

*Before Jitendra Chauhan, J.*

**PARAMJIT SINGH BEDI—Appellant**

*versus*

**STATE OF PUNJAB—Respondent**

**CRA No. 2009-SB of 2012**

September 12, 2013

*Indian Penal Code, 1860 - S.376 - Code of Civil Procedure, 1973 - S.215 - Indian Evidence Act, 1872 - S.114A - Appellant tried for offences u/s 366 and 376 IPC - Convicted u/s 376 IPC - Preferred appeal - Contended charge was defective - No details given in charge - Held, S.215 Cr.P.C. provides that such omission shall not be material unless the accused was in fact led by such error or omission and it has occasioned a failure of justice - Evidence recorded in presence of accused - Appeal dismissed.*

*Held*, that the argument of the learned counsel for the appellant that charge is defective as no details has been given in the charge, is not favourable to the accused as Section 215 Cr.P.C. provides that no omission

at any stage of the case is material, unless the accused was in fact led by such error or omission and it has occasioned failure of justice. This error or omission, if any, was not brought to the notice of the Court during trial. At appellate stage, he cannot taken this objection as the accused was fully aware of the imputations against him. A copy of report under Section 173 cr.P.C. along with documents relied upon by the prosecution, was supplied to him. The evidence of the prosecutrix was recorded in his presence. The counsel failed to show as to what prejudice is caused to the accused-appellant.

(Para 11)

*Further held*, that the last-seen evidence is also against the appellant. As per the statement of PW3, Sarabjit Kaur, she had seen the accused along with two other young boys taking away the prosecutrix on 19.06.2009. Moreover, the appellant was arrested on 25.06.2009, and the prosecutrix was recovered from her custody. Thus, throughout this period, the prosecutrix remained in the custody of the accused. The prosecutrix has stated on oath that she was confined in a room of a deserted factory at Malerkotla and raped there. When she objected to the act, the accused threatened to kill her. She has also stated in her cross-examination that she raised raula but there were nobody around to here her cries. Thus, even if the prosecutrix had consented to accompany the appellant, it does not prove that she also consented to copulate with the appellant.

(Para 15)

Suram Singh Rana, Advocate, *for the appellant.*

Mehardeep Singh, DAG, Punjab.

### **JITENDRA CHAUHAN, J.**

(1) The present criminal appeal has been preferred by the appellant challenging the judgment and order dated 01.06.2012, passed by the Sessions Judge, Ludhiana, (hereinafter as 'the trial Court'), convicting the accused-appellant for committing offence under Section 376 of the Indian Penal Code (for short, 'the IPC') and sentencing him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- or in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

(2) Briefly stated, the facts of the present case, as recorded in para 2 of the impugned judgment, are as under:-

*"2. The case of the prosecution, in brief, is that the prosecutrix PW1 is the young daughter of Ranjit Singh PW2. She was born on 13.3.1994. In 2009, she was studying in 8th class in Government High School, Manjit Nagar, Ludhiana. On 19.6.2009, the PW1 at about 7.30 p.m. left her house to buy some articles. The accused accosted her on her way. He told the PW1 that he wanted the PW1 to meet his daughter Nancy. As Nancy was a friend of the PW1, therefore, she agreed to accompany the accused. The accused made her sit in his Maruti car. Two boys were already there in the car. The accused took the PW1 towards 1.1.G Flats. From there, the said two boys went away along with the car. The accused then kept the PW1 for two days in the flat. On 22.6.2009, the accused took the PW1 to Malerkotla on his scooter. He kept the P.WI for two days in the flat. On 22.6.2009, the accused took the PW1 to Malerkotla on his scooter. He kept the P.WI confined there in a factory. There the accused kept on having sexual intercourse with the PW1 against her will. As the PW1 opposed the idea of sexual intercourse, the accused would threaten to kill her. On 25.6.2009, the accused took the PW1 to Ludhiana on train. From the railway station, the accused was taking the PW1 on foot through railway colony No.5. Incidentally, the PW2 i.e. the father of the PW1, the police officials i.e. SI Harinder Singh, IIC Tarsem Singh and other police officials spotted the accused. On seeing them, the accused tried to flee, but, the police officials apprehended the accused and recovered the PW1 from him. The PW4 prepared the arrest memo Ex.PO, personal search memo EX.PH and the information of arrest memo Ex.P.J regarding the arrest of the accused. He also prepared the identification memo Ex.PI at the spot. These documents were attested by the P W2. He also prepared the rough site plan EX.PI, showing the place of arrest. "*

(3) After completion of investigation challan was presented in Court and the copies of the documents relied upon by the prosecution were supplied to the accused as per Section 207 Cr.P.C.

(4) Charge under Sections 366 and 376 IPC, was framed against the accused-appellant to which, he pleaded not guilty and claimed trial.

(5) In order to substantiate the charges against the accused, the prosecution examined eleven witnesses, viz., PW1-the prosecutrix; PW2-Ranjit Singh, the father of the prosecutrix, at whose instance the FIR has been lodged; PW3-Sarabjit Kaur, is the paternal aunt of the prosecutrix and the last seen witness; PW4-SI Harinder Singh; PW5- HC Tarsem Singh; PW6-Dr. Hitinder Kaur, deposed about the age of the prosecutrix on the basis radiological examination; PW7-Dr. Anantjit Kaur, medico-legally examined the prosecutrix; PW8-Dr. Ramesh Kumar, medico-legally examined the accused; PW9-Surinder Kumar, Clerk; PW10-IIC Rajesh Singh; and PW11-Swaran Kaur, retired Headmistress, Government Primary School, Loco Shed, Ludhiana.

(6) In his statement under Section 313 Cr.P.C., the accused-appellant denied all the allegations of the prosecution case and pleaded false implication. It was contended that he was a tenant in the house owned by Major Singh and Manjit Singh, who are relatives of Ranjit Singh, the father of the prosecutrix. He had filed a civil suit against them, wherein, a stay was granted in his favour. He asserted that the motive behind the present FIR is to get the above said premises vacated from him. He further asserted that Ranjit Singh, PW2, owed Rs.1,50,000/- to him, therefore, he was involved in the present case. In defence, he examined DW1-Kamal Sharma; DW2- Gulzar Singh; and DW3- Om Parkash.

(7) The learned trial Court, after hearing both the parties, convicted and sentenced the accused-appellant as indicated in para 1 of this judgment. Hence the present appeal, which was admitted by this Court on 10.07.2013.

(8) The learned counsel for the appellant contends that the charge is defective. He further contends that there is unexplained delay in lodging the FIR. As per the prosecution story, the prosecutrix had gone to purchase grocery items on 19.06.2009 at 7.30 p.m. whereas the present FIR was registered on 25.06.2009, at 7.30 p.m. However, no explanation has come forth in this regard. There is also delay in recording the statement of the

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(11) The argument of the learned counsel for the appellant that charge is defective as no details have been given in the charge, is not favourable to the accused as Section 215 Cr.P.C. provides that no omission at any stage of the case is material, unless the accused was in fact led by such error or omission and it has occasioned failure of justice. This error or omission, if any, was not brought to the notice of the Court during trial. At appellate stage, he cannot taken this objection as the accused was fully aware of the imputations against him. A copy of report under Section 173 Cr.P.C. along with documents relied upon by the prosecution, was supplied to him. The evidence of the prosecutrix was recorded in his presence. The counsel failed to show as to what prejudice is caused to the accused-appellant.

(12) The prosecutrix was examined as PW1 and she stated in her statement that when she was going to purchase grocery items from the shop, the appellant met her on the way and told her that he will meet her with his daughter. She has pecifically stated that she committed rape upon her without her consent and on raising objection, he threatened to kill her. She has nowhere stated that she was a consenting party to the sexual intercourse. In the absence of any such admission by the prosecutrix during her examination that she was a consenting party, the onus was upon the appellant to prove his assertion. The prosecutrix was of the same age group as of the daughter of the appellant. Both the girls were known to each other. It is the categoric and constant stand of the prosecutrix that the appellant approached her and she went along with him to meet his daughter. The appellant has not been able to rebut the stand taken by the prosecutrix.

(13) Section 114-A of the Evidence Act reads as under:-

"114A. [Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent]."

(11) The argument of the learned counsel for the appellant that charge is defective as no details have been given in the charge, is not favourable to the accused as Section 215 Cr.P.C. provides that no omission at any stage of the case is material, unless the accused was in fact led by such error or omission and it has occasioned failure of justice. This error or omission, if any, was not brought to the notice of the Court during trial. At appellate stage, he cannot taken this objection as the accused was fully aware of the imputations against him. A copy of report under Section 173 Cr.P.C. along with documents relied upon by the prosecution, was supplied to him. The evidence of the prosecutrix was recorded in his presence. The counsel failed to show as to what prejudice is caused to the accused-appellant.

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(14) In the instant case, the prosecutrix has specifically denied being a consenting party and therefore, the presumption to be drawn is that she did not consent to sexual intercourse.

(15) The last seen evidence is also against the appellant. As per the statement of PW-3, Sarabjit Kaur, she had seen the accused along with two other young boys taking away the prosecutrix on 19.06.2009. Moreover, the appellant was arrested on 25.06.2009, and the prosecutrix was recovered from her custody. Thus, throughout this period, the prosecutrix remained in the custody of the accused. The prosecutrix has stated on oath that she was confined in a room of a deserted factory at Malerkotla and raped there. When she objected to the act, the accused threatened to kill her. She has also stated in her cross-examination that she raised raula but there was nobody around to hear her cries. Thus, even if the prosecutrix had consented to accompany the appellant, it does not prove that she also consented to copulate with the appellant.

(16) In *Dinesh @Buddha versus State of Rajasthan*, (1) Hon'ble the Supreme Court has observed as under:-

"12. In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed," to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in the rape case "

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(17) The prosecutrix was recovered from the custody of the accused on 25.06.2009. She was medically examined by Dr. Anandjit Kaur, PW-7, on 26.06.2009. The chemical report shows that spermatozoa was found on the vaginal swabs. The argument that the same was not matched with the appellant cannot be given much weight in the light of the fact that the prosecutrix remained in the custody of the appellant during the relevant period.

(18) The learned counsel for the appellant has placed reliance on the statement of this witness to the extent that she was habitual to sexual intercourse as well as the statements of DW2 and DW3, to make out a case that the prosecutrix was a girl of bad moral character. In these type of cases, it is the common tendency of the defence to defame and raise fingers on the morality of the victim. However, in the considered opinion of this Court, bearing bad moral character does not confer any right to the others to physically or ~ sexually exploit the other.

(19) As far as the delay in lodging the FIR is concerned, the complainant- PW2, has specifically stated that he has brought the matter of disappearance of the prosecutrix to the Police on 19.06.2009, itself, however, his statement was formally recorded on 25.06.2009, for the reasons best known to the police. However, the victim cannot be made to suffer on account of the lapse on the part of the prosecution. Thus, the delay in the instant case, is of no consequence, in the light of other facts and circumstances of the present case.

(20) The age gap between the accused and the prosecutrix, who has a daughter of the same age group as that of the prosecutrix, further increases the gravity of the offence. This Court sees no mitigating circumstance to reduce the sentence.

(21) In view of the above discussion, this Court feels that the prosecution has been successful in bringing home the guilt against the accused-appellant beyond a shadow of reasonable doubt.

(22) Accordingly, the present appeal is dismissed. The appellant is stated to be on bail. His bail bonds shall stand cancelled. He be taken into custody forthwith, to suffer the remaining part of his sentence.

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*J.S. Mehndiratta*