

Balwant Singh and Others

Vs

State of Punjab

Saudagar Singh

Vs

State of Punjab

Criminal Appeals Nos. 131 and 273 of 1978

(M. M. Dutt, G. L. Oza JJ)

10.02.1987

JUDGMENT

M. M. DUTT, J. -

1. These two appeals by special leave - one filed by Balwant Singh, Gurdish Singh and Nirmal Singh and the other by Saudagar Singh - are directed against the judgment of the High Court of Punjab & Haryana affirming with slight modification the order of convictions and sentences passed by the learned Additional Sessions Judge, Ludhiana. The learned Additional Sessions Judge convicted the appellants under Section 366 IPC and sentenced each of them to undergo rigorous imprisonment for four years and to pay a fine of Rs. 100. The appellants were also convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2000 each. The High Court while affirming the said convictions and sentences directed that the sentences of imprisonment would run concurrently.

2. The prosecution case, in brief, is that on May 10, 1976 at 11.00 a.m., while Kumari Rajwant Kaur, aged about 19/20 years and a student of B.A. Part II of Gobind National College, Narangwal, was going to the college to collect her certificate of passing the Pre-University Examination the appellants, who are known to her and one Atma Singh (since acquitted), forcibly took her in a car to the canal bank and there in a grove of eucalyptus trees raped her one after another. When Atma Singh was committing rape on her, she lost consciousness.

3. The further case of the prosecution was that when Kumari Rajwant Kaur did not return home until 5.00 p.m., her father, Dalip Singh (PW 3), got anxious and started searching for her. About an hour after sunset in course of his search, Dalip Singh found his daughter, Rajwant Kaur, lying in an unconscious state under a banyan tree near the canal bridge. Nobody was near her at that time. Dalip Singh, his son and his wife brought her home. In spite of medical treatment, she did not regain consciousness till one hour before dawn next day. After regaining consciousness, she narrated to her father the entire incident.

4. Her father took her to the Police Station, Dehlon, where at 11.00 a.m. she lodged the first information report. At 4.30 p.m. on the same day, Dr. Gurbachan Kaur, Medical Officer, Civil

Hospital, Ludhiana, examined her and found, amongst other, the following :

1. Vaginal examination was possible with one finger. Vagina and cervix were healthy.
2. Hymen was torn posteriorly. The edges of the tear were red and painful and bled on touch.
3. Two vaginal swabs were taken and sent to the Chemical Examiner through police for examination for semen and spermatozoa.
4. Red abrasion 1" x 1/8" on right breast medial side.
5. Reddish abrasion 1/6" x 1/8" on right breast 2" above injury No. 8.
6. She complained of pain in both legs and back of neck. No visible marks of violence were found.

5. As many as four police officers including the Superintendent of Police investigated the case at different stages. They, however, could not accept the truth of the version of Rajwant Kaur about the incident. It is said that on the instruction of the Superintendent of Police, the case was reported to be cancelled. Rajwant Kaur naturally felt dissatisfied with the conduct of the investigating agency of the police and herself filed a complaint in the court of the Judicial Magistrate, Ludhiana. The learned magistrate committed the appellants and the said Atma Singh to the Court of Session for trial.

6. At the trial, the prosecutrix examined herself as PW 2. She also examined her father, Dalip Singh (PW 3) and Dr. Gurbachan Kaur (PW 1).

7. The defence of the appellants was that they had been falsely implicated in the case by Dalip Singh, the father of the prosecutrix, because he had an enmity against the appellants in connection with some litigations pending between them over the repayment of certain loans advanced by Dalip Singh to the appellants. The appellants also examined certain defence witnesses including the police officers who had investigated the case.

8. The learned Additional Sessions Judge, after considering the evidence adduced in the case, overruled the defence plea that the appellants were falsely implicated in the case at the instance of Dalip Singh because of his enmity against them. He found that the prosecution had proved the guilt of the appellants beyond any reasonable doubt and convicted them and sentenced them as mentioned above. Atma Singh was, however, acquitted.

9. On appeal by the appellants, a learned Single Judge of the High Court, as already stated, affirmed the convictions and sentences with slight modification, namely, that the substantive sentences would run concurrently. Hence these two appeals by special leave.

10. In this case, the appellants have been convicted on the evidence of the prosecutrix (PW 2), her father, Dalip Singh (PW 3), and of Dr. Gurbachan Kaur (PW 1). Mr. Kohli, learned counsel appearing on behalf of the appellants in both these appeals, has urged that in view of the fact that the investigating agency of the police could not accept the genuineness of the prosecution story, the High Court was not justified in affirming the conviction of the appellants solely on the uncorroborated evidence of the prosecutrix (PW 2). It is submitted that the High Court should have

kept in its view the rule of prudence that the evidence of the prosecutrix without corroboration by any independent witness could not be made the basis of conviction of the appellants.

11. We are dissatisfied with the manner of investigation of the case by the police. It is curious that in spite of the statements of the girl and her father and the medical report, the police was not satisfied even prima facie as to the truth of the allegations against the appellants. The police officers including the Superintendent of Police, did not even consider it their duty to produce before the court the report of examination by the Chemical Examiner of the vaginal swabs of the prosecutrix as to the presence of semen and spermatozoa. There is no explanation why such a very important and vital evidence has been withheld from the court. In the circumstances, no importance whatsoever should be given to the fact that the police was not satisfied about the genuineness of the prosecution case.

12. Be that as it may, it is not correct to say that the evidence of PW 1 (sic PW 2) does not find any corroboration. The medical report, in our opinion, supports the case of the prosecutrix that she was raped. According to the medical report, the hymen was torn and the edges of the tear were red and painful and bled on touch. There were abrasions on the right breast. She complained of pain in both legs and back of neck. The High Court has rightly observed that these are the indications of first sexual intercourse of a female. According to the High Court, there was swelling on the internal walls of the vagina because of the forcible and violent intercourse by many persons. The prosecutrix (PW 2) was subjected to a lengthy cross-examination, but she did not break down under the pressure of such cross-examination. It is the evidence of her father, Dalip Singh (PW 3), that she was found in an unconscious state and she remained unconscious till one hour before dawn. This evidence also supports the evidence of the prosecutrix. It may be that Dalip Singh is the father of the prosecutrix, but there is no ground to discard his evidence. Both the learned Additional Sessions Judge and the High Court have believed the evidence of the prosecutrix and her father and, in our opinion, there is no reason why their evidence should not be believed.

13. It is next contended on behalf of the appellants that as it does not transpire from the medical report as to the number of persons who had committed rape on the prosecutrix, the conviction of the appellants is illegal and should be set aside. This contention, in our opinion, is without any substance whatsoever. We do not think that on medical examination it is possible to say about the number of persons committing rape on a girl and, accordingly, in her report Dr. Gurbachan Kaur has not expressed any opinion in that regard. The evidence of the prosecutrix that all the appellants had committed rape on her is not inconsistent with the medical report. In the circumstances, there is justification for the finding of the High Court that the medical examination and the evidence show the involvement of more than one person in the act of rape. The contention made on behalf of the appellants is rejected.

14. It is difficult for us to accept the contention of the appellants that because of enmity of the father of the prosecutrix against the appellants, they have been falsely implicated in the case. It may be that litigations are going on between Dalip Singh and the appellants, but it is absurd to suggest that because of the litigations or any enmity that he may have against the appellants, the father of the prosecutrix would falsely involve his daughter in a case of rape by the appellants. On the contrary, the High Court has rightly observed that the appellants, who are debtors, had a common interest to bring disrepute to Dalip Singh, their creditor, by committing rape on his daughter, Kumari Rajwant Kaur (PW 2). There is, therefore, no substance in the contention of the appellants that they have been falsely implicated in the case on account of the enmity of Dalip Singh against them.

15. Lastly, it is submitted by the learned counsel for the appellants that the absence of any injury on the back of the prosecutrix or any part of her body falsifies the case of rape by the appellants on her. It is submitted that the prosecutrix was expected to offer resistance which would normally cause certain injury on her body and particularly on the back. As there was no such injury, it should be held that there was no such incident as alleged. This argument, in our opinion, is devoid of merit. It cannot be said that whenever resistance is offered there must be some injury on the body of the victim. The appellants were four in number and the prosecutrix being a girl of 19/20 years of age, she was not expected to offer such resistance as would cause injuries to her body. It is also not correct to say that there was no injury at all. It has been earlier noticed that as per the medical report she had red abrasions on her right breast. In the circumstances, the contention of the appellants is rejected. No other point has been urged on behalf of the appellants in these appeals.

16. For the reasons aforesaid, these appeals are dismissed.

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