

Balbir Singh Vs. State

Balbir Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/697000

Court : Delhi

Decided On : Feb-15-1996

Reported in : 1996IIAD(Delhi)528; 1996CriLJ2403; 61(1996)DLT727;
1996(37)DRJ35

Judge : P.K. Bahri and; Mohd. Shamim, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 157 of 1992

Appellant : Balbir Singh

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Rakesh Luthra,; R.M. John,;

Judgement :

P.K. Bahri, J.

(1) The appellant-Balbir Singh has been convicted of offences punishable under Section 366 and 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000.00 and in default of payment of fine to undergo simple imprisonment for one year on the first count and to undergo imprisonment for life and to pay fine of Rs.10,000.00 and in default of payment of fine to undergo simple imprisonment for one year on the

second count vide judgment and order dated August 7, 1992, by an Additional Sessions Judge, Delhi. He has come in appeal challenging his conviction and sentences.

(2) Facts of the case, in brief, are that PW4 Mehar Singh with his wife PW5 Sarupi were at the relevant time living in Railway Colony, Vasant Road. PW3 young girl then aged about 7 years, who is the grand-daughter of PW4 Mehar Singh, was living with them. Appellant was living in the neighborhood in Quarter No-195/C-I, Railway Colony, Vasant Road. It is the case of the prosecution that on June 1

(3) It appears that due to injuries caused to her vagina the girl developed septicemia requiring treatment and she was taken to Kalavati Saran Child Hospital on July 8, 1983 and she was examined by Dr.Sharda Jain PW11 who prescribed certain medicines as per prescription slip Ex.PW11/A. It is recorded in the prescription that the child had been assaulted. Mehar Singh then thought of taking up the matter in the brotherhood as the appellant and Mehar Singh belong to same brotherhood. Admittedly the appellant was resident of Village Dhaani Mir Dad, District Hissar. Mehar Singh is stated to have taken her little child to the respectable persons of brotherhood in that Village who then met as a Panchayat and after hearing the narration of facts from Mehar Singh and the little girl and also giving chance to explain the position to appellant's father Mangat Ram, they came to the conclusion that appellant had committed rape and proposed a punishment of blackening the appellant's face and then for taking him around in the village which punishment was not acceptable to appellant's father. Thus, they prepared document Ex.PW7/B in this connection on July 12, 1983 and as the punishment was not agreed upon by the appellant, they prepared letter Ex,PW7/A addressed to the Gram Panchayat of Garnothi, District Rohtak, to which village Mehar Singh belonged, recommending that the suitable action may be taken against the appellant in accordance with law. PW7 Phoola Ram, PW8 Parbhati and PW10 Parkash are the witnesses of the said village who were examined to prove these facts. Mehar Singh then decided to take up the matter with the police and on August 6, 1983, he made his statement Ex.PW4/A before Si Ramesh Chang Garg PW15 and Fir, copy of which is Ex.PW12/B, was registered. PW3 little girl was sent for medical examination and she was first taken to Dr.D.D.Khetarpal, PW2,

who referred her to Lnjpn Hospital as there was no lady doctor present in the Police Hospital at that time and he prepared his report Ex.PW2/B and thereafter the girl was medically examined by a lady doctor on that very day as per medico legal report Ex.PW6/A. The record clerk of the said hospital Shri K.K.Chhibber PW6 proved the report to be in handwriting and signed by Dr.Behl. Dr.Behl was not examined as her present address could not be found out. Document Ex.PW6/A shows that the patient, who is said to be victim of having been subjected to rape by Balbir Singh, was having history of mucus discharge from her private parts for the last one month or so and she also found that pus discharged was present from urethra and hymen stood torn and no fresh bleeding was present but vaginal introits was found inflamed. Slide was also made of pus discharge coming from introits.

(4) The learned Additional Sessions Judge has brought home the offences to the appellant in placing implicit reliance on the testimony of the little girl corroborated by testimony of the grand parents and supported to some extent by the medical report.

(5) It has been urged by the learned counsel for the appellant that the charges against the appellant were not at all stood established in any manner inasmuch as there has been unexplained and undue delay made by the grand-parents of the little girl in reporting the matter to the police and they themselves have been instrumental in destruction of the material evidence like blood stained underwear of the little girl by washing it out and not producing the same before the police. It is also urged that the statement of Mehar Singh, grandfather, was full of contradictions as he wanted the court to believe that in order not to give any publicity to the plight of his little girl and to save her honour he had not thought fit of raising the issue with the police yet he thought it fit to go to the brotherhood of the appellant in the village and publicise this occurrence at that place instead of reporting the matter to the police at Delhi so that the members of the brotherhood may not come to know about the shame of little girl. It is also urged that Pratap, father of the girl, was cited as a witness and was present in court on one of the hearings still the prosecution had for reasons unknown not examined him as a witness. It is also urged that PW3 being a child witness could have been easily

tutored to falsely implicate the appellant and thus, her testimony could not have been made the basis of bringing home the offences to the appellant as her testimony was not corroborated by any independent evidence. It is also urged that at any rate the sentences imposed on the appellant were disproportionate to the alleged crime committed by him and appellant being a young person should not have been dealt with so severely. It is also urged that the witnesses, who have been examined from the village of the appellant, were inimically inclined towards the family of the appellant and thus, no reliance could have been placed on their statements and virtually they are the persons, who had got falsely implicated the appellant in this case.

(6) On the other hand, it has been urged on behalf of the State that there was no enmity in between the appellant and Mehar Singh and his family and there were cordial relations between them till this occurrence took place and there is no reason whatsoever for Mehar Singh and his wife to toe the line of any enemy of appellant for bringing this heinous charge against the appellant which involves the honour of their little grand-daughter. It is urged that delay which has occurred in lodging the Fir in the present case has been explained as Mehar Singh who originally belongs to a village and his son Pratap did not want to give publicity to the occurrence which would have brought more trauma and shame to the family and they wanted the matter not to be raked up but as the girl developed septic in her private parts in the injuries caused to her on account of this rape, they took up the courage at first to get punished the appellant at the hands of his brotherhood and not succeeding in that object they were left with no other alternative but to lodge the case with the police.

(7) While speaking on a testimony of child witness in the case of Arbind Singh Vs State of Bihar 1994 Scc (Cri) 1418, it was held that it is well settled that a child witness is prone to tutoring. Hence the court should look for corroboration particularly when the evidence betrays traces of tutoring. In Satish Kumar Vs State of Punjab 1994 Scc (Cri) 180, the apex court has held that court should look to all the surrounding circumstances in order to decide whether the testimony given by a child witness is as a result of tutoring.

(8) 1 In the present case, before even approaching the respectable members of the brotherhood of the appellant in the village situated in Hissar District (Haryana) this girl has been taken for medical treatment to Kalavati Saran Child Hospital and it was found by the doctor who examined her that history had been given that she had been assaulted and medical treatment was prescribed and a drug ampicillin for controlling the infection has been given. Mere fact that the words 'rape or sexual assault' are not recorded in the prescription slip is of no consequence. The word 'assault' and nature of drug prescribed, in our view, give corroboration to the prosecuticase.

(9) Even the girl was examined after lodging of the FIR. Her hymen was found torn and the pus was also found coming from her private parts. So, these material pieces of evidence which could not be fabricated by the prosecution do indicate that this little girl was having problem in her private parts which fact gives corroboration to the statements of the prosecution witnesses that she must have suffered injuries to her private parts on account of an assault. The doctor had, while referring the history before the case was registered, mentioned that child has been subjected to assault. It is true that nature of the assault has not been mentioned in that prescription slip prepared by the doctor. In the present case, the testimony of the little girl in court has been quite straightforward and she has unequivocally deposed that it was the appellant who lured her to his own room and then subjected her to rape and she bled from her private parts. It must be mentioned that there is not even a suggestion to little girl or Mehar Singh or Smt.Sarupi in cross-examination that they had ill- will or inimical relation with the appellant earlier so that they could be motivated to bring such heinous charges against the appellant. Sarupi has clearly mentioned that this appellant always held himself out as her Dharambhai which indicates that there were quite amiable relations between appellant and Mehar Singh and Mehar Singh's family. If that is so, we find no earthly reason as to why Mehar Singh, Sarupi and the little girl would have brought about this serious charge against the appellant which involved the honour of their little grand daughter if the charge was not true.

(10) In the case of State of Himachal Pradesh Vs Raghubir Singh, : [1993]2SCR17 , the Supreme Court has laid down that there is no legal compulsion to look for

corroboration of the evidence of the prosecutrix before recording order of conviction and a conviction can be recorded on the sole testimony of the prosecutrix if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.

(11) Mere fact that the underwear of the prosecutrix was not preserved by the grand-parents of the girl, in our view, is not sufficient to doubt the veracity of the statement of the little girl as well as her grand-parents that this heinous crime has been committed by the appellant. The grand-parents of the child and also her father had Initially decided not to take any action against the appellant for this occurrence, that is why they did not in their wisdom think it fit to preserve that blood stained underwear. It is possible that if the girl had not developed any serious infection in her injury to her private parts, the matter may not have seen the light of the day. Unfortunately for the appellant the girl developed infection in the injury inflicted on her private parts as a result of inhumane rape committed by the appellant on her person and that provoked the grand-parents of the girl to rake up the matter and see that the appellant is awarded some punishment by his brotherhood and failing in their efforts in that direction they lodged the matter with the police. So, this delay which has occurred in lodging the Fir, in our view, is quite explainable. This delay, in our view, is not sufficient to doubt the veracity of the statements of the grand-parents as well as of the girl in support of the charge. In cross-examination of PW3 it was suggested that the girl had fallen while climbing down the stairs of the room of the appellant and that has brought about bleeding injury to her private part which suggestion was categorically denied by PW3. If injury had occurred in this manner there could be no reason for PW3 to have deposed against the appellant that he had subjected her to rape. As already noticed, there was no inimical relation which could have prompted grandparents of the girl to tutor the child to bring these allegations against the appellant.

(12) PW7 Phoola Ram has proved documents Exs.PW7/A, and PW7/B and had deposed that Mehar Singh Along with his grand-daughter had come to the village and complained about the conduct of the appellant in raping his grand-daughter and the members of the brotherhood had met in a Panchayat where even appellant's father was present and the girl had narrated the occurrence which they

believed. In cross-examination of this witness it was tried to show that appellant's father was having bad relations with Prabhati, Zile and Harjas and thus, they had joined hands with Mehar Singh in support of this case. It is true that Harjas had been convicted in some criminal case at the instance of appellant's father and he had also lodged a criminal complaint against appellant's father regarding theft of bullocks. But the question which arises for consideration is whether any such Panchayat was brought about or not. It is evident that any decision taken by the Panchayat is not at all relevant for deciding the guilt of the appellant. The story of Panchayat has been relied upon by the prosecution in order to explain the delay which has occurred in lodging the Fir by Mehar Singh. In cross-examination of Phoola Ram it was not suggested that no such complaint had been made by Mehar Singh to the brotherhood of the appellant in that village. The only suggestion given was that they had joined hands along with Harjas in order to take revenge from the appellant's father. Parbhathi PW8 also referred to the same facts and it was suggested in his cross-examination that Savitri, sister of Ziley Singh had been a tenant of Mehar Singh for some period prior to the present occurrence. This fact is, indeed, not disputed by Mehar Singh that Savitri had been his tenant for 3-4 months prior to the occurrence. Although Mehar Singh denied that Ziley Singh and Harjas had ever visited his house or he ever knew them prior to the holding of the said Panchayat. To this witness a suggestion was given that in fact no such meeting of Panchayat took place and the so-called Panchayat had tried to falsely implicate the appellant on account of enmity which suggestion was denied by the witness. Parkash PW10 has also given a statement in the same manner.

(13) In defense, the appellant has examined DW1- Ram Singh, DW2-Sadal Singh, DW3-Abey Ram and DW4- Dharampal who deposed that no such Panchayat ever took place and in case any such Panchayat had been arranged they would have also participated in such Panchayat. These witnesses were referring to a regular Panchayat which is elected and meets now and then for performing its functions while the prosecution was referring to a Panchayat of the brotherhood of the appellant and not the meeting of any official Panchayat of the Village. So, these statements of DW1 to DW3 that no regular Panchayat had taken place do not go to rebut the case of the prosecution that no Panchayat of the brotherhood, as alleged by the prosecution, took place.

(14) DW4-DHARAMPAJ was one of the persons who allegedly also attended the Panchayat of the brotherhood but he has only again deposed that no Panchayat had ever met and he gave out the names of members of the Panchayat presumably he was referring to the meeting of a regular Panchayat. In fact, he has not deposed that no Panchayat of the brotherhood had taken place.

(15) The significance of the Panchayat is only to give support to the case of the prosecution that Mehar Singh had brought about the charges against the appellant in July 1983 itself and documents were executed by the persons who met in that Panchayat on July 12, 1983, to explain the delay which occurred in bringing about the police case against the appellant. In our view, the findings given by the Panchayat are not at all relevant and are of no consequence. In the present case, we find that reasonable Explanationn is given for the delay which has occurred in lodging the FIR. We agree with the findings arrived at by the Additional Sessions Judge that there was no reason for Mehar Singh and his wife and their grand-daughter to bring any false charges against the appellant involving the honour of their family. Non-examination of Pratap, girl's father, as witness is of no significance because he was informed about the occurrence only after a few days when he visited his parents. We find the testimony of the girl quite trustworthy and we place implicit credence in her testimony which stands duly corroborated from the statements of her grand-parents and some corroboration is available in the medical report of the girl, as referred above. The age of the prosecution is, indeed, not in challenge as it stood established from the school record proved by PW1 Smt.Usha Bhatia and the radiological assessment of her age carried out by PW14 Dr.B-Bhattacharya as per X-ray plates Exs.PW14/A & B and report Ex.PW14/C.

(16) This offence was committed by the appellant prior to Indian Penal Code being amended. Section 376(2)(f) was brought on the Statute book afterwards and thus, would not be applicable to the case in hand. However, the maximum life imprisonment could be imposed even under Section 376 of the unamended Indian Penal Code. In the present case, we, however, find that sentence of life imprisonment imposed on the appellant is harsh. The interests of justice would be well met by imposing sentence of ten years rigorous imprisonment in place of imprisonment for life. With this modification in the sentence, we maintain the

conviction and the sentences of the appellant and dismiss the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com