bhushan Parsoon) Judge April 9th , 2014 Brij 1. Whether Reporters of local papers may be allowed to see the judgment?. Yes 2. Whether to be referred to the Reporters or not?. Yes 3. Whether the judgment should be reported in the Digest?. Yes Mohan Brij 2014.04.10 15:35 I attest to the accuracy and integrity of this document Chandigarh

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