

Sanjay Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Jan-27-2005

Reported in : 2005CriLJ2703

Judge : V.K. Bali and; Nirmal Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 328; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 200-DB of 2003

Appellant : Sanjay

Respondent : State of Haryana

Advocate for Def. : Sanjay Vashisht, Sr. DAG

Advocate for Pet/Ap. : R.S. Cheema, Sr. Counsel and; M.S. Sidhu, Adv.

Disposition : Appeal allowed

Judgement :

Nirmal Singh, J.

1. This appeal has been filed by the appellant against the judgment and order 12/14-2-2003 passed by learned Sessions Judge, Bhiwani, vide which he was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.

3000/-. In default of payment of fine, he was further sentenced to undergo R. I. for nine months under Section 302, IPC. He was also convicted and sentenced to undergo R.I. for four years and to pay a fine of Rs. 1000/-. In default of payment of fine, he was directed to undergo R. I. for six months under Section 328, IPC. However, both the sentences were ordered to run concurrently.

2. The case of the prosecution is that on 14-1-1999 at about 8.30 p.m. Sada Ram and his brother Prithvi were watching television. Wife of Sada Ram told him that Babli, his daughter, had gone to tie the he-calf and had not returned. Sada Ram searched for Babli here and there. Then he heard a noise from the roof. He went there and saw that Sanjay had gagged the mouth of Babli with his hand while she was trying to free herself. Sada Ram got released Babli from the clutches of Sanjay. In the meantime, Prithvi also came there. Sanjay ran away from the spot. They brought Babli down-stairs. She complained of vomiting. When they enquired from Babli that what happened, she told that Sanjay wanted to commit rape on her. but when she resisted, he forcibly put a sulphas tablet in her mouth and pressed her mouth, due to which some part of it went inside her stomach and some part was visible in the vomiting. When the condition of Babli became serious, Sada Ram along with Sube Singh, Bahadur Singh and Rati Ram took her to the hospital in a private car and got her admitted but during treatment, she breathed her last. On receipt of information. ASI Hari Chand went to General Hospital. Charkhi Dadri and recorded the statement of Sada Ram, Ex. PK, on the basis of which formal FIR Ex. PK/1 was recorded.

3. The accused surrendered in the Court on 9-2-1999. He was interrogated by PW-15 SI Sube Singh on 10-2-1999. On interrogation, he made a disclosure statement, Ex. PT, that he had kept concealed a tablet in Dibi in his residential house and could get the same recovered. The said statement was attested by PWs. In pursuance of disclosure statement, the accused led the police party to the place of disclosure and got recovered the celphos tablet, which was taken into possession vide recovery memo Ex. PU.

4. After completion of investigation, challan against the accused was presented and he was charge-sheeted under Sections 302 and 328, IPC, to which he

pleaded not guilty and claimed trial.

5. To prove the case, the prosecution examined PW-1 Roshan Lal, PW-2- Dr. U. S. Disodia, who medically examined Babli daughter of Sada Ram, PW-3-Dr. Rajiv Sain, PW-4 Constable Virshakti Singh, draftsman, PW-5 Constable Vikram Singh, PW-6-Moharrir Head Constable Siri Ram, PW-7-UGC Karan Singh, PW-8-Constable Jag Ram, PW-9 Head Constable Siriom, PW-10 Dr. Anil Chaudhary, PW-11 Sanjiv Kumar, PW-12 Sada Ram, complainant, PW-13-Prithvi, PW-14 Assistant Sub Inspector Hari Charan Singh and PW-15 Sub Inspector Sube Singh.

6. The accused was examined under Section 313 Cr. P. C. to explain the incriminating circumstance appearing in the prosecution evidence. He pleaded innocence and alleged false implication due to party faction in the village.

7. When the accused was called to lead evidence in defence, he examined DW-1 Sube Singh and DW-2 Tara Chand Lamba.

8. The learned trial Court, after hearing the defence counsel and learned PP for the State found the appellant guilty and convicted and sentenced him vide judgment and order dated 12/14-2-2003 as stated in paragraph 1 of the judgment, against which the present appeal has been filed.

9. Mr. Cheema, learned Senior counsel for the appellant, challenged the conviction and sentence of the appellant on the ground that the learned trial Court has not appreciated the evidence on record in its right perspective. He submitted that there was a delay of more than 15 hours in lodging the FIR, for which no plausible explanation has been given and which should prove fatal to the prosecution case.

10. He further submitted that the story put forth by the prosecution is most improbable. He contended that as per PW-12 Sada Ram, his wife informed him that his daughter had gone to tie the he-calf in the cattle shed and had not returned. He pointed out that as per the site plan, Ex. PG, cattle shed is far away from the residential portion of the house of Sada Ram. Further as per the site plan, there is a boundary wall and the stair-case is inside the house in front of the

Veranda towards the south while the kitchen of the house is towards the west near the Veranda. He contended that if Babli was inside the house itself and the other family members were also present, then it is not believable that the appellant would forcibly take her on the roof of the house through stairs. Moreover, there is no explanation of the prosecution that how the deceased had reached on the roof whereas she had gone to tie the he-calf in the cattle shed, which was on the ground floor.

11. He further submitted that there are material discrepancies in the statements of PW-12 Sada Ram and PW-13 Prithvi, eyewitnesses of the occurrence. He contended that DW-1 Sube Singh and DW-2 HFO Tara Chand Lamba were called by PW-12 Sada Ram to his house and he disclosed to them that his daughter had consumed some poisonous substance but he did not disclose that the appellant had made an attempt to outrage the modesty of his daughter and when she resisted, he forcibly put a sulphas tablet in her mouth. He further contended that DW-1 also accompanied deceased Babli to Civil Hospital, Charkhi Dadri and she was conscious at that time. However, she did not disclose anything with regard to forcible administration of sulphas tablet by the appellant. He contended that Babli was conscious and she did not make any statement before the doctor that the appellant had tried to outrage her modesty and on her resistance, he forcibly put some poisonous substance in her mouth. He also contended that under these circumstances no reliance can be placed on the testimony of Sada Ram and Prithvi. He further pointed out that as per the medical evidence, deceased Babli did not receive any injury on her person. If the appellant had tried to forcibly put the celphos tablet in the mouth of Babli, then there must have been some mark of injury either on her mouth or any other part of body. He also pointed out that it was a case of suicide, which has been converted into a case of homicidal death by Sada Ram in connivance with the police as he might have been suspecting that his daughter had illicit relations with the appellant.

12. On the other hand, Mr. Sanjay Vashisht, learned Sr. Deputy Advocate General, Haryana, contended that there is no previous enmity between the appellant and Sada Ram to falsely implicate him in this case and that too at the cost of honour of his daughter. He also contended that PW-12 Sada Ram and PW-

13 Prithvi were illiterate villagers, therefore, minor discrepancies are bound to occur in their statements, which were being recorded after a long gap. He further contended that delay itself had been fully explained as Babli was in serious condition and after the incident, the first priority of Sada Ram was to save the life of his daughter and not to lodge the report.

13. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and carefully gone through the record.

14. It is settled proposition of law that the case of the prosecution cannot be thrown out simply on the ground that there is a delay in lodging the FIR but it puts the Court on its guard to look for the possible motive and explanation for the delay and consider its effect on the truthfulness of the prosecution witnesses. In the case in hand, when the evidence of PW-12 Sada Ram and PW-13 Prithvi is scanned carefully, it is established that delay was utilised by the prosecution to concoct a false story and rope the appellant in this case.

15. We have minutely examined the scaled site plan placed on record by the prosecution as Ex. PG. As per the site plan, Sada Ram is having a common wall with Hukam Chand on the ground floor. Three residential rooms have been constructed by the side of that common wall. In front of two rooms, there is Veranda and in front of third room, there are store and stairs. Further, in front of Veranda, there is a courtyard and after crossing it towards west, there is a kitchen. In front of the house, there is a cattle shed and on the eastern side, there is a bath room. As per the prosecution case, he-calf was tied at point B, which is inside a room towards the west. He-calf was to be tied in the cattle shed, which is in front of the house. The house of Sada Ram is having a boundary wall. The further case of the prosecution is that the appellant had taken Babli from Point D to Point A (roof) forcibly. As per the site plan, the distance from the cattle shed to staircase up to point D is about twelve and a half meters. The stairs are inside the boundary wall of the house of Sada Ram.

16. The story put forth by the prosecution that the appellant had forcibly taken Babli at the roof is liable to be rejected out-rightly as after tying the he-calf, Babli had to come towards the residential portion and not towards the stairs. If the

appellant had caught hold of Babli near the cattle shed, then on raising alarm by her, Sada Ram and his other family members, who were present at house, must have heard her shrieks and he could be caught there and then. When Mr. Sanjay Vashisht, learned Senior Deputy Advocate General, was asked to explain that as to how the deceased had reached on the roof while she had gone to tie he-calf in the cattle shed, which was on the ground floor, he could not give any answer to this query of the court. A close scrutiny of the site plan depicts that it is all a made up story to falsely implicate the appellant in this case.

17. Further PW-12 Sada Ram deposed that when Babli was brought down from the roof, she disclosed in the presence of PW-13 Prithvi that appellant attempted to outrage her modesty but when she resisted, he forcibly put the celphos tablet in her mouth. We are unable to accept the version of the prosecution as there are not only material discrepancies, but improvements have been made by the PW-12 Sada Ram and PW-13 Prithvi in their statements. PW-12 Sada Ram, in his statement, deposed that at about 8.30 P. M., all the family members were watching television and he was sleeping on the cot but he was confronted with his statement Ex. PK, where it was not so recorded. He also deposed in his statement before the court that he reached Civil Hospital, Dadri, in a separate vehicle. He was confronted with Ex. PK where it was not so recorded. PW-12 deposed that when he went out in search of Babli, then he noticed some noise from the roof. He climbed over the roof and saw Babli in the grip of the appellant who had gagged her moth with his hand. He saved Babli from the clutches of the appellant, who ran away from the spot by pushing him. In the meantime, Prithvi, his brother, also reached at the place of occurrence. However, PW-13 Prithvi deposed that there was an altercation between him and the appellant and he grappled with him. The family members of the appellant also arrived at the place of occurrence, who caught hold of him and the appellant was allowed to escape. PW -13 further stated that the appellant was lying upon Babli and he had pressed her mouth with his hand. He was confronted with his statement Ex. DA where it was not so recorded. Before the police also, he had stated that there was a scuffle with the appellant. He was confronted with the statement Ex. DA where it was not so recorded. He also stated to the police that the family members of the appellant intervened and they separated them. He was confronted with statement Ex. DA where it was not

so recorded. He also deposed that he managed a car to take Babli to the hospital. He was confronted with his statement, Ex. DA where it was not so recorded. He also stated that he lifted Babli from the house and took her up to the car. Confronted with his statement, Ex. DA, where it was not so recorded. These improvements and contradictions have been brushed aside by the learned trial Court by observing that the contradictions are minor in nature whereas these contradictions are not minor rather the same go to the root of the case to prove the fact that the occurrence had not taken place as alleged by PW-12 Sada Ram and PW-13 Prithvi.

18. Not only this, the versions of PW-12 Sada Ram and PW-13 Prithvi are also contradictory to the medical evidence. Both PW-12 and PW-13 deposed in their statements that the appellant had forcibly put the poisonous substance in the mouth of Babli. As per the medical evidence given by PW-2 Dr. U. S. Disodia, who had medically examined deceased-Babli, had not deposed that there was any mark of struggle or injury on the person of Babli alias Baby. The version as given by PW-12 and PW-13 is also not acceptable on the ground that both of them had deposed that when they reached at the roof, the appellant was lying on Babli alias Baby. Therefore, neither there was any time for the appellant to forcibly put some poisonous substance in the mouth of Babli nor they would allow him to do so. The version of the prosecution is also improbable because there was not occasion for Babli to go to the roof.

19. PW-11 Sanjiv Kumar is the neighbour of Sada Ram. He was owning a car. Admittedly, in the said car Babli was removed to Civil Hospital, Charkhi Dadri. He deposed that in the car, Sada Ram, Sube Singh, Rati Ram and Bahadar Singh also accompanied him. In cross-examination, Sanjay Kumar admitted that Sada Ram was his brother from brotherhood. He further deposed that when he was taking Babli to Dadri, he stopped at Loharwar as she wanted to ease out. The said version, as given by PW-11, is fully corroborated by DW-1 Sube Singh, who accompanied them in the car. He deposed that on 11-1-1999 around 10 p.m. during night Sada Ram called him to his house. When he reached there, he disclosed that his daughter Babli had consumed some poisonous substance. At that time, Rati Ram, Bahadar and other family members of Sada Ram were

present. He advised Sada Ram to take Babli at Primary Health Centre in Village Achiana for treatment on which Sada Ram pointed out that he would take Babli to Civil Hospital at Dadri as there was no proper arrangement for treatment in the village Hospital. Thereafter, he along with Sada Ram, Rati Ram and Bahadar took Babli in the vehicle to Civil Hospital, Charkhi Dadri. PW-11 was driving the car. He further deposed that at that time Sada Ram had not disclosed him any reason for consuming the poisonous substance by Babli. DW-2 Tara Chand Lamba also corroborated the version given by DW-1 Sube Singh. He deposed that Sada Ram disclosed them that Babli had taken some poisonous substance. If the occurrence would have taken place as per the version of PW-12 and PW-13, then they must have disclosed the same to PW-11 Sanjay Kumar, DW-1 Sube Singh and DW-2 Tara Chand Lamba. The learned trial Court in a whimsical manner discarded the evidence of DW-1 and DW-2 while ignoring the fact that they were not having enmity either with the complainant nor were related to the appellant. Rather, the evidence on record shows that DW-1 Sube Singh and DW-2 Tara Chand Lamba were close to the complainant. Even the learned trial court has observed that they were not present at the time of occurrence but subsequently appeared on the scene. The evidence of prosecution witnesses and defence witnesses stand on equal footing. No premium is to be given to the prosecution witnesses. If the evidence of defence witnesses is truthful and worth reliable, then reliance should be placed on the same. The defence evidence should not be discarded simply on the ground that they were appearing in defence. Both the DWs were cross-examined at length but the prosecution failed to make any dent in their evidence. After appreciating the evidence on record, it is established that both the witnesses were called by Sube Ram but he did not disclose them that the appellant had tried to outrage the modesty of his daughter.

20. After appreciating the evidence, we have no hesitation to say that the First Information Report is the result of embellishment and a creature of an afterthought. There are material contradictions and improvements in the statements of PW-12 Sada Ram and PW-13 Prithvi. The contradictions and improvements in the statements of PW-12 and PW-13 as pointed out in the earlier part of the judgment would not occur even if they were examined after a long gap. The learned trial Court was palpably wrong in appreciating the evidence on record

and convicting and sentencing the appellant on the basis of conjectures and surmises.

21. For the reasons recorded above, judgment of conviction and order of sentence recorded by learned Sessions Judge, Bhiwani, dated 12/14-2-2003 is set aside and the appeal is allowed. The appellant be set at liberty forthwith, if not required in any other case.

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