REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 763 of 2008

Satpal Singh **...Appellant**

Versus

State of Haryana **...Respondent**

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the Judgment and Order dated 7.03.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Crl. Appeal No. 337-SB of 1994, by which the High Court has upheld the conviction Order of the Trial Court dated 20th/21st July, 1994 passed in Sessions Trial No. 21 of 1993, however, the High Court reduced the sentence from seven years to five years for the

offence punishable under Section 376 of the Indian Penal Code (hereinafter called as, "IPC").

2. The facts and circumstances giving rise to the present case are that the alleged occurrence of rape took place on 11.03.1993. Rajinder Kaur (PW 15), the prosecutrix, and her brother Rajinder Singh (PW 16) had gone to fields for collecting cattle fodder. Rajinder Singh had gone on a cycle and settled in a field at some distance from the field where Rajinder Kaur, the prosecutrix, had reached to cut/collect the grass. The appellant, Satpal Singh, caught hold of her and out of fear, the sickle in her hand fell down. The appellant took her to the nearby wheat field and raped her. She raised an alarm and upon hearing the same, her brother, Rajinder Singh (PW 16), came running to the place of occurrence. But by then, the appellant escaped from the scene. The prosecutrix came to her house along with her brother and told her mother Smt. Balwant Kaur that she was raped by the appellant. The father of the prosecutrix, Balbir Singh (Complainant) (PW 11), was not present at home and he was informed about the incident

when he returned home in the evening. Balbir Singh (PW 11), after having consultation with his brother Kulwant Singh, went to Police Station, Shahbad. However, the police officials on duty asked him to come on next day. When Balbir Singh (PW 11) reached the Police Station on next day, he found that a Village Panchayat had already assembled there and efforts were made to compromise the matter. However, Balbir Singh (PW 11), agreed not to launch criminal proceedings in case, the appellant was fined to the tune of Rs. 5000/- and "*be taken in procession after blackening his face and be paraded in the village*". Ultimately, the Panchayat imposed fine of Rs. 1100/- only on the appellant, out of which Rs. 600/- were donated in the Gurudwara and Rs. 500/- in the temple. Being dissatisfied with the dictate of the Panchayat and running from pillar to post to convince the Panchayat members to come to a justifiable solution, Balbir Singh (PW 11), complainant, approached the Superintendent of Police, Kurukshetra on 16.07.1993 i.e. after about four months of the date of incident. On the instructions of the Superintendent of Police, Kurukshetra, an FIR was lodged against the appellant

and one ASI Ram Kumar on 16.07.1993 under Sections 376, 201 and 217 IPC. ASI Ram Kumar was arrayed as an accused for the reason that there had been allegations against him that he forced the matter to be compromised in order to screen the appellant from the crime.

3. Dr. Geeta Suri (PW 2), the Medical Officer, examined the prosecutrix on 17.07.1993. According to her, as the alleged rape had taken place long ago, the vaginal swap could not be taken and, therefore, there was no possibility to prove the alleged act of rape by way of medical report. However, she opined that possibility of rape could not be ruled out.

4. The charges were framed against the appellant and ASI Ram Kumar on 14.09.1993 under Sections 376, 201 and 217 IPC. Both the accused pleaded not guilty and claimed trial. Thus, the trial was conducted and after recording the statements and considering the case in totality, the Trial Court convicted the appellant under Section 376 IPC and sentenced to seven years' Rigorous Imprisonment and imposed fine to the tune of Rs.5000/-. In default of payment of fine, he was

directed to undergo Rigorous Imprisonment of six months more. However, ASI Ram Kumar stood acquitted.

5. Being aggrieved, the appellant preferred the appeal before the High Court of Punjab and Haryana and the High Court, vide impugned Judgment and Order dated 7.03.2007, upheld the conviction of the appellant, but considering the mitigating circumstances, reduced the sentence from seven years to five years. Hence, this appeal.

6. Sh. Abhinav Ramakrishna, learned counsel for the appellant, has raised only two issues namely; (a) that there has been inordinate delay in lodging the FIR and the prosecution could not furnish any explanation for the same and; (b) that the prosecutrix was major and the Courts below have recorded a wrong finding of fact that she was a minor. The prosecutix and the appellant had been studying in the same school. They knew each other and it was a case of consent. The appellant has falsely been enroped in the crime just to extract certain amount of money from him. The appeal deserves to be allowed.

7. On the other hand, Sh. Rajeev Gaur 'Naseem', learned counsel for the respondent-State, has vehemently opposed the appeal contending that the prosecutrix was a minor at the time of the incident and even if, she was a major, there was no consent of the prosecutrix for sexual intercourse. More so, there had been no demand of money by the prosecutrix or her father, Balbir Singh (PW 11). The delay occurred because of the intervention of the Village Panchayat and non-cooperation of the Police officials. The Panchayat did not agree to the suggestion of Balbir Singh (PW 11), that the appellant *"be taken in procession after blackening his face and paraded in the village."* The complainant approached the Superintendent of Police, Kurukshetra. Thus, no fault can be found with the prosecution case as delay in lodging FIR stood explained. Appeal lacks merit and is liable to be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. In the instant case, admittedly, the FIR was lodged after about four months of the commission of offence and that was done on the instructions of the Superintendent of Police,

Kurukshetra. There is ample evidence on record to show that the Panchayat had intervened on the next day of the incident and it pressurised the complainant to compromise the case and settle it outside the Court. The Panchayat met several times and ultimately imposed a fine of Rs.1100/- on the appellant, out of which the appellant deposited/donated Rs.600/- and Rs. 500/- in Gurudwara and Temple respectively, and obtained receipts also. The receipts had been produced before the trial Court by Piara Singh (PW 6). However, Balbir Singh (PW 11), complainant, had been demanding that *"the appellant be fined to the tune of Rs.5000/- and be taken in the procession after blackening his face and be paraded in the village".* It was not accepted by the Panchayat, therefore, the complainant had raised the grievance before the Superintendent of Police, Kurukshetra.

10. Maya Ram, Sarpanch, Village Dhantori, was examined as PW8 and was declared hostile. However, in the examination-in-chief, he stated as under :-

> *"A Panchayat was convened to settle this issue. Members of Panchayat assembled*

from four-five villages including the relatives of both the parties. This dispute/issue was settled by the Panchayat by imposing the fine of Rs.1100/- on Satpal Singh."

11. Balbir Singh (PW 11) has stated that he went to the Police Station on the same day. His statement was recorded there and was asked by the Munshi to come on the next day. When on the next day, he went to the Police Station at about 8.00-8.30 a.m. along with his daughter Rajinder Kaur, the prosecutrix, and brother, he noticed 15-20 persons from different villages, including a few from his village, who had advised him to settle the matter for the reason that he had to marry his daughter. They had also advised not to get his daughter medically examined as it would be a hurdle for him in arranging her marriage. But the complainant did not accept their suggestion and approached the higher authorities.

12. Both the courts below have considered this aspect at length and reached the conclusion that delay occurred because of the intervention of the Panchayat, as the Panchayat

had insisted to compromise the case, rather than moving the investigating machinery. The High Court observed as under :-

> *"It was a case where the life of a young child of the complainant was at stake. A tendency on the part of the villagers or the parents of a young child, who is ravished, would normally be to save the honour of the child as first priority. The respectables in the village could be expected to intervene in this matter to seek compromise, so as to avoid the stigma for a young girl. An innocent complainant, even admitted that he would not have got the case registered in case the panchayat had agreed to impose fine as suggested by him and if the panchayat had paraded the appellant with blacken face as proposed by him. This would rather reflect that the witness was truthful besides being innocent villager, who despite being subjected to intricacies of the court proceedings, did not resile from the true accounts of events that had taken place."*

13. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and

sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences. (Vide **Karnel Singh Vs. State of M.P.** AIR 1995 SC 2472; and **State of Punjab Vs. Gurmeet Singh & Ors.** AIR 1996 SC 1393).

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its

entirety. [vide **State of Andhra Pradesh Vs. M. Madhusudhan Rao** (2008) 15 SCC 582].

15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that *"ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon*" [vide **Satyapal Vs. State of Haryana** AIR 2009 SC 2190].

16. In **State of Himachal Pradesh Vs. Prem Singh** AIR 2009 SC 1010, this Court considered the issue at length and observed as under :-

> *"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the*

prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

17. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick.

18. If the instant case is examined in the light of the aforesaid settled legal proposition, we are of the considered opinion that the delay in lodging the FIR has been satisfactorily explained.

19. So far as the issue as to whether the prosecutrix was a major or minor, it has also been elaborately considered by the courts below. In fact, the School Register has been produced and proved by the Head Master, Mohinder Singh (PW 3). According to him, Rajinder Kaur (PW 15), the prosecutrix, was admitted in Government School, Sharifgarh, Dist. Kurukshetra on 2.05.1990 on the basis of School Leaving Certificate issued by Government Primary School, Dhantori.

In the School Register, her date of birth has been recorded as 13.02.1975. The question does arise as to whether the date of birth recorded in the School Register is admissible in evidence and can be relied upon without any corroboration. This question becomes relevant for the reason that in cross-examination, Sh. Mohinder Singh, Head Master (PW 3), has stated that the date of birth is registered in the school register as per the information furnished by the person/guardian accompanying the students, who comes to the school for admission and the school authorities do not verify the date of birth by any other means.

20. A document is admissible under Section 35 of the Indian Evidence Act, 1872 (hereinafter called as 'Evidence Act') being a public document if prepared by a government official in the exercise of his official duty. However, the question does arise as what is the authenticity of the said entry for the reason that admissibility of a document is one thing and probity of it is different.

21. In **State of Bihar & Ors. Vs. Radha Krishna Singh & Ors.** AIR 1983 SC 684, this Court dealt with a similar contention and held as under:–

> *"Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.. . . . .*
>
> *Where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has "a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute, its probative value would indeed be very high so as to be entitled to great weight.*
>
> *The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little."*

22. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in **Ram Prasad Sharma Vs. State of Bihar** AIR 1970 SC 326;

Ram Murti Vs. State of Haryana AIR 1970 SC 1029; **Dayaram & Ors. Vs. Dawalatshah & Anr.** AIR 1971 SC 681; **Harpal Singh & Anr. Vs. State of Himachal Pradesh** AIR 1981 SC 361; **Ravinder Singh Gorkhi Vs. State of U.P**. (2006) 5 SCC 584; **Babloo Pasi Vs. State of Jharkhand & Anr.** (2008) 13 SCC 133; **Desh Raj Vs. Bodh Raj** AIR 2008 SC 632; and **Ram Suresh Singh Vs. Prabhat Singh @Chhotu Singh & Anr**. (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.

Such entries may be in any public document, i.e. school register, voter list or family register prepared under the Rules and Regulations etc. in force, and may be admissible under Section 35 of the Evidence Act as held in **Mohd. Ikram Hussain Vs. The State of U.P. & Ors.** AIR 1964 SC 1625; and

Santenu Mitra Vs. State of West Bengal AIR 1999 SC 1587.

23. There may be conflicting entries in the official document and in such a situation, the entry made at a later stage has to be accepted and relied upon. (Vide **Shri Raja Durga Singh of Solon Vs. Tholu & Ors.** AIR 1963 SC 361).

24. While dealing with a similar issue in **Birad Mal Singhvi Vs. Anand Purohit** AIR 1988 SC 1796, this Court held as under:–

> *"To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act, but entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."*

25. A Constitution Bench of this Court, while dealing with a similar issue in **Brij Mohan Singh Vs. Priya Brat Narain Sinha & Ors.** AIR 1965 SC 282, observed as under:–

> *"The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant himself is illiterate and has to depend on somebody else to make the entry. We have therefore come to the conclusion that the High Court is right in holding that the entry made in an official record maintained by the illiterate Chowkidar, by somebody else at his request does not come within Section 35 of the Evidence Act."*

26. In **Vishnu Vs. State of Maharashtra** (2006) 1 SCC 283, while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by un-

impeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded.

Thus, the entry in respect of age of the child seeking admission, made in the school register by semi-literate chowkidar at the instance of a person who came along with the child having no personal knowledge of the correct date of birth, cannot be relied upon.

27. Thus, the law on the issue can be summerised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/Authority to examine its probative value. The authenticity of the entry would depend as on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school

register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

28. In case, the issue is examined in the light of the aforesaid settled legal proposition, there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the School Register. It is not possible to ascertain as to who was the person who had given her date of birth as 13.02.1975 at the time of initial admission in the primary school. More so, it cannot be ascertained as who was the person who had recorded her date of birth in the Primary School Register. More so, the entry in respect of the date of birth of the prosecutrix in the Primary School Register has not been produced and proved before the Trial Court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major.

Be that as it may, the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.

29. It can be held that a woman has given consent only if she has freely agreed to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammeled right to forbid or withhold what is being consented to, it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former. An act of helplessness on the face of inevitable compulsions is not consent in law. More so, it is not necessary that there should be actual use of force. A threat or use of force is sufficient.

30. The concept of 'Consent' in the context of Section 375 IPC has to be understood differently, keeping in mind the provision of Section 90 IPC, according to which a consent given under fear/coercion or misconception/mistake of fact is not a consent at all. Scheme of Section 90 IPC is couched in negative terminology. Consent is different from submission. [Vide **Uday Vs. State of Karnataka** AIR 2003 SC 1639; **Deelip Singh @ Dilip Kumar Vs. State of Bihar** AIR 2005 SC

203; and **Yedla Srinivasa Rao Vs. State of A.P.** (2006) 11 SCC 615.]

31. In the **State of H.P. Vs. Mange Ram** AIR 2000 SC 2798, this Court, while considering the same issue, held as under :-

> *"Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between the resistance and assent."*

32. Rajinder Kaur (PW 15), the prosecutrix, has deposed that the sickle in her hand had fallen down out of fear when the appellant caught hold of her. She had given teeth bites and broken the buttons of the shirt of the appellant in order to rescue herself from his clutches. She raised a hue and cry and her brother, Rajinder Singh (PW 16), who was working in another field at some distance, came to the spot. The prosecutrix has also been examined under Section 164 of Code of Criminal Procedure, 1973, wherein she had deposed in respect of the resistance also. She stood the test of cross-

examination with reasonable certainty. Her version also got support from the medical evidence of Dr. Geeta Suri (PW 2), who had opined that possibility of rape with the prosecutrix could not be ruled out.

33. The Trial Court considered the issue of consent at length and recorded the following findings :-

> *"There is positive and cogent evidence in the statement of Mst. Rajinder Kaur (PW15) as also in her statement Ex.PS/2 that resistance was offered by her. She even makes out a case that she could have even used sickle in offering resistance but it had fallen away from her hands on the doll.*

34. The High Court dealt with the issue and made the following observations :-

> *"The aspect of consent introduced by the appellant's counsel as an alternative plea would also not stand the test of judicial scrutiny. When analysed in the light of evidence given by prosecutrix and other PWs, it would show that prosecutrix had offered resistance, so much as that she had pulled the buttons of the shirt of the appellant and had given him teeth bites. She had also raised alarm, which had attracted her brother, who was present in*

the nearby fields. The aspect of consent introduced by taking advantage of the appellant being a student of the same school where the prosecutrix was studying, was rightly discarded by the trial court……it may also need a notice that such a plea was only raised in the alternative as otherwise plea of denial alone was earlier raised. Defence has, without success, tried to encash the aspect of settlement, which was negotiated during the panchayat meetings."

35. Thus, in view of the above, we are of the considered opinion that in such a fact-situation, the question of drawing an inference that it could be a case of consent does not arise at all. There was resistance by the prosecutrix and thus, it cannot, even by a stretch of imagination, be held that she had voluntarily participated in the sexual act. There had been no enmity between the two families, and, therefore, there could be no reason for the prosecutrix and her family to enrope the appellant falsely in a case where the honour of the family itself remains on stake and the prosecutrix has to suffer mental agony throughout her life. We should be alive to the fact that

rape not only distracts the personality of the victim but degrades her very soul. Prosecutrix generally faces humiliation and is being harassed by the defence in her cross-examination during the trial. Any kind of unwarranted suggestion can be put to her. In the instant case, the appellant in his statement under Article 313 Cr.P.C. did not hesitate to label the prosecutrix as "Vagabond". He further stated that he had falsely been enroped in the case "with the connivance of police in order to extort money".

36. In the totality of the circumstances, we do not find any force in the appeal. It lacks merit and is accordingly dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
July 28, 2010