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KRISHAN

v.

STATE OF HARYANA

(Criminal Appeal No. 1342 of 2012)

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MAY 16, 2014

[DIPAK MISRA AND N.V. RAMANA, JJ.]

C *Penal Code, 1860 – ss. 376 and 506 – Rape and criminal intimidation – Commission of, by the appellant on the prosecutrix – Conviction and sentence u/ss. 376 and 506 by the courts below – Interference with – Held: Not called for – Taking into consideration the totality of circumstances, on appreciation of entire evidence, supported by the doctors' opinion and chemical examination report, the prosecution case that the appellant committed the offences of rape and criminal intimidation cannot be doubted.*

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E **The prosecution case was that on the fateful day the appellant committed rape on the prosecutrix-victim. Investigation was carried out. The trial court convicted the appellant for offences punishable under sections 376 and 506 IPC and sentenced accordingly. The High Court upheld the order passed by the trial court. Hence, the instant appeal.**

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**Dismissing the appeal, the Court**

G **HELD: 1.1. Taking into consideration the totality of circumstances and on appreciation of entire evidence, supported by the Doctors' opinion and chemical examination report, there is nothing to disbelieve the prosecution story that the appellant had committed the offences of rape and criminal intimidation. There is no error in the judgments and orders passed by the Courts**

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below and thus, there is no reason to interfere. [Para 18] [559-G-H; 560-A]

1.2. PW 8-doctor relying upon the report of the Chemical Examiner stated that human semen was detected on the underwear of the victim. PW 2-doctor stated that there were bone injuries on the right forearm, swelling and contusion both on the left hand and right shoulder and abraded contusion of the right leg of the accused. The doctor opined that these injuries were caused within a duration of 24 to 72 hours. All these injuries indubitably support the version of the prosecutrix-victim who stated that in the scuffle, she had bitten the accused. In addition to this, PW 2 also stated that he found nothing which suggests that the accused could not perform sexual intercourse. The contention to rule out rape by the accused, that the prosecutrix is habitual of sexual intercourse and there were no signs of recent forcible sexual intercourse or injuries on her body, also cannot help. It is not expected that every rape victim should have injuries on her body to prove her case. The findings of the medical experts clearly established that there was a rape committed against the victim. [Para 16] [558-F-H; 559-A-B]

1.3. The other ground that the prosecutrix falsely implicated the appellant as his father (DW 1) had complained to her father that she was roaming around with the company of some boys and thus, she threatened that she will implicate the appellant falsely to take revenge for complaining against her, has no basis. To prove this fact, the counsel relied upon the only circumstance that after the arrest of the accused, his father (DW 1) made a complaint to the Superintendent of Police about the false implication of his son which was signed by two villagers. However, there was no corroborative evidence on record

A to establish this fact and even the said two persons were not examined. [Para 16] [559-C-E]

B 1.4. The submission that after the alleged occurrence, the girl straightaway went to her house and only thereafter, she went to the police station to lodge the complaint and thus, the story of rape cannot be believed, cannot be accepted. One cannot expect every rape victim to straightaway go to police station and lodge complaint. [Para 17]. [559-F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1342 of 2012.

D From the Judgment and Order dated 03.03.2011 in CRA No. 687-SB of 2003 of the High Court of Punjab and Haryana at Chandigarh.

Sunil Verma, P.V. Raghunandan and Rameshwar Prasad Goyal for the Appellant.

E Manjit Singh, AAG, Vikas Sharma and Naresh Bakshi for the Respondent.

The Judgment of the Court was delivered by

F **N.V. RAMANA, J.** 1. This appeal arises out of Judgment and order dated 3rd March, 2011 of the High Court of Punjab and Haryana upholding the order passed by the Additional Sessions Judge, Faridabad convicting the appellant for the offences punishable under Sections 376 and 506, IPC.

G 2. The facts giving rise to this appeal are that at the instance of the prosecutrix (PW-10) an F.I.R. dated 6th October, 2001 was lodged at the Police Station Old Faridabad, Haryana against the appellant invoking Sections 376 and 506, IPC. According to the prosecution story, on 6th October, 2011 while the prosecutrix (PW 10) was on her way carrying meals for her H parents who were working in the fields, the appellant

approached her from behind when she was going on the road in between his fields, and started abusing her. When she protested, the appellant overpowered and pushed her as a result of which she fell down on the ground. The appellant then gagged her mouth and forcibly took her to the nearby 'arhar' fields and committed rape on her.

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3. After the case was registered, investigation commenced and the prosecutrix was got medically examined on 6th October, 2001 itself. The accused appellant was arrested on the next day and he was also got medically examined. After recording the statement of prosecutrix under Section 164, Cr.P.C., the case property was sent to Forensic Science Laboratory, Madhuban, Karnal and the case was committed to the Court of Session. Subsequently, charges under Sections 376 and 506, IPC were framed against the accused appellant who pleaded not guilty and claimed trial.

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4. While the prosecution in all examined as many as 12 witnesses to substantiate its allegations against the accused, there were two defence witnesses.

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5. Dr. Meenu Kapoor, Medical Officer, B.K. Hospital, Faridabad (PW 8) who medically examined the prosecutrix opined that there was possible sexual intercourse, but there was no external injury mark anywhere on the body of the prosecutrix. She deposed before the Trial Court that human semen was detected on undergarments of the victim.

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6. Dr. Sudhir Khurana, PW 2 who examined the accused appellant found nothing which could suggest that the accused could not perform sexual intercourse. He also noticed bone injuries on the right forearm, left hand, right shoulder and right leg of the accused, which are simple in nature.

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7. PW-11, father of the victim supported the prosecution story. He deposed that after hearing the noise of his daughter,

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A he reached the spot and saw the accused running. When he tried to apprehend the accused, he ran away.

B 8. It is the case of the appellant before the Trial Court that the prosecutrix had intentionally implicated him in this case as she had developed personal grudge against him because he along with his father (DW 1) and one Zile Singh (DW 2) visited the house of the prosecutrix and made a complaint to her father the she had been keeping bad company with some boys and asked her father to keep an eye on her. This resulted in an  
C altercation between them and consequently the prosecutrix warned them that she would implicate the appellant in a false case.

D 9. The Trial Court, considering the facts and circumstances of the case, more particularly relying on the FSL report (Ext. P1), came to the conclusion that the prosecution had adduced sufficient evidence in order to bring home the guilt of the accused, and accordingly, the appellant was convicted and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to further undergo  
E rigorous imprisonment for a period of one year, for the offence punishable under Section 376, IPC. For the offence punishable under Section 506, IPC the appellant was sentenced to undergo rigorous imprisonment for one year, to pay a fine of Rs.1,000/  
F -, in default to undergo rigorous imprisonment for two months. However, the substantive sentences were directed to run concurrently.

G 10. Dealing with the appeal preferred by the accused, the Single Judge of the High Court fully concurred with the order of the Trial Court convicting the appellant for the aforesaid offences. Before the High Court, the accused claimed that on the date of incident he was juvenile and hence he may be given the benefit of the provisions of Juvenile Justice (Care and  
H Protection of Children) Act, 2000. The High Court, therefore,

referred the matter to the Juvenile Justice Board to find out whether on the day of incident, the appellant was juvenile or not. The High Court clarified that in case the Juvenile Justice Board came to the conclusion that the appellant was a juvenile, he would be dealt with those provisions, otherwise, he would undergo the sentence awarded by the Trial Court.

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11. The Juvenile Justice Board, Faridabad considered the case of the accused appellant and reached to the conclusion that the accused had failed to prove with proper documentary evidence that he was a juvenile on the date of occurrence and accordingly declined his plea to be a juvenile.

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12. Aggrieved by the order passed by the learned Single Judge of the High Court, the appellant approached this Court by this appeal. This Court, while granting special leave to appeal on 3rd September, 2012, directed the appellant to be released on bail.

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13. Before us, it is strenuously contended by the counsel for the appellant that the Courts below have failed to appreciate the defence of the appellant who was falsely implicated in the case. An effort has been made to satisfy this Court that there was strong motive of the prosecutrix to implicate the appellant. It was on account of the altercation that took place when the appellant party brought to the notice of the father of prosecutrix about her illicit relationship with some boys, the prosecutrix warned the appellant that she will take revenge by implicating him in a false case. He also submitted that the Courts below have erred in relying on the statement of prosecutrix that the appellant pushed her twice, gagged her mouth and dragged her holding both hands on the dry field of the Arhar and forcibly committed rape. He submitted that when such a forcible assault is committed on a girl, one would expect some sort of injury on any part of her body, but the prosecution story is totally concocted as it is unbelievable that in spite of all the alleged

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A forcible rape, the victim did not sustain any injury and it is evident from her Medical Report that there was no external mark of injury anywhere on her body.

B 14. Learned counsel finally contended that there were several anomalies and improvements in the evidence, no corroboration of certain important statements of victim with the medical evidence and the prosecution has failed to prove its case beyond reasonable doubt. Despite all this, the Trial Court as well as the High Court went on convicting and sentencing the appellant and hence the impugned judgment has to be set aside.

C 15. Learned counsel for the respondent—State, on the other hand, supported the views taken by the Courts below and submitted that there is no iota of doubt in coming to the conclusion that the appellant has committed the grievous offence, and he is rightly punished by the Courts below.

D 16. The two grounds on which learned counsel for the appellant laid stress to show that there is no offence committed by the accused are (i) the medical evidence, and (ii) false implication by the prosecutrix. To appreciate his contention, we have perused the evidence of Dr. Meenu Kapoor—PW 8, who relying upon the report of the Chemical Examiner (Ext. PJ) stated that human semen was detected on the underwear of the victim. In addition to this, as per the evidence of Dr. Sudhir Khurana, PW 2 (Ext. PA), there were bone injuries on the right forearm, swelling and contusion both on the left hand and right shoulder and abraded contusion of the right leg of the accused. The Doctor opined that these injuries were caused within a duration of 24 to 72 hours. All these injuries indubitably support the version of the prosecutrix—victim who stated that in the scuffle, she had bitten the accused. In addition to this, the Doctor—PW 2 also stated that he found nothing which suggests that the accused could not perform sexual intercourse. The

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further contention of the counsel to rule out rape by the accused, that the prosecutrix is habitual of sexual intercourse and there were no signs of recent forcible sexual intercourse or injuries on her body, also cannot help. It is not expected that every rape victim should have injuries on her body to prove her case. The findings of the medical experts clearly established that there was a rape committed against the victim.

The other ground taken by the counsel is that the prosecutrix has falsely implicated the appellant as his father (DW 1) has complained to her father that she was roaming around with the company of some boys and hence she has threatened that she will implicate the appellant falsely to take revenge for complaining against her, but this plea has also no basis. To prove this fact, the counsel has relied upon the only circumstance that after the arrest of the accused, his father (DW 1) made a complaint to the Superintendent of Police about the false implication of his son which was signed by two villagers, namely, Mahender Lumberdar and mamchand Balmiki. However, there is no corroborative evidence on record to establish this fact and even the said two persons have not been examined.

17. A further submission made by the counsel for the appellant is that after the alleged occurrence, the girl straightaway went to her house and only thereafter she went to the police station to lodge the complaint and hence the story of rape cannot be believed. We find nothing unusual in this, one cannot expect every rape victim to straightaway go to police station and lodge complaint.

18. Taking into consideration the totality of circumstances and on appreciation of entire evidence, supported by the Doctors' opinion and chemical examination report, in our considered opinion, there is nothing to disbelieve the prosecution story that the appellant had committed the offences

A of rape and criminal intimidation. We, therefore, find no error in the judgments and orders passed by the Courts below and hence we see no reason to interfere.

B 19. The plea of the appellant being juvenile has not been raised before this Court.

20. The appeal fails and is accordingly dismissed.

C 21. The appellant is on bail in view of this Court's order dated 3rd September, 2012. His bail bonds shall stand cancelled and he shall be taken into custody forthwith to serve remaining sentence.

Nidhi Jain

Appeal dismissed.