

# SUPREME COURT OF INDIA

Prem Parkash @ Lillu & Anr.

Vs.

State of Haryana

CrI.A.No.91 of 2007

(B.S.Chauhan and Swatanter Kumar,JJ.,)

07.07.2011

## JUDGMENT

**Swatanter Kumar,J.,**

1. Three accused, namely Dharambir @ Pappu, Prem Prakash @ Lillu and Herchand @ Poley, were charged for an offence punishable under Sections 366 and 376(2)(g) of the Indian Penal Code, 1860 (in short the `IPC'). Upon trial, the learned Additional Sessions Judge, Rohtak, by judgment and order dated 31st July, 1992 held all the three accused guilty of the offences of kidnapping and gang rape of Kumari Sudesh and, thus, they were sentenced to undergo rigorous imprisonment of 10 years with a fine of Rs.500/- each. In case of default of payment of fine, they were ordered to undergo rigorous imprisonment for a further period of one month. The accused were also awarded two years' rigorous imprisonment each for the offence committed under Section 366 of the IPC. Both the substantial sentences were ordered to run concurrently. Dissatisfied with the judgment of the trial court, the accused preferred an appeal before the High Court. The High Court found no merit in the appeal and consequently, dismissed the same vide its judgment dated 27th July, 2005, giving rise to the present appeal by all the accused.

2. The learned counsel for the appellants pointed out that during the pendency of the appeal before this Court, one of the accused, i.e., Prem Prakash @ Lillu had expired and therefore, the present appeal survives only qua the third accused, i.e. Herchand @ Poley. In so far as the appeal by the accused Dharambir @ Pappu is concerned, the same was dismissed in limine. The brief facts in the present case are that the aforesaid three accused were asked to face trial on the aforestated charges based on the case of the prosecution.

3. According to the prosecution, Kumari Sudesh, daughter of Pratap Singh, resident of Village Chhuchhak accompanied by her brother Satish, aged about 5 years, had gone out of her house at about 8-9 p.m. on 25th July, 1990 to ease herself at a distance of about two or three killas away from their house and by the side of a nearby pucca road. After she answered the call of nature and washed herself a car approached her from behind and stopped beside her. The accused Dharambir got down and took her in his arms. The accused

Poley followed him and gagged her mouth with his hand. She was lifted and dragged into the car. The car was being driven by the accused Lillu. The car was taken beyond the village abadi, across a petrol pump and into the fields by the side of the road. All the three accused raped Kumari Sudesh one by one in that field. Accused Dharambir was left there and the other two took the prosecutrix in the car to an unknown jungle and kept her there for that night and the following afternoon. She was again raped by these two accused in that jungle. At about 4.00 p.m. on 26th July, 1990, she was dropped on the bridge of a canal, at a distance of about one kilometer from her house and was threatened of being kidnapped, raped and killed if she narrated the occurrence to anybody. She reached home and recounted the incident to her father Pratap. A panchayat of the brotherhood was convened but no decision was arrived at. On the next day, the father of the prosecutrix went to the Police Station Beri with her, to lodge a complaint. However, their request for registration of a case was not entertained. On 27th July, 1990, they went to Jhajjar Sub Divisional Headquarter and approached the Deputy Superintendent of Police but to no avail. Thereafter, they approached the Sub Divisional Magistrate (in short the `SDM') with a written application dated 28th July, 1990, Ex.PE/1, to get the prosecutrix medically examined and for taking action against the culprits.

4. The SDM referred the matter to the incharge of the hospital at Jhajjar and a lady doctor, Dr. A.K. Bhutani, examined the prosecutrix and prepared her report, Ex.PE. The clothes of the prosecutrix were also taken by the doctor, who later on handed over the same to the police, who in turn transferred them for examination by the PSL. It is stated that while Pratap Singh was again going towards the police station, on the way at the bus stand of Village Jahagarh, he met a police party and Assistant Sub Inspector Hawa Singh recorded his statement, Ex.PO/1 and an F.I.R., Ex.PO/2 dated 28th July, 1990, was registered.

5. In brief, the prosecution had examined a number of witnesses including PW1, Dr. R.B.S. Jakhar, who had medically examined the accused Dharambir and had opined that he was fit to commit sexual intercourse. PW2 was the police officer incharge of the Police Station and he presented the original challan before the Court. The prosecutrix was examined as PW4 and her father Pratap Singh was examined as PW7. Besides this, the lady doctor who had examined the prosecutrix, was PW5, Dr. A.P. Sharma, who had medically examined the other two appellants was PW6, SI Hawa Singh, who was the Investigating Officer was examined as PW8. The prosecution, on the basis of these witnesses attempted to bring home the guilt of the accused.

6. In the statements made under Section 313 of the Code of Criminal Procedure, (for short `Cr.P.C.'), the accused Prem Prakash and Herchand stated that all witnesses were false. They denied the incident in its entirety and took a specific stand that Pratap Singh, father of Kumari Sudesh was carrying on cultivation on the land belonging to the family of the accused and since he had stopped them from carrying on the agricultural activity, Pratap Singh had developed animosity towards them.

7. However, in his statement under Section 313 of the Cr.P.C., the accused Dharambir offered no explanation and also chose not to lead any defence. The trial court vide its

detailed judgment found that the accused were guilty of the offence with which they were charged. The accused had further raised a defence on behalf of Prem Prakash, that he was not named in the FIR and has been falsely implicated. It was also contended that the prosecutrix was more than 19 years of age and in fact there was no reliable evidence to convict the accused and there were contradictions in the case of the prosecution. The trial court dealt with these two issues as follows: -

"23. Then I have been pointed out some points of contradictions in the statements of the witnesses. The first point of contradiction is as to who was driving the car. In the F.I.R. which was recorded on the basis of statement of Partap, it is stated that Poley was driving the car. Otherwise both the father and the daughter are consistent in stating that it was the third accused (Lilu) who was driving the said car. The police had not been co-operating with the prosecutrix. It has been discussed above. Hence may be that the police deliberately recorded wrongly that Poley, in place of Lilu, was driving the car. Otherwise too, the version given by Partap, was given to him by the prosecutrix, and may be that on this point Partap made wrong statement. This contradiction cannot affect the merits of the case. The second point of contradiction is with regard to the timing of the kidnapping. P.W.4 Smt. Sudesh in the court stated that she had been kidnapped at about 8.00/9.00 A.M. and otherwise the case of the prosecution throughout is that she was kidnapped at 8.00 or 9.00 P.M. If the prosecution story is read as a whole and if the statement of this witness is also read keeping in view to the sequence of the happenings, it shall be clear that she was kidnapped at 8.00 or 9.00 P.M. and not at 8.00/9.00 A.M. It is only a clerical or typical (sic) mistake that the time has been written as A.M., in place of P.M. So, it is not a contradiction.

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31. On the basis of this medical evidence it has been argued that this lady was habitual to sexual intercourse and since there was no injury found on her private part, so it may be held that it is a case of consent and she being of more than 18 years of age was an equal party to the sexual intercourse and, therefore, even if it assumed that the accused have committed sexual intercourse with this lady, they cannot be said to have committed any offence. The learned counsel for the accused has placed reliance on *Sukhjit Singh vs. The State of Haryana, 1987 (i) R.C.R. 352*. That was a case where two real brothers were alleged to have committed rape on a lady. No injury was found on the person of that lady. It was reported that she was used to sexual intercourse. It was held that probably it was a case of consent.

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39. Lastly argument has been advanced on behalf of accused Lilu. He was not named in the F.I.R. How and when he came into picture 7 (sic). The F.I.R. was recorded on 28.7.90. The police resorted to the supplementary

statement of the prosecutrix of her father just the next day, i.e. 29.7.1990 and these statements were to the effect that two accused, other than Dharmabir, were innocent. This way Lilu was not arrested by the police. Two months after, as stated by the prosecutrix, she had identified him in the street when she was coming along with her father. Then her father had told that the name of this accused was Lilu. This way Lilu came into picture in the case of the prosecution. Since the police has submitted the challan only against one person, so: Lilu could be named only be(sic) the prosecutrix in the court itself. It cannot be said that Lilu had not been identified so his name being named in the court for the first time by the prosecutrix would create any doubt in the truthfulness of the case of the complainant that Lilu was also one of the persons who kidnapped and raped her."

The main argument on behalf of the appellant, while challenging the above findings, is that there is hardly any evidence directly involving the accused Prem Prakash @ Lillu in the commission of the crime. This argument does not impress us. Firstly, the prosecutrix when examined as PW4 stated in Court that the appellant was driving the car in which she was kidnapped and subsequently taken to the jungle. Her version is also supported by her father Pratap Singh, PW7, though, of course, Pratap Singh was not an eye-witness to the occurrence. There is no reason for this Court to disbelieve the version given by the prosecutrix. Some contradictions have been pointed out between the statements of the prosecution witnesses. The trial court has rightly observed that these are some discrepancies which, viewed from any angle, are not significant. It is also on record that PW4 did deny some portion of her statement Ex.DA, particularly, that she was raped in the car one after the other by all the three accused. This statement does not find support from any of the prosecution witnesses or from the investigation of the Investigating Officer. Thus, this contradiction does not render the statement of the prosecutrix unreliable or untrustworthy. Another important aspect of the case is that the accused Dharambir, in his statement under Section 313 of the Cr.P.C. has not chosen to say that none of the other two accused, namely, the appellant herein and the deceased Prem Prakash, were present at the time of the occurrence or that they have been falsely implicated on account of some land dispute, as referred to by the other two accused in their statements under Section 313 of the Cr.P.C. As per the medical evidence of PW5, Dr. A.K. Bhutani, "abrasions which were brownish in colour with clothes, blood on right shin anteriorly, clotted dry blood sticking from the abrasions described above (sic) 3 cm. below right knee joint" were found on the person of the prosecutrix. There was also abrasion on right side of cheek, 5 cm brownish in colour and the prosecutrix complained of pain on the right side of her neck. In her cross-examination, the duration of injury no.1 was stated to be more than 24 hours and it was also stated that the injury no.1 could be result of a fall while the injury no. 2 cannot be self inflicted. This medical evidence clearly shows that she had suffered injuries during the alleged incident and she was taken for medical examination by the Investigating Officer after expiry of 24 hours. Dr.A.P. Sharma had examined the appellant-accused Herchand and found him fit to perform sexual intercourse. The doctor also stated that she had conducted X-ray examination of Kumari Sudesh and according to report, Ex.P8, Sudesh was aged

more than 18 years. After examining the forensic reports, Exs.PH and PJ, from the Forensic Science Laboratory, the doctor also stated that there was a possibility of intercourse having taken place with Sudesh on 25th July, 1990.

8. There are certain significant averments which show the manner in which the offence was committed. Firstly, she has stated that the car was being driven by Prem Prakash @ Lillu. Secondly, that she was wearing same clothes at the time of her medical examination which she was wearing at the time of rape. Her salwar was blood-stained. These clothes were taken into custody by the doctor herself, who subsequently handed over the same to the investigating agency. Similarly, the father of the prosecutrix, PW7, has specifically stated that his daughter had told him that Dharambir had caught hold of her and dragged her to the car, her mouth was gagged by Poley and still there was another person with small pox marks on his face who was driving the car. About the identity of Lillu @ Prem Prakash, it is clear that PW7 had known him for the last 10 years as he had settled in the Village. In other words, there could hardly be any dispute with regard to the identity of the person accused. But for the contribution made by the present accused, who was driving the car and had taken away the prosecutrix to the jungle/fields, probably the incident could have been avoided. Thus, it is clear that involvement of the present accused in the entire chain of events was material and as per the prosecutrix he had also raped her. According to the doctor, he was capable of performing sexual intercourse. This entire evidence and the attendant circumstances point towards the guilt of the accused.

9. The learned counsel appearing for the appellant had placed emphasis on the fact that the doctor had opined that the prosecutrix was accustomed to sexual intercourse and that there was no sign of fresh intercourse. This argument has rightly been rejected by the High Court by noticing that there was no fresh intercourse but she had been subjected to intercourse more than 24 hours ago. The doctor had examined her on 27th July, 1990 while the incident took place on 25th July, 1990. Thus, the statement of the doctor has to be read and understood in that background and the doctor also specifically stated, that there was a possibility that she was subjected to intercourse on 25th July, 1990.

10. The evidence, essentially, must be viewed collectively. The statement of a witness must be read as a whole. Reliance on a mere line in the statement of the witness, out of context, would not serve the ends of justice and the conclusion of the Court based on such appreciation of evidence could be faulted. Another aspect of this case which has specifically not been noticed by the High Court, is that the prosecutrix and her father were made to run from pillar to post by the police authorities, before their case could be registered. The prosecutrix, PW4, has specifically stated that report made by her father was not recorded by the police and the next day they went to Jhajjar along with her mother and appeared before the police officers but again, no action was taken. According to her, the application which she had given in the Tehsil office was thumb marked by her. Pratap Singh, father of the prosecutrix, stated that he had even convened a panchayat of the brotherhood but the panchayat having failed to arrive at a decision, he had proceeded to the police station along with his daughter and his report was not recorded at the police station by the police. He returned to the village and again went to the Jhajjar Sub Divisions Headquarter and met the

DSP and narrated the entire occurrence to him. But still no action was taken and then they claim to have gone to the SDM, Jhajjar and made a complaint in writing. Thereafter, his daughter was medically examined and subsequently, the case was registered. This event certainly describes and points towards the apathy in the functioning of investigating agencies in heinous crimes, to which the complainant was subjected. In terms of the provisions of Section 154, Cr.P.C., it is obligatory for the police to register a case when the facts constituting a cognizable offence are brought to its notice. The father of the girl, surely must have felt trauma and frustration when he was subjected to the above treatment, besides the knowledge of his daughter's raped by the accused. We do express a pious hope, that such occurrences will not be repeated in any police station in the country. The counsel for the appellant had also tried to rely upon some contradictions and embellishments in the statements of the prosecutrix and her father. Reference was made to exhibits D1 and PO in this regard. The Court cannot ignore the fact that the prosecutrix cannot be expected to make a perfect statement after a lapse of time without even a normal variance. Furthermore, she had specifically stated that, the statements recorded by the appellants were not read over to her nor were any thumb impressions taken for the same. In fact, she had given an application to the tehsil office which was thumb marked and even that complaint had not been produced in evidence before the Court by the prosecution. These are the lacunae and impropriety committed by the investigating agency itself. Thus, no burden or fault could be shifted to the prosecutrix. Her statement before the Court is fully supported by other prosecution witnesses and even the -medical evidence produced on record. There is a concurrent finding of conviction against the accused, which is based upon proper appreciation of evidence. We see no reason to interfere. Consequently, the appeal is dismissed.