
Before Mehtab S. Gill & Baldev Singh, J.

MAHANT SEWA DASS CHELA BABA INDER DASS,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CRIMINAL APPEAL NO. 892-DB OF 2004

17th August, 2006

Indian Penal Code, 1860—S. 376—Conviction of appellant u/s 376 for committing rape of a 9 years old girl—7 days delay in recording FIR—Board of Doctors constituted by SMO on his own not giving a definite opinion regarding rape having been committed but only stating that possibility of prosecutrix having been subjected to sexual inter-course could not be ruled out—No request by police for conducting medico-legal examination of prosecutrix—Appellant about 69 years and a patient of diabetes and coronary artery disease—No definite opinion of doctor whether appellant capable of performing sexual inter-course—Medical evidence showing that neither prosecutrix was raped nor was appellant in a position to commit rape on her—False case on the asking of a Society to oust the appellant from his Dera to take over his property—Appeal allowed, appellant acquitted of the charge framed against him.

Held, that from the medical evidence it is clear that the prosecutrix was not raped nor was the appellant also as per the medical evidence, not in a position to commit rape on her. We do not have any hesitation in observing that a false case has been foisted on the appellant, on the asking of the Taraksheel Society, a Society which was campaigning against the Sants and Saints. They wanted to oust the appellant from his Dera to take over his property.

(Paras 22 & 23)

R.S. Rai, Advocate with Gautam Dutt, *Advocate for the appellant.*

S.S. Randhawa, Senior D.A.G. Punjab.

JUDGEMENT

MEHTAB S. GILL, J.

(1) This is an appeal against the judgment/order of the Additional Sessions Judge, Barnala whereby he convicted Mahant Sewa Dass Chela Baba Inder Dass under Section 376 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000 and in default, to further undergo R1 for 2 years.

(2) The prosecution case is unfolded by the statement of Binder Kaur made to SI Satwant Singh. Binder Kaur stated that she was married to Gulzar Singh resident of Village Chohanke Khurd. Out of this wedlock they had three children. Her son Sukhpreet Singh was aged 11 years. Lakhbir Kaur *alias* Lakhi was younger to him. Lachmi aged about 6 years was the youngest. They did not have any agricultural land. Lakhbir Kaur *alias* Lakhi was aged 8/9 years. About 9 years back, her husband Gulzar Singh came to Dera Baba Inder Dass Tapa, where Gulzar Singh was employed as paid worker for cultivation and also for looking after the cattle. After some time Mahant Sewa Dass asked Gulzar Singh to bring his family. After about six months Gulzar Singh brought his family. Mahant Sewa Dass got constructed a residential room on the Bhatinda-Barnala road in front of the Dera. About six months from the date of this occurrence Mahant Sewa Dass asked Binder Kaur and her husband Gulzar Singh to leave their daughter lakhi with him in the Dera, with the assurance that he would get her educated. Binder Kaur and Gulzar Singh handed over their daughter to Mahant Sewa Dass since he was a saint. At night Lakhi used to reside with Mahant Sewa Dass in the Dera and in the day she used to visit her parents. About one week back, her daughter Lakhi came to their house weeping and told her mother Ranjit Kaur, that during the last one month, Baba Muni Dass who slept in the Chaubara (upper room of the storey), made her to sleep with him on the bedding spread on the ground. He used to remove her Salwar with his own hands and take off his clothes and committed rape with her, by threatening her and also used to kiss her. Due to this she was suffering from pain in her private part. But due to fear, she used to keep mum at that time. Thereafter Binder Kaur narrated the incident to her husband Gulzar Singh. Due to fear and also being poor persons, they took Lakhi to their parental village in Village Maur Maksudan, where Binder Kaur and her mother gave treatment to

Lakhi at home. This was done to save their honour. On seeing the condition of her daughter deteriorating, Binder Kaur alongwith her husband Gulzar Singh and her grand-father Narain Singh went to police station and lodged a report. She further stated that Mahant Sewa Dass Muni of Tapa committed rape with her daughter Lakhi forcibly.

(3) D.D.R. No. 16, dated 27th May, 2001 was recorded at 3 p.m. On the basis of this statement, F.I.R. Ex. PB, dated 27th May, 2001 came into existence. Special report was sent to the A.C.J.M. on the same day at 6.40 p.m.

(4) The prosecution to prove its case, brought into the witness-box Lakhwinder Kaur PW-1, Binder Kaur PW-2, Gurtej Singh PW-3, Manjit Kaur PW-4, Dev Raj PW-5, Dr. Asha Gupta PW-6, Dr. Narinder Singh PW-7, Inspector Satwant Singh PW-8, Avtar Singh PW-9, Shimla Mittal PW-10 and Dr. Amandeep Singh PW-11.

(5) Learned counsel for the appellant has argued, that there is an unexplained delay of 7 days in recording of the F.I.R. If we go through the medical evidence, it does not corroborate the ocular account. Dr. Asha Gupta PW-6 who examined the prosecutrix on 27th May, 2001 at 6.30 p.m., opined that hymen was intact. Vaginal swabs were taken which were put in a glass vial. In her cross-examination, she has stated that as per the case history, as given in document Ex. PF, there was no allegation levelled by the prosecutrix or by any other person regarding the commission of rape with the prosecutrix. Further, except for one abrasion, there was no other mark of injury found on the prosecutrix. No puss was noted on the vaginal canal or any other organ or the private parts of the prosecutrix. No signs of early treatment of the private parts of the prosecutrix were noted. Hymen of the prosecutrix was intact. On preparing M.L.R. Ex.PF, she did not give any opinion that the prosecutrix had been subjected to rape, as at that time, she was not in possession of any material regarding the commission of rape with the prosecutrix. She opined for the first time in Court, that prosecutrix was subjected to rape, after going through the opinion Ex. PG of the Chemical Examiner.

(6) Similarly, Dr. Narinder Singh PW-7 who headed the Medical Board, stated he alongwith Dr. Sanjiv Jindal and Dr. Amita Goel examined the prosecutrix on 20th June, 2001. He stated that the

hymen of the prosecutrix was ruptured, showing old healed tears. He did not give any definite opinion regarding the prosecutrix having been raped. The Medical Board was set up, without any request being made by the police or the Court. This Board in fact, was set up to please a Committee by the name of Taraksheel Society who wanted to malign the appellant and thereafter take over his property.

(7) Dr. Amandeep Singh PW-11 who examined the appellant, has stated that the appellant was an elderly diabetic patient with coronary artery disease and was undergoing treatment for both. He did not give any definite opinion as to whether the appellant had the capability of committing intercourse. Document Ex. PK report of the Chemical Examiner has stated that swabs which were sent did not have any spermatozoa.

(8) The prosecutrix who appeared as PW-1 has stated in her testimony that she did not disclose to the lady doctor that 7 days before the date when she was examined, appellant had committed bad acts with her. She further stated that when she was examined, she did not have any injury on her body. She was not feeling pain in any part of her body. She further stated that when bad acts were committed on her, blood never oozed out. Her clothes were never stained with blood. The statement of the prosecutrix does not show that any rape was committed on her repeatedly. If it had been done so, there would have been tell tail physical marks on the body of the prosecutrix. She has stated that nine persons were helping her. They are the ones who got a room for her and her family. These nine persons are not on speaking terms with the appellant. These nine persons were the members of the Taraksheel Society.

(9) Similarly, Binder Kaur PW-2 has stated that the incident was not narrated to anyone by her. She has stated that the prosecutrix told her that appellant used to commit rape on her. He used to put his hands on her mouth, so that she could not shout. She stated that prosecutrix told her that she examined her vagina and there was no semen in it.

(10) She has admitted that the Taraksheel Society was the one who was instigating her to file a case against the appellant. Even when the F.I.R. was registered, members of the Taraksheel Society were with the complainant. They got the statements of the prosecutrix and the complainant recorded in front of them.

(11) Learned counsel has further argued that appellant is an old man of 72 years. He is diabetic and suffers from Coronary Artery Disease. As per the statement of Dr. Amita Batra DW-1, a patient who is Diabetic for a long time, was unable to perform sexual intercourse. He has stated that document Ex. D1 was prepared by him.

(12) Appellant in his statement under Section 313 Cr.P.C. has stated that Taraksheel Society wanted to usurp his property and it is they who had got a false case registered against him.

(13) Learned counsel for the State has argued that the medical evidence does not corroborate the ocular account. Doctors have given a definite opinion that rape was committed on the prosecutrix, though she was examined after 7 days. The testimony of both the witnesses i.e. the prosecutrix and her mother Binder Kaur PW-2 is cogent and convincing. Statement of the prosecutrix who at that time was a girl of 9 years, inspires confidence. Taraksheel Society was in no way interfering in the course of justice by helping the complainant.

(14) We have heard the learned counsel for the parties and perused the record with their assistance.

(15) The prosecutrix in her statement before the Court stated that appellant after opening the string of her salwar, committed rape on her. She did not narrate this incident to anyone being poor persons. Appellant used to threaten her that if she told this incident to anyone, she would be killed. She narrated this incident to her maternal grandmother about 8/9 days back. She had also narrated this incident to her mother. When she was cross-examined, she stated that when she was raped, no blood oozed out. Appellant kept raping her 6/7 times a day for one month continuously. She has further stated that as and when the appellant raped her, she used to tell her mother and father about the same daily. Her mother and father used to tell her to let the appellant perform the sexual act with her. A number of persons resided in the Dera. She made statement Ex.PA to the J.M.I.C., Barnala under Section 164 Cr.P.C. She stated in Court that appellant and the police threatened her not to narrate anything to anyone. She has further stated that when statement Ex.PA was recorded in Court, the persons who had accompanied her told her the name of appellant as Sewa Dass. Nine persons have accompanied her to the Court Complex. All these persons were residing at Tapa Mandi. These nine

persons were standing outside the Court room when her statement was being recorded. The same nine persons were also there when her statement Ex.PA was recorded. These very nine persons brought her in a jeep to give testimony in Court. Her mother, father and herself were residing in a house provided by those nine persons. In her statement recorded by the J.M.I.C., Barnala Ex.PA, she has stated that about six months earlier she and Sant Muni Dass used to sleep in the same room. He had three rooms. Her parents were residing in their own house in front of the Dera. The Sant used to kiss her face and used to lie on her. Puss had developed in her vagina. She used to tell her parents daily about the mistreatment of the Sant towards her. It comes out from statement Ex.PA that nothing has been mentioned by the prosecutrix of she being raped continuously for one month. She named Sant Muni Dass in her testimony before the Court when she appeared as a witness. She has stated that nine persons who had accompanied her today in the Court Complex, have told her the name of the appellant as Seva Dass. She did not name the appellant to be Sava Dass at the time when her statement Ex.PA was recorded. It is clear that the Taraksheel Society was pursuing the case.

(16) The prosecutrix in her statement under Section 164 Cr.P.C. Ex. PA has not identified the appellant, but has identified the appellant by name in her statement before the Court after being asked to do so by nine persons (Taraksheel Society) who were standing outside the court room. It is the Taraksheel Society men who had brought her to the Court. Similarly, the mother of the prosecutrix Binder Kaur PW-2 has also stated that they were residing at Tapa in a relative's house. The house has been taken on rent by the Taraksheel Society. She denied the suggestion that the Taraksheel Society is a society which opposes the saints. From the statement of the prosecutrix it comes out that she was being raped by the appellant for the last one month. The incident had taken place 8 days before the lodging of the F.I.R. At the time when the prosecutrix told her about the incident, there was semen in the vagina and blood was oozing out and puss was present in the vagina. Her clothes were stained with puss and semen. She came crying from the Dera. On the day when she gave her statement in the Court, she was accompanied by one Babu, Ved *alias* Ved Parkash, Jagdev Singh and Bukkan. She did not know as to who Ved Parkash and Jagdev Singh were, as per her, either the President or Secretary of the Taraksheel Society. Members of the Taraksheel Society

were bearing the expenses of their livelihood. The Taraksheel Society persons had told them, that they should stick to their earlier statements while deposing in the Court, otherwise they would be defamed and humiliated in Tapa. The members of the Taraksheel Society also used to meet the police officials. Members of the Taraksheel Society brought them to Tapa and got the case registered. When the F.I.R. was registered, members of the Taraksheel Society were also present and they got the statements of the prosecutrix and other witnesses recorded before the police. Further, she stated that the Taraksheel Society told the doctor that she did not give her opinion in the way, which was told by them and that her medical opinion was deficient. The doctor told the Taraksheel Society that what was agreed/settled, had been opined by her and she could not write anything else in her opinion.

(17) From the statement of both these witnesses i.e. the prosecutrix and her mother Binder Kaur PW-2, it is clear that the Taraksheel Society was a society which was not in favour of saints and Sants and was the one who was spearheading and campaigning against the appellant. Before the F.I.R. was recorded, the Taraksheel Society played an active part in narrating to the police officers the version which suited to them. It has come in the evidence of both these witnesses, that not only did the Taraksheel Society influence the police officers, but also the doctor, i.e. Dr. Asha Gupta PW-6. Some sort of settlement had been reached between the Taraksheel Society and Dr. Asha Gupta PW-6 *qua* the medical report which Binder Kaur PW-2 has confessed in her statement.

(18) Now, going to the medical evidence, we have no hesitation in observing that it does not corroborate the ocular account. Dr. Asha Rani PW-6 examined the prosecutrix on 27th January, 2001 at 6.30 p.m. She was brought by her mother Binder Kaur PW-2. She has stated in her statement before the Court that hymen of the prosecutrix was intact. There was no discharge of any type present. Vaginal swabs were taken. As per the history narrated by her on the medico-legal report Ex. PF, there was no allegation levelled by the prosecutrix or by others along with the prosecutrix of appellant having raped her. Examination of the prosecutrix took about one hour. She made enquiries several times from the prosecutrix. When the prosecutrix was examined, her mother, a Staff Nurse, and a female Class IV employee were present. Except for one abrasion, there was no other mark of injury, on the person of the prosecutrix. There was no scab

formation on the abrasion. The aforesaid abrasion was within 24 hours of the examination of the prosecutrix. No puss was noted by her in the vaginal canal. No sign of early treatment of the private parts of the prosecutrix was noted by her, as there was none. She further stated that the seminal material and the spermatozoa deposited in the vagina loose motility within one hour and at the end of six hours no mobile sperms are found. Sperms may be recovered within upto 24 hours, from the vagina. At the time of handing over of the medico-legal report Ex. PF, she did not opine that the prosecutrix had been subjected to rape. The first time this doctor stated, that the prosecutrix could have been subjected to rape, was in Court after going through the opinion Ex. PG of the Chemical Examiner.

(19) A Board of Doctors was constituted comprising of Dr. Narinder Singh PW-7, Dr. Sanjiv Jindal and Dr. Amita Goyal by the Senior Medical Officer, Sangrur. This Board was constituted on 20th June, 2001, while the occurrence had taken place on 20th May, 2001, i.e. after a gap of one month. Dr. Asha Gupta PW-6 had examined the prosecutrix on 27th May, 2001. This Board was constituted not on the asking of the police or the Court, but the Senior Medical Officer, Sangrur on his own constituted the Board. Dr. Narinder Singh PW-7 in his testimony has stated that hymen of the prosecutrix was ruptured showing old healed tears. The Board did not give a definite opinion regarding rape having been committed on the prosecutrix, but only stated that the possibility of the prosecutrix having been subject to sexual intercourse could not be ruled out. Nothing has come on record as to how the Board came to the conclusion that sexual intercourse could have been committed on the prosecutrix on or about 20th May, 2001. It has come in the statement of the Public Prosecutor that after he examined the police file and the judicial file, there was no order as to who requested the Senior Medical Officer, Sangrur to constitute the Board and have the prosecutrix examined. Dr. Narinder Singh PW-7 has categorically stated that no request was made by the police for conducting the medico-legal examination of the prosecutrix. He has further stated that perforation or tear of the hymen could be possible by digital means also. Dr. Narinder Singh PW-7 has not given a definite opinion as to rape being committed on the prosecutrix. Dr. Asha Gupta PW-6 has stated that though for one hour she examined the prosecutrix, in the history note mentioned in the Ex. PF, nothing was mentioned to her about rape being committed on the prosecutrix.

(20) As per the **Textbook of Forensic Medicine and Toxicology** 14th edition Page 293 authored by V.V. Pillay, it is stated as per recent Indian study, intact sperms may be found in vaginal washings upto 12 hours after coitus, while sperm heads can be detected upto 24 hours. The investigators further state that significantly increased acid phosphate of such washings, suggestive of seminal fluid, may be evident upto 36 hours after coitus. It clearly shows that this witness was telling a lie.

(21) Dr. Amandeep Singh PW-11 who examined the appellant on 14th June, 2001, has stated that the patient was elderly and diabetic with coronary artery disease. He again has not given a definite opinion whether the appellant was capable of doing sexual intercourse. We cannot overlook the fact that at the time of framing of the charge, by the learned trial Court, the age of the appellant has been given as 70 years, meaning thereby that at the time of the occurrence, appellant was about 69 years of age. Similarly, Dr. Amit Batra DW-1 of the Christian Medical College, Ludhiana, in his report Ex.D1 has stated, that the patient is 70 years of age. He is impotent on account of Neuropathy, associated with long standing diabetes and also due to decreased cardiac output and is unable to perform the act of intercourse. In his statement before the Court, in his cross-examination, Dr. Amit Batra DW-1 has also categorically stated that appellant being a long diabetic patient, was unable to perform the act of sexual intercourse.

(22) From the medical evidence as discussed above, it is clear that the prosecutrix was not raped nor was the appellant also as per the medical evidence, not in a position to commit rape on her.

(23) We do not have any hesitation in observing that a false case has been foisted on the appellant, on the asking of the Taraksheel Society, a Society which was campaigning against the Sants and saints. They wanted to oust the appellant from his Dera, to take over his property.

(24) Appeal is allowed. Appellant is acquitted of the charge framed against him. Appellant if in custody, be set free forthwith.