

In the High Court of Punjab and Haryana at Chandigarh

**CRA-AD No. 72 of 2021
Reserved on : 07.11.2023
Date of Decision: 05.12.2023**

Karamjeet Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Inderpal Singh, Advocate and
Mr. Tarun Kumar Sharma, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the aggrieved complainant, against the impugned verdict, as made on 16.8.2021, upon Sessions Case No. 55 of 20.7.2020, by the learned Additional Sessions Judge, Fast Track Court, Exclusively dealing with Rape Cases, Ferozepur. Through the above said verdict, the learned trial Judge concerned, acquitted accused-respondent No. 2, in respect of charges drawn against him for offences punishable under Sections 363, 365, 366-A read with Section 120-B IPC, 376-D and 506 of the IPC, besides under Section 6 of The Protection of Children from Sexual Offences Act, 2012 (for short 'the Act of 2012').

Factual Background

2. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-7 is assigned. The narrations carried in Ex. P-7 are that the complainant/prosecutrix got recorded her statement with the

police officer concerned, on 24.07.2018 wherein she stated that she had passed 9th class from Government Senior School Kamal Wala, and, now a days was doing household work. On 08.11.2017 at 8.00 A.M., she was going to school as usual but it was thick fog on the way and on the way, one Amarjit Singh son of Bhim Singh the maternal cousin of his father met her who has been residing in their village. He had tied her mouth, and, forcibly made her sit on his motor cycle. He had taken her to an unknown place at Bathinda where one Gora Singh son of Puran Singh resident of Village Beer Talab Basti No. 2, Police Station Sadar Bathinda was also present. Amarjit Singh had forcibly removed her clothes inspite of her resistance and committed rape upon her. Then he handed over her to one Gora Singh and he himself went away from there. Gora Singh had taken her to his own house. But due to fear, she had not disclosed anything to her family members. Gora Singh had taken her in a separate room in the night and raped her by advancing threats to her. When she tried to raise hue and cry then he had threatened her that he would eliminate her if she would raise alarm. So, she remained silent due to fear. Then Gora Singh and his family members forcibly got filed an application from her on the helpline No.181 against her parents. On 09.11.2017, her parents had taken her from the house of Gora Singh and brought her at Village Kamal Wala. She had not disclosed about the occurrence for the sake of honour of her family. On the basis of said statement, the appeal FIR was registered.

Investigation proceedings

3. During investigations, the investigating officer concerned, made rough site plan of the place of occurrence. Statements of witnesses were recorded. Medico legal examination of the complainant was conducted in

hospital. The statement of complainant/prosecutrix was also recorded under

Section 164 of Cr.P.C. Accused Gurpreet Singh alias Gora was arrested. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused Gurpreet Singh alias Gora, before the learned Court concerned. One accused Amarjit Singh son of Bhim Singh resident of Kamal Wala PS Mallanwala had not been arrested and proclamation proceedings were initiated against him.

Trial Proceedings

4. The learned trial Court concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before it. Resultantly, the learned trial Judge concerned, proceeded to draw charges against the accused for the commission of offences punishable under Sections 363, 365, 366-A read with Section 120-B IPC, 376-D and 506 of the IPC, besides under Section 6 of the Act of 2012. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

5. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, but did not lead any defence witness into the witness box.

6. As above stated, the learned trial Judge concerned, proceeded to acquit the accused for the charges (supra), as became drawn against him.

Submissions of the learned counsel for the appellant

argued before this Court, that there is a gross misappreciation of evidence on record especially of the confidence inspiring testimony, rendered by the prosecutrix. Therefore, he contends, that the charges drawn against the accused were liable to be sustained. Consequently, he contends, that the impugned verdict of acquittal, as made by the learned trial Judge concerned, be quashed, and, set aside.

Reasons for dismissing the instant appeal

8. In support of the charges (supra), the best evidence would comprise in the confidence inspiring testification, as made by the prosecutrix. The testification of the prosecutrix would be amenable to become fastened with utmost sanctity but only when her testification, is free from blemish, and, taints of hers neither improvings or embellishing, thus from her previously made statement in writing, rather before the police officer concerned, and/or if during the course of investigations, being made into the appeal FIR, she had consistently, and, uniformly made incriminatory echoings against the accused.

9. The rule of uniformity, and, consistency in the statements, rendered by the prosecutrix, during the course of investigations, being made into the appeal FIR, does assume relevance, as thereby it is to be concluded whether she is rendering a concocted, tutored or a prevaricated version in respect of the crime event.

10. However, before proceeding to make any conclusion but after appraising the evidentiary vigour of the statement of the prosecutrix, it is deemed important, to rather conclude from the evidence adduced, whether the prosecutrix at the relevant stage, was a minor, and, thus was completely incompetent, to purvey any consent to the accused, to thus subject her to any

penetrative sexual assault. In case, from the apposite evidence, it is revealed

that she was not a minor at the relevant stage, thereupon, the defence, if any, taken by the defence counsel, that she was a consensual partner to the sexual overtures made upon her by the accused, thus may lead this Court, to thereby affirm the verdict of acquittal.

11. In the above regard, the best evidence is comprised in the admission form, relating to the prosecutrix, which became tendered into evidence by PW-6. The said admission form became assigned Ex. PW-6/A. Furthermore, PW-6 also tendered into evidence, the school leaving certificate of the prosecutrix, to which Ex. PW-6/B became assigned. In addition, he also tendered into evidence, an attested copy of the admission/withdrawal register, and, to which Ex. PW-6/D became assigned. A reading of the above exhibits, does apparently disclose, that at the relevant stage, the prosecutrix was aged 16½ years, and, therefore but naturally, she was completely incompetent to render any lawful consent to the accused, to subject her to any coitus. In consequence, the defence, if any, reared by the defence counsel devolving, upon the prosecutrix, being a consenting partner to the accused for the latter subjecting her to penetrative sexual assault, if any, thus would not acquire any tenacity.

12. Now it has to be discerned from a closest reading of the testification rendered by the prosecutrix, besides from a reading of the various statements, as became made by the prosecutrix, during the course of investigations being conducted into the appeal FIR, that whether therein thus occur any dire or gross inter se contradictions, for thereby this Court, being led to conclude, that such dire or blatant inter se contradictions, but naturally erode the efficacy of the deposition, as, became made by the prosecutrix.

prosecutrix, before the learned trial Judge concerned, would be amenable to become concluded to be ridden with an entrenched vice of blatant improvements, and, embellishments, being made viz-a-viz her previously made statement in writing to the police officer concerned, to which Ex. P1, is assigned. In the above endeavour, it is but deemed necessary to refer to Ex. P-1, which is the first statement made by the prosecutrix, before the police officer concerned. The said statement of the prosecutrix-victim, led to the registration of the appeal FIR against the accused. In the said exhibit, the prosecutrix speaks, that on 8.11.2017 at 8.00 A.M., when she was going to school as usual, with thick fog on the way, and, that enroute she encountered accused Amarjit Singh son of Bhim Singh, the maternal cousin of his father, who has been residing in their village. She also narrates therein, that the said accused Amarjit Singh tied her mouth and forcibly made her sit on the motorcycle. She further narrates therein, that the accused Amarjit Singh, had taken her to an unknown place at Bathinda, where one Gora Singh son of Puran Singh resident of village Beer Talab Basti No. 2, P.S. Sadar Bathinda, was already present. She alleges that accused Amarjit Singh had forcibly removed her clothes, despite her resistance, and, committed rape upon her. Subsequently, she stated that accused Amarjit Singh after handing her to one Gora Singh, fled away. The said Gora Singh had taken her to his own house but due to fear, she had not disclosed anything to her family members. She further alleges, that Gora Singh had taken her in a separate room in the night, and, committed rape upon her by advancing threats to her. She further states that when she tried to raise hue and cry, Gora Singh threatened her that he would eliminate her. She also alleges therein, that Gora Singh and his family members forcibly got filed an application from her on the helpline No. 181 against her parents.

On 9.11.2017, she narrates in Ex. P-1, that her parents had taken her from the house of Gora Singh, and, brought her at village Kamal Wala. Further she states therein, that she did not disclose about the occurrence for the sake of honour of her family.

14. After a closest reading of the above statement of the prosecutrix, now it has to be discerned whether on the prosecutrix thus stepping into the witness box, she spoke in tandem with the narrations (supra), as made by her in Ex. P1. Though in Ex. P1, the prosecutrix did not make any echoings viz-a-viz Amarjit, Singh after applying the handkerchief on her mouth, thus with a stupefying substance carried thereons, qua thereafter hers getting semi-conscious. Therefore, in the victim-prosecutrix making the said statement in her cross-examination, as rendered by her, before the learned trial Judge concerned, she has to be concluded to improve or embellish, upon, her previously made statement Ex. P-1, as became rendered by her before the police officer concerned, thus thereby her credit becomes besmeared.

15. Furthermore, accused Amarjit Singh is evidently a close relative of the prosecutrix. The genesis of the crime event took place, on a thoroughfare, but enigmatically neither in Ex. P1, nor in her examination-in-chief, as became made by her before the learned trial Judge concerned, she has been able to make any echoing, that she raised any hue and cry so as to invite, the attention of occupants of the vehicles, which were, at the relevant time, also plied on the thoroughfare. The effect of the above omission sparks a conclusion, that thereby the prosecutrix voluntarily joined, the company of her close relative. In consequence, the effect of the above improvement or embellishment, as made by the prosecutrix during hers

rendering her examination-in-chief, before the learned trial Judge concerned,

thus viz-a-viz her previously made statement in writing (Ex. P1), to the police officer concerned, is that, the prosecutrix is not to be concluded to be rendering a confidence inspiring version viz-a-viz the crime event.

16. Even during the course of investigations, being made into the appeal FIR, the prosecutrix had recorded her statement under Section 164 Cr.P.C., before the trial Judge concerned. However, thereins she has stated that she had, during the course of hers going to the school hours, thus encountered accused Amarjit Singh, who had then threatened her, and, had taken her to an unknown place at Bathinda, thus on his motorcycle. Again in the said statement, she apparently made an echoing, that there were meteings of threatenings to her by the said Amarjit Singh, and, as a result of the said threatenings, she was made to occupy the motorcycle, driven at the relevant time by Amarjit Singh. However, in Ex. P-1, she does not refer to any threatenings becoming meted to her by the said Amarjit Singh, nor she made any speaking thereins, that thereby she was led to occupy the motorcycle, driven at the relevant time, by Amarjit Singh. The said improvement or embellishment, is but also gross, and, dire. Resultantly, the effect thereof, is but naturally that a grave doubt shrouds her testification, as became rendered, before the learned trial Judge concerned.

17. It has also emerged in the testification of the prosecutrix, that even in the house of accused Gurpreet Singh @ Gora, his other family members i.e. his father, mother, sister and niece were also present. However, yet it is enigmatic, that she did not raise any hue and cry, nor she thereby invited the attention of the above family members of the accused, for thereby theirs ensuring that with their intervention, she becomes rescued.

18. Though, the above inference(s) devolve, upon the prosecutrix

being a consensual partner to the sexual overtures, if any, which became

exerted upon her by the accused, but yet the said inference may not have any exculpatory effect, as for reasons (supra), with the prosecutrix being a minor at the relevant stage, thus was incompetent to purvey any lawful consent to the accused. Nonetheless, the effect of the above, is that, since she stated the above fact only in her testification, as made before the learned trial Judge concerned, but when she omitted to state the above fact, in her previously made statement in writing. Therefore, the omission of the prosecutrix, to state the above fact, in her previously made statement in writing, whereas, hers proceeding to state the said fact, only in her deposition, as made before the learned trial Judge concerned, thus garners a conclusion from this Court, that thereby the prosecutrix, rather has not unfolded a truthful version viz-a-viz the crime event. Consequently, she cannot be concluded to be rendering a truthful, and, confidence inspiring version viz-a-viz the crime event. Therefore, but naturally, no credence is to be assigned to her testification, as became rendered by her, before the learned trial Judge concerned.

19. Apart from the above, since this Court, for the reasons (supra), has made a conclusion, that the testification, rendered viz-a-viz the crime event by the prosecutrix, is not amenable for any absolute probative sanctity becoming assigned thereto. However, the best evidence becomes comprised in the report of the FSL concerned, revealing therein, that after the forensic expert concerned, making an examination of the materials enclosed, in the vaginal swabs of the prosecutrix, besides his making an examination of the semen of the accused, his thereafter making a conclusion, that in the vaginal swabs of the prosecutrix, thus became enclosed the semen of the accused. However, the said best forensic evidence was required to be made in prompt sequel to the crime event taking place. Strangely enough, the medical

examination of the prosecutrix rather became conducted after about one

year, elapsing since the crime event taking place, inasmuch as, the crime event took place on 8.11.2017, whereas, the medical of the prosecutrix became conducted by the doctor concerned, on 19.11.2018. Therefore, but obviously there was a lack of prompt collections of the apposite incriminatory material, thus thereby the best forensic evidence (supra) did not emerge, for thereby this Court concluding, that irrespective of the tainted, and, blemished testification, rendered by the prosecutrix, yet the best affirmative forensic evidence (supra), rather nailing the charges drawn against the accused.

20. It appears that the belated collections of the relevant incriminatory material at the instance of the investigating officer concerned, has resulted in the smothering of the apposite best apposite incriminatory material, which on the emergence rather may have led this Court to conclude, that the verdict of acquittal is required to be quashed, and, set aside.

21. Even otherwise, there is an immense delay of about 08 months, since the crime event taking place, and, the appeal FIR, becoming registered at the instance of the prosecutrix, before the police officer concerned. The effect of the above gross unexplained delay, is but naturally that, thereby the version, as set-forth by her in Ex. P1, is to be concluded to be completely premeditated, and, tainted. Therefore, but naturally, no credence is to be assigned thereto.

Final order

22. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in

accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

23. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 5th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No