

SUPREME COURT OF INDIA

Jaswant Singh

Vs.

State of Punjab

Crl.A.Nos.70-72 of 2006

(B. Sudershan Reddy and J.M. Panchal JJ.)

05.11.2009

JUDGMENT

B. Sudershan Reddy, J.

1. Four persons were tried by the learned Addl. Sessions Judge, Ludhiana, principally for offences punishable under Sections 376 and 366 of the *Indian Penal Code (IPC)*. All of them were convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- under Section 376, IPC and to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- each under Section 366, IPC. All the substantive sentences of imprisonment were directed to run concurrently. By the impugned judgment, the High Court of Punjab & Haryana confirmed the conviction and sentence.

2. These appeals are preferred by three of the accused, namely, Kuldip Singh, Major Singh alias Maiji and Jaswant Singh. The occurrence took place on the night intervening 25th/26th June, 1989 in a village called Talwandi Rai. The prosecutrix was sleeping in the courtyard of her house. Her adopted parents were also sleeping in the said courtyard. The prosecutrix around 11 p.m. got up to answer the calls of nature and at that time all the appellants barged into the courtyard and gagged her mouth all of a sudden making her totally helpless and immobile. Kuldip Singh alias Rana pointed a pistol at her and then all the accused bodily lifted her to the house of Jaswant Singh. She could not raise hue and cry as she was in panic. Major Singh alias Maiji and Charan Singh forcibly thrown the prosecutrix on a cot. Kuldip Singh alias Rana removed her clothes forcibly and committed sexual intercourse with her against her will and consent and thereafter, the rest of the accused had also committed rape on her. Thereafter, the prosecutrix was allowed to go. She was threatened and warned not to disclose the occurrence to her parents. On returning home, the prosecutrix narrated the occurrence to her parents.

3. On the following day, Surjit Kaur (PW4), mother of Prosecutrix informed Gurdev Singh, Sarpanch and Gajjan Singh, Lamberdar. She then went to police station Raikot to inform the police about the incident, but the concerned police did not take any action against the

accused. Thereafter, a written complaint (Ext. DA) was filed on July 5, 1989 before the Senior Superintendent of Police (SSP), Ludhiana which was in turn sent to Joginder Singh, Deputy Superintendent of Police, Jagraon (DW2). The DSP visited the village on July 8, 1989 and recorded the statement (Ext. PD) of the prosecutrix on the basis of which formal FIR (Ext. PD/1) was issued on the same day.

4. The prosecutrix was medically examined by Dr. Renu Baweja (PW1) on July 8, 1989. The matter was thereafter investigated by Inspector Piara Singh (PW8). The accused were also examined medically by Dr. Rajiv Bhalla (PW11) on July 10, 1989 and were found fit to perform sexual intercourse.

5. The prosecutrix (PW2) is a crucial witness and the whole case centres around her evidence. She passed out Matriculation in the year 1989. It is in her evidence that she was physically carried to the house of Jaswant Singh, appellant herein, where she was thrown on a cot; that thereafter, the appellants one after the other committed rape upon her; on returning home, she narrated the incident to her parents; on the next day, her parents went to police station after informing Sarpanch and the Lamberdar of the village. Smt. Surjit Kaur (PW4) is none other than the mother of the prosecutrix who has corroborated the statement of the prosecutrix. Darshan Singh, Head Master, Government High School, Talwandi Rai (PW6) was examined to prove the certificate (Ext.PC) where the prosecutrix's date of birth is mentioned as February 3, 1973. She was aged about 16 years as on the date of occurrence. Dr. G.S. Grewal (PW10) has medically examined the prosecutrix on 19th July, 1989 and found certain injuries on her person which were meticulously noticed in judgments of the trial Court as well as the appellate Court which need no reproduction.

6. The learned Sessions Judge, upon appreciation of evidence and on an elaborate consideration of the entire matter, convicted appellants for both the offences punishable under Sections 376 and 366, IPC. The appellate Court re-appreciated the evidence, meticulously analyzed the same and found no merit in the appeal.

7. The learned counsel for the appellants mainly contended before us that there was unexplained delay in lodging the FIR which itself casts a serious doubt on the whole of prosecution case. We are not impressed by the submission. It is in the evidence of PW4 that she went to the police station the next day after the occurrence to lodge the FIR but the police did not take note of it. On 5.7.1989, a written complaint (Ext. DA) was lodged before SSP, Ludhiana which was marked to DSP who visited the village on July 8, 1989 and recorded the statement (Ext. PD) of the prosecutrix. The prosecutrix clearly narrated the sequence of events in detail as to the manner in which the appellants committed the crime against her. The DSP, for the obvious reasons, made an attempt to sabotage the entire prosecution case as is evident from his own evidence. The DSP who was examined as DW2, brought into existence a Panchayat Nama (Ext. DB), the recitals whereof read as under:

“In the presence of the village Panchayat and respectables (name of the prosecutrix) adopted daughter of Jagir Singh, Jat, resident of Talwani Rai stated that on the night

of 25-6-1989 of her own free will she had gone to the "Chari" field of Rana alias Kuldip Singh, accused son of Shri Harbans Singh, Jat, resident of Talwandi Rai at about 10 p.m. That field was nearer her house. There, she stayed with him for about 2 or 3 hours. When she returned home, she found her father and mother awake. In order to save Rana, accused from them, she falsely named Jaswant Singh, Charan Singh and Major Singh that they had forcibly kidnapped her. In fact, they had not kidnapped her. The statement which she had made for the registration of the case was false. Dated : 17.7.1989."

8. There is no explanation forthcoming as to what transpired between 8.7.1989 when the FIR was issued on the strength of the statement made by the prosecutrix and 17th July, 1989 when the Panchayat Nama (Ext. DB) was got recorded by the DSP (DW2). On the other hand, we are required to notice that the prosecutrix and her mother (PW4) filed a further complaint (Ext. PHH) before the SSP, Ludhiana on 22.7.1989 alleging that the signatures of the prosecutrix were obtained on certain blank papers and similarly some thumb impressions of PW4 were also obtained. It was also alleged therein that DSP Joginder Singh (DW2) had threatened them to face serious consequences if they do not give statement in favour of the accused. It was further alleged that she was subjected to harassment and some of the Constables caused her injuries. The prosecutrix was medically examined on 19.7.1989 by Dr. G.S. Grewal (PW10) and found as many as four injuries on her person and opined that probably they were caused about three days prior to the medical examination. In her statement, the prosecutrix has categorically stated that "no Panchayat assembled on 17.7.1989. I did not see any Panchayat Nama at Jagraon on 17.7.1989". The signatures were obtained from her on 17.7.1989 after beating her with 'leather pattas'. She stated "my signatures had been obtained by the police on 17.7.1989 after beating me with leather pattas".

9. The sequence of events in clear terms demonstrates the sinister and diabolical role played by the police and in particular, by the DSP, Joginder Singh (DW2) to sabotage the entire prosecution in order to protect the accused for obvious reasons. We are neither surprised nor shocked at the conduct of the DSP inasmuch as such instances are galore in this country where the police, instead of protecting law, take the law in to their own hands for extraneous considerations. We have no doubt whatsoever that Ext. DB, whether it is characterized as Panchayat Nama or whatever else be, it has been brought into existence and is the brainchild of the said police officer (DW2). The contents thereof cannot be taken into consideration for whatsoever purposes. This document in no manner creates any doubts in our minds as to the truthfulness of the statement made by the prosecutrix in her complaint to the SSP on 5.7.1989 and her statement of 8.7.1989 based on which the FIR was issued.

10. Considering this, we find no merit in the submission made by the learned counsel for the appellants that FIR was ante timed and brought into existence so as to falsely implicate the appellants. There is no reason to disbelieve the evidence of prosecutrix and her mother (PW4) that attempts were made to lodge the FIR on the next day of the occurrence of the incident but the police did not cooperate and initiated any action. The attempt on the part of the police to protect the accused from day one of the occurrence is clear and obvious.

11. The learned counsel for the appellants made an attempt to contend that the appellants were falsely implicated in the present case due to enmity between the parents of prosecutrix and the appellants with regard to construction of a wall. The courts below having considered the similar submission rejected the same and observed that the alleged dispute over a common wall was not of such a grave nature compelling the entire family of the prosecutrix to go to the extent of putting at stake its reputation and fair name of a young girl child to settle the scores with the accused. We find no merit in the submission. The defence set up in this regard is totally untenable and cannot be accepted.

12. We have no reason to disbelieve the evidence of the prosecutrix and her mother (PW4) so as to doubt the prosecution case.

13. The trial Court as well as the High Court have, after considering the evidence carefully, given good reasons in support of the order of conviction. This Court, in exercise of its jurisdiction under Article 136 of the Constitution of India, does not act as a third appellate Court. Suffice it to hold that the verdict in the instance case did not result in any miscarriage of justice. The impugned judgment is not an erroneous one. Nor the judgment is vitiated on account of any error either in appreciation of evidence or application of legal principles.

14. Learned counsel for the appellant, however, made an attempt to appeal to the Court to reduce the sentence of imprisonment awarded by the Courts below. Having regard to the gravity of the crime, we are not inclined to consider the request to reduce the sentence.

15. No other point is urged. For these reasons, we confirm the order of conviction passed by the High Court and dismiss these appeals.