

[2023 LiveLaw \(SC\) 592](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
HIMA KOHLI; J., RAJESH BINDAL; J.
CRIMINAL APPEAL NO. 1050 OF 2013; August 02, 2023
Avtar Singh & Anr. versus State of Punjab

Indian Penal Code, 1860; Sections 342 and 376(2)(g) - Criminal Appeal against concurrent conviction in rape case - There was no evidence brought on record to connect the present appellants with the offence - Accused Acquitted.

For Appellant(s) Ms. E. R. Sumathy, AOR Mr. Nishant Bhardwaj, Adv.

For Respondent(s) Ms. Jaspreet Gogia, AOR Mr. Karan Sharma, AOR Mr. Mohit Siwach, Adv. Mr. Rishabh Sharma, Adv.

J U D G M E N T

Rajesh Bindal, J.

1. The judgment dated February 10, 2010 passed by the High Court of Punjab & Haryana in Criminal Appeal No.386 of 1999 has been impugned in the present appeal. The appellants were convicted and sentenced under Section 342 and 376(2)(g) of the Indian Penal Code [hereinafter 'IPC']. The third accused, Gian Singh was acquitted by the trial court itself.

2. Briefly noticing, the facts of the case are that FIR No. 102 of 1996 was registered at Police Station Hariana, District Hoshiarpur, under Sections 366, 376, 342, 506 and 34 IPC¹ against the appellants i.e. Avtar Singh, Sohan Lal and the acquitted accused, Gian Singh by the complainant, prosecutrix herself i.e., XYZ [name withheld].

3. Briefly as stated by the prosecutrix in the complaint, on the basis whereof the FIR was registered, that on 22.07.1996 at about 08.30 PM she went to ease herself in the 'Maize' crop field close to her haveli. When she had just entered the 'Maize' crop field, appellant no. 1, Avtar Singh came there. He put his hand on her mouth and took her to the 'Maize' crop field. He made her sniff something. She became unconscious. When she regained consciousness, she found herself on the floor of a room. At that time, Avtar Singh was lying with her and her 'Salwar' had been removed. She was feeling pain in her vagina. When she tried to get up, she was threatened by Avtar Singh with a knife that if she raised alarm, she would be killed. Again, early in the morning also, Avtar Singh committed rape on her by showing her a knife. Next morning on 23.07.1996, at about 06.00 AM, Gian Singh, Panch of the village, came there and opened the room. (Pertinently, he was acquitted by the Trial Court). At that time, she came to know that the room in which she was detained, was part of the haveli of Gian Singh. Thereafter, Avtar Singh went out and bolted the door from the outside. After this, Gian Singh committed rape on her. The prosecutrix remained with Gian Singh throughout the day. In the evening, Avtar Singh and Sohan Lal came to the room and Gian Singh went away. During the night, both Avtar Singh and Sohan Lal committed rape on her, turn by turn. In the morning on 24.07.1996, Avtar Singh and Sohan Lal took the prosecutrix to the 'Bajra' field behind the haveli of Gian Singh and again committed rape on her, turn by turn, against her consent. She was detained in the Bajra field throughout the day. In the evening, when Avtar Singh and Sohan

¹ Indian Penal Code, 1860.

Lal were taking her to some other place, she ran away and reached her house. The prosecutrix narrated the entire incident to her mother in the evening on 24.07.1996.

4. The FIR was got registered on the next day i.e., 25.07.1996, against the accused persons by the prosecutrix who came along with her mother and uncle Basant Singh to the Police Station.

5. The prosecution examined 13 witnesses, which included the prosecutrix herself and her mother. All the other prosecution witnesses were officials. The defence examined 4 witnesses which included a former sarpanch and the sarpanch of the village at time when the alleged incident had taken place. Further, defence witnesses includes Adda in-charge of the Union where appellant no. 1 namely, Avtar Singh was employed & lastly, the document and handwriting expert.

6. The chargesheet was filed against Avtar Singh and Sohan Lal and Gian Singh was placed in column no. 2. Charges were framed against Avtar Singh, Sohan Lal and Gian Singh vide order dated January 08, 1997. On appreciating the evidence produced by the parties, vide judgment dated February 27, 1999, the trial court convicted Avtar Singh under Sections 366, 376(2)(g), 342, 506 IPC & Sohan Lal under Section 342 and 376(2)(g) IPC and sentenced them to undergone imprisonment for a period of 10 years, respectively, whereas the accused, Gian Singh was acquitted.

7. Ms. E.R. Sumathy, learned counsel for the appellant submitted that the story as projected by the prosecution, was not believable. There are substantial discrepancies therein. Part of incident was stated to have taken place in a room in the haveli of Gian Singh, who was also charge-sheeted for committing rape on the prosecutrix. However, his involvement was disbelieved by the trial court and he was acquitted. Once the story of the prosecution is disbelieved with reference to the involvement of Gian Singh, the chain of events is broken and the conviction of the appellants can also not be upheld. The main incident was stated to have taken placed in the room of the haveli of Gian Singh, where the accused and the prosecutrix had remained for two days. He further submitted that no missing report was filed by the family members of the prosecutrix for more than two days, despite the fact that she was allegedly missing from the house from the night of July 22, 1996 and had come back to her home in the evening of July 24, 1996.

8. Though it is stated in the FIR that the uncle of the prosecutrix namely, Basant Singh had accompanied them to the police station at the time of registration of the FIR, however, he has not been produced in the Court. The appellants could not be linked with the crime, as there was no report produced from the laboratory linking them to the crime. It was claimed that the samples of semen and blood was taken from the clothes of the prosecutrix, but the same were not matched. There is further discrepancy in the evidence lead by the prosecution as the prosecutrix stated that she had handed over her clothes namely salwar and shirt to the Investigating Officer at the police station whereas her mother, Bakshish Kaur (PW6) stated that the clothes of the prosecutrix had been given to Sadhu Singh, who had handed over the same to the police. Sadhu Singh has not been produced as a prosecution witness. It was further submitted that there was no injury found on the body of the prosecutrix, even though she claimed that rape was committed against her consent firstly on the floor of a room in the haveli and secondly in the 'Bajra' field, that too multiple times. The plea raised by the appellant no.1 namely Avtar Singh, claiming an alibi was disregarded by the trial court without any reason. It is further submitted that the appellant no. 1, namely Avtar Singh had produced certain love letters written by the prosecutrix to him. Initially, the prosecutrix had given her sample of handwriting, distorting the same. However, when she was asked by the handwriting expert for another sample of

handwriting, she had refused to provide the same. For this conduct of the prosecutrix, an adverse inference is to be drawn. Further, there is a delay of more than one day in getting the FIR registered by the prosecutrix. It has further been contended that Rattan Chand, sarpanch of the village, (DW2) had stated that there were two rooms in the haveli of Gian Singh. In another room, goods of Gian Singh were lying, as on the same plot, house of Gian Singh was under construction and in another room, some labourers were residing.

9. The conviction of the appellants deserves to be set aside as the findings recorded are totally perverse and the view taken by the Courts below was not a possible view.

10. On the other hand, Mr. Karan Sharma, learned counsel for the State submitted that the evidence led by the prosecution has been properly appreciated by the Courts below while recording a finding of conviction, which does not require interference by this Court, as at this stage, re-appreciation of evidence should not be done. It is a case in which rape was committed on the prosecutrix by three accused, namely Avtar Singh, Sohal Lal, and Gian Singh, though one of them was acquitted by the trial court. However, the involvement of the appellants was proved beyond any doubt. Plea taken by them in defence was not found to be tenable. Delay of one day in getting the FIR registered in such type of cases is not fatal.

11. We have heard learned counsel for the parties and perused the relevant referred record. As per the version of the prosecutrix, three accused were involved in the offence, namely Avtar Singh, Sohan Lal and Gian Singh. It was claimed that on July 22, 1996 when the prosecutrix was on her way to ease herself in a Maize field, she was waylaid by Avtar Singh who had put handkerchief on her nose and made her smell something, after which she had become unconscious. Thereafter, she was taken in a room in an underconstruction building. It is difficult to believe that in the residential area of the village, at around 08.30 p.m., Avtar Singh could manage to take the prosecutrix in an unconscious condition to a room in the haveli of Gyan Singh unnoticed by anyone. It is further the case setup by the prosecution that throughout the night, Avtar Singh had committed rape on the prosecutrix. When she regained consciousness, she had found herself lying on the floor of the room. In the morning at about 06.00 AM, Gian Singh had come there along with a cup of tea, which she had refused to consume. Thereafter, Avtar Singh left the place and Gian Singh committed rape on her throughout the day on July 23, 1996. While going out, Avtar Singh had bolted the door from outside.

12. This story of the prosecution is belied by the fact, as has come on record through the evidence led by the prosecution, that the haveli of Gian Singh was under construction where regular activity was going on. Labour was working there throughout the day. Coupled with the fact that it was the case of the prosecutrix herself that the accused party belonged to the opposite group in the village. The trial court did not find any case made out against Gian Singh in whose haveli, the prosecutrix had allegedly stayed for two days, out of which on one day, she was allegedly raped by Gian Singh, owner of the haveli. The acquittal of Gian Singh has broken the chain of events and falsified the story projected by the prosecutrix.

13. Now coming to the evidence lead against the appellants. It is the case of the prosecution itself that the room in which the prosecutrix was allegedly detained and raped for two days by three persons is located in an under-construction haveli of Gian Singh where labour was working throughout the day. Despite this fact, the prosecutrix did not raise any alarm. The stand of the prosecutrix in her statement was that she neither drank water, nor had she eaten anything for three days. She remained in the illegal custody of the accused and was raped repeatedly for three days, against her wishes. When

considered in the light of her medical examination, the said statement is falsified as the doctor noted that she was well-built and well-nourished.

14. There is nothing in the evidence laid by the prosecution that there was any threat to the prosecutrix on 23.07.1996 when she remained in the room with Gian Singh, alone. The story projected by the prosecution that she was raped by Gian Singh during the daytime on 23.07.1996, has been disbelieved by the trial court. The case of the prosecution is that the appellant no. 1 namely, Avtar Singh had left the room on 23.07.1996 in the morning, leaving the prosecutrix with Gian Singh and had come back in the evening with the appellant no.2, Sohan Lal. Once the involvement of Gian Singh is taken out from the entire story, the deduction would be that the prosecutrix may have been alone in the room throughout the day on 23.07.1996, admittedly at a place, where construction activity was going on all day long. No alarm was raised by the prosecutrix. Even in her statement, Bakshish Kaur (PW6), mother of the prosecutrix had stated that "*the kothi (haveli) was under construction and labourers were working on the roof as well as inside.*" The statement of the prosecutrix that she was raped throughout the day in open in a field where 'Bajra' crop was standing, is not found to be plausible or persuasive. As per the evidence led by the prosecution, the 'Bajra' field was adjoining the haveli of Gian Singh, where construction activity was going on at the level of the first floor and the area all around was visible. If any such incident had taken place, the prosecutrix being in an open field, could have very well raised an alarm.

15. The room where the offence was allegedly committed, is within the compound of an under construction kothi (haveli) of Gian Singh as it is evident from the site plan (Exhibit PD) produced by the prosecution. The story of the prosecutrix is further demolished as her claim was that she could recognise the place only after she saw Gian Singh in the morning when he had come there to offer her tea. Gian Singh's involvement in the crime has been disbelieved by the Trial Court while recording his acquittal. The order was not challenged further.

16. Further in the evidence of the prosecution, a major discrepancy found in the statements of the prosecutrix as well as her mother is with reference to handing over the clothes of the prosecutrix to the police. The prosecutrix had stated that she had handed over her salwar & kameez (shirt) to the police which had stains of semen, whereas her mother, (Bakshish Kaur)-PW6, while testifying had stated that she had handed over the clothes of the prosecutrix to Sadhu Singh who in turn had given them to the police. Sadhu Singh has not been produced in the evidence by the prosecution.

17. Admittedly, the prosecutrix had returned home in the evening of 24.07.96, however, the FIR was got registered in the evening of 25.07.96 and she was taken for medical examination a day after, on 26.7.96, at 01.00 pm. From the statement of the doctor, Renu Kumari (PW1) who examined the prosecutrix (PW4), the claim of the prosecutrix is further belied. The prosecutrix's stand is that she was raped repeatedly from the night of 22.07.1996 till the evening of July 24, 1996, by three different persons, firstly, in a room with no bedding and secondly, in a field of 'Bajra' crop with no bedsheet or anything. However, no external/internal injury was found on her body and even on her private parts. The doctor, Renu Kumari (PW1) opined that the prosecutrix was well built and well nourished. She further stated that the prosecutrix was used to sexual intercourse. This is not to say that the version of a victim of a sexual offence ought to be disbelieved only because she has had an active sexual life. In the instant case, the surrounding circumstances pointed out above, discredit the version of the prosecutrix.

18. Though in the chemical examiner's report, it had come that the clothes of the prosecutrix handed over to the police were having stains of semen, however, no scientific evidence was produced to link the same with the accused. This issue gains importance in the light of the fact that a part of the story sought to be projected by the prosecutrix, had already been disbelieved by the Trial Court with the acquittal of the Gian Singh. It has not been pointed out from the record, that the clothes which were handed over to the police station, belonged to the prosecutrix. More so when there are two different versions with reference to the manner of handing over the clothes of the prosecutrix to the police.

19. There are several material discrepancies even in the statement of the mother of the prosecutrix, Bakshish Kaur (PW6) who stated that after her daughter did not return back on 22.07.1996, she had informed Rattan Chand (DW2), sarpanch of the village, who also made efforts to search her daughter. However, when Rattan Chand appeared in court as DW-2, he completely denied this fact.

20. Further, on going through the evidence led by the prosecution, the findings returned by the trial court are found to be completely perverse. It is so stated by the prosecutrix in the FIR that about 5 months back, her father had a quarrel with Avtar Singh (also called Tari) and others. To take the revenge, Avtar Singh, Gian Singh and Sohan Lal had committed rape on her. Gian Singh was acquitted by the trial court noticing the stand of the prosecutrix that there was party faction in the village and both the parties belonged to different sections. The same reasoning will apply to the appellants as well for the reason that in the FIR, the stand taken by the prosecutrix is same in respect of all the accused, as far as the allegation of party faction is concerned.

21. In view of the aforesaid discussion, we are of the opinion that there was no evidence brought on record to connect the present appellants with the offence. The appeal is accordingly allowed and the judgments of both the courts below are set aside. The appellants are acquitted of the charges framed against them. The bail bonds submitted by them are discharged.

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