

Mange

Vs

State of Haryana

Criminal Appeal No. 115 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

17.01.1979

JUDGMENT

FAZAL ALI, J. -

1. In this appeal by special leave the appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and a fine of Rs. 300. The prosecution case has been fully narrated in the judgment of the High Court and the Sessions Judge. It appears that on June 10, 1972 at about 8.00 a.m. Raj Bala the daughter of PW 5 Jaswant Singh was stopped by the accused while she was coming through a 'pag-dandi' and was forcibly taken into the chamber (Kotha) of the tube-well of the accused on which she started crying. Her cries attracted Mohinder Singh, PW 4, the step-brother of the father of Raja Bala. Mohinder Singh entered into the chamber of the accused and saw the accused lying upon Raja Bala and committing sexual intercourse with her. On seeing Mohinder, the appellant left her and ran away. Mohinder Singh then brought Raj Bala to her house and he found that the 'nalla' of the 'salwar' of girl had been snapped and the 'salwar' had been brought up to her ankles and was blood-stained. Jaswant Singh, the father of Raj Bala had gone to Delhi and when he returned the entire occurrence was narrated to him by PW 4 Mohinder Singh. Thereafter, Jaswant Singh went to the police station and lodged first information report at 10 p.m. The police after usual investigation submitted charge-sheet the appellant on the basis of which the appellant was convicted by the Sessions Judge, as indicated above. The appellant filed an appeal before the High Court which was also dismissed and thereafter, he filed a petition to this Court for grant of special leave and after obtaining special leave, this appeal has been placed before us.

2. The central evidence against the appellant consisted of the statement of PW 4 Mohinder Singh which was corroborated by the blood-stained 'salwar' found and produced before the police and the medical evidence. The evidence of PW 4 was corroborated by PW 5 Jaswant Singh to whom Mohinder Singh narrated the entire story. A portion of the swab was taken from the vagina and sent to the Chemical Examiner who found seminal stain thereon. This also corroborated the story of rape. Both the courts below have found that the prosecution has proved the case beyond reasonable doubt. In support of the appeal Mr. Marwah, Advocate has raised a number of arguments before us which appear to be wholly untenable. In the first instance, it was contended that Raj Bala was not examined by the prosecution and on that ground alone the prosecution case must fail. It appears, however, that Raj Bala was a deaf and dumb girl on only 13 years of age. So apart from being a child witness, she was also deaf and dumb and no useful purpose would have been served by examining her. Moreover, if there was any infirmity in the prosecution case the same has been removed by the examination of PW 4 Mohinder Singh who was a full fledged eyewitness to the act of rape. Once the courts below believed the evidence of PW 4 that the appellant had forcibly

performed sexual intercourse with Raj Bala there was an end of the matter. No further corroboration was required. It was then pointed out that medical evidence does not support that the rape had taken place on June 10, 1972 because the lady doctor says that the girl may have been subjected to intercourse two days before. It is true that the lady doctor who examined Raj Bala has said that if it was a case of a fresh rape bleeding should have been there and the duration of injury found on the victim may be about 12 to 28 hours. Her evidence, however, does not clearly exclude the act of rape having been committed on June 10, 1972 at about 8 a.m. It was then contended that the doctor found that hymen was torn and ruptured yet she did not find any swelling, redness or inflammation around the bruises which should have normally been found if rape had been committed recently. This circumstance is not sufficient to put the prosecution case out of court because the fact that there was a rupture of the hymen and a bruise around the hymen was sufficient to prove the act of rape. It is difficult for an medical expert to give the exact duration of time when the rape was committed. More particularly when we have the evidence of PW 4 as to the time and date of the occurrence, the medical evidence case hardly be relied upon to falsify the evidence of the eyewitness because the medical evidence is guided by various factors based on guess and certain calculations. We are therefore unable to discard the evidence of PW 4 on the basis of the statement by the lady doctor. It was then contended that PW 4 did not narrate the occurrence to the mother of girl Mst. Murti, PW 6. To begin with, PW 4 had undoubtedly brought the victim to Mst. Murti in a condition from which anybody could have presumed that a sexual intercourse had been committed with her. PW 4 was after all the stepbrother of Jaswant Singh and may have thought it better to wait until his brother returned to narrate the details of the occurrence lest he might be misunderstood by Mst. Murti. Her father Jaswant Singh had gone to Delhi and he returned to narrate the details of the occurrence to him. In these circumstances, therefore, the omission of the witness to narrate the incident of rape to Mst. Murti is clearly explainable. Some other contentions had been raised by the learned counsel for the appellant also which we do not find it necessary even to mention. On a consideration of the evidence and circumstances, therefore, we are satisfied that the High Court was right in holding that the prosecution case against the appellant had been fully proved. We do not see any force in this appeal with is dismissed accordingly.

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