



2023 INSC 1039

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1205 OF 2021

VED PAL & ANR.

APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The appeal challenges the judgment and order dated 15th July, 2019 by which the Division Bench of the High Court of Punjab and Haryana, Chandigarh has affirmed the orders of conviction dated 28th January, 2004/29th January, 2004 as recorded by learned Additional District Judge (Adhoc) thereby convicting the appellants for the offences punishable under Section 376(2) (g), 342 read with Section 34 of the Indian Penal Code (for short, "IPC") and sentencing them to undergo rigorous imprisonment for a period of 10 years along with fine of Rs.2,000/- each and in default of payment

of fine, to further undergo rigorous imprisonment for a period of six months each. The appellants were also sentenced to suffer imprisonment for a period of 06 months for the commission of offence punishable under Section 342 of the IPC.

2. The prosecution case in brief, as could be gathered from the material placed on record is thus:

- (i) On the date of the incident i.e. on 6th August, 2022, there was a programme in the village with regard to taking of 'Kavar'. Prosecutrix-P.W.1, who at the relevant time was studying in 9th Class, was sleeping in her house with her parents and her grandmother namely, Chameli. The brothers of the prosecutrix-P.W.1 namely Jogender and Hemant had gone to attend the said programme in the village. The prosecutrix was sleeping along with her grandmother Chameli on the roof of the ground floor of the house whereas her parents were sleeping on the roof of the first floor.

- (ii) At around 01:00 a.m., the prosecutrix heard a noise of knocking at the door. Thinking that her brothers had returned from the village programme, she opened the door. When the prosecutrix opened the door, she saw both the accused, namely, Suresh and Ved Pal standing at the door. Ved Pal caught hold of the hand of the prosecutrix and accused Suresh placed his hand on her mouth. After that, both the accused took the prosecutrix to their 'baithak'. Accused Suresh forcibly laid her on the cot and accused Ved Pal placed his hand on the mouth of the prosecutrix. Following which, accused Suresh opened the string of her 'salwar' and committed rape on the prosecutrix. After the accused released her, the prosecutrix raised an alarm which alerted the mother of the prosecutrix and Simran, who is the cousin of the prosecutrix. On seeing them coming, both the accused ran away from the door.

Thereafter, the mother of the prosecutrix (P.W.2) came there and took the prosecutrix with her. The prosecutrix told her mother about the occurrence of the incident and on the same day, at around 08:00 a.m., the prosecutrix accompanied by her parents, Simran and others went to the Police Post, where the statement of the prosecutrix came to be recorded. The prosecutrix was medically examined and her statement under Section 164 of the Criminal Procedure Code, 1973 (in short "Cr.P.C.") was also recorded.

3. After the completion of the investigation, charge-sheet came to be filed in the Court of competent Judicial Magistrate First Class. Since the case was essentially triable by the Sessions Judge, it came to be committed to the Sessions Court. At the conclusion of the trial, the learned Trial Judge recorded the order of conviction as aforesaid. In an appeal, the High Court has confirmed the same and hence the present appeal.

4. Mr. Nikhil Tyagi, learned counsel appearing on behalf of the appellants submitted that both the Trial Court as well as the High Court have grossly erred in recording the order of conviction. He submitted that, there are material contradictions between the evidence of the prosecutrix-P.W.1 and P.W.2 (Rajwati). He further submits that, even the evidence of the medical expert as well as the FSL report does not support the prosecution case. He further submitted that the case is full of coincidences. It is submitted that, according to the prosecution, P.W.2 (Rajwati) went to fill up water and at the same time, she heard the cries of the prosecutrix. He further submitted that, another coincidence is that Simran, who is the son of the uncle of the prosecutrix also comes at the same time from the function and accompanies P.W.2. It is submitted that in any case, Simran has not been examined. He therefore submits that the order of conviction and sentence, as recorded, is not sustainable in law and the appellants are entitled

to be acquitted.

5. Ms. Ruchi Kohli, learned counsel appearing for the State vehemently opposed the appeal. She submitted that the learned Trial Court as well as the learned High Court concurrently, and on correct appreciation of the evidence, have recorded the order of conviction which warrants no interference. She further submits that the conviction can also be recorded on the sole testimony of the prosecutrix. It is submitted that the testimony of the prosecutrix (P.W.1) is cogent, reliable and trustworthy. In any event, the testimony of the prosecutrix (P.W.1) is supported by the version of P.W.2 (Rajwati). She also submits that the minor contradictions between the evidence of (P.W.1) and P.W.2 (Rajwati) should not be given much weightage inasmuch as both are rustic villagers. She further submits that the prosecutrix is 70 per cent physically handicapped and as such, was not in a position to resist the force used by the accused. It is therefore submitted that, much would not turn

on the absence of injuries on the person of the prosecutrix.

6. Ms. Ruchi Kohli, learned counsel appearing for the State further submitted that the entire defence of the appellants has been that of consent. However, taking into consideration that the prosecutrix at the relevant time was aged about 13 years, consent would be immaterial.

7. With the assistance of the learned counsel for the appellants as well as learned counsel for the State, we have scrutinized the evidence.

8. No doubt that the conviction of the appellants under Section 376 of the IPC could be recorded on the sole testimony of the prosecutrix if the evidence is found to be trustworthy, cogent and reliable. As rightly pointed out by Ms. Ruchi Kohli, learned counsel appearing for the State, the minor contradictions in the evidence of the prosecution witnesses would not substantially deter the prosecution case.

9. However, in the present case, upon the consideration of the entire evidence together, we find that the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

10. In the evidence of prosecutrix as well as in the evidence of P.W.2, it has come on record that there are three houses in between the house of the prosecutrix and house of the accused Suresh, where the incident is alleged to have taken place.

11. As such, it is clear that even according to the prosecution, the prosecutrix was dragged from her house to the house of accused Suresh. It is difficult to believe that, at that time, the prosecutrix did not make any cries/hues.

12. It is further to be noted that in the medical evidence, the Doctor has specifically stated that no injuries were found on the person of the prosecutrix. Though he has opined that the possibility of the sexual intercourse could not be ruled out, he has also stated that the possibility

of intercourse earlier to the MLR cannot be ruled out. It is further to be noted that the FSL report further finds that no semen was found on the clothes of the prosecutrix or on the vaginal swab. The semen was found on the underwear of accused Suresh.

13. It is to be noted that the accused have taken a specific defence that there was a civil dispute between grand-father of the appellant(s) and the grand-father of the prosecutrix. No doubt that the said suggestion is once denied by the prosecutrix and on other occasion she has stated that she is not aware about the same. Though the prosecutrix admits the letter addressed by her to accused Suresh, in the next blush, she states that she has neither visited the house of the Suresh nor Suresh has visited to her house. Taking into consideration the fact that the both the prosecutrix and the appellant(s) reside within the vicinity of three houses, the said version is difficult to believe.

14. In the totality of the circumstances, we find that the prosecution has failed to prove the case beyond reasonable doubt. The accused are entitled to benefit of doubt.

15. The impugned judgment and order dated 15th July, 2019 passed by the High Court as well as the orders dated 28th January, 2004/29th January, 2004 passed by learned Additional District Judge (Adhoc) are quashed and set aside and the appeal is allowed.

16. The appellants are directed to be set at liberty forthwith if their detention is not required in any other case.

17. Pending applications, if any, stand disposed of.

.....J
(B.R. GAVAI)

.....J
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi
November 29, 2023