



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-741-DB-2004 (O&M)
Reserved on: 08.1.2025
Date of Decision: 16.1.2025

Mandhir Singh Appellant

Versus

State of Punjab Respondent

2. CRA-D-825-DB-2004 (O&M)

Gurmail Kaur Appellant

Versus

State of Punjab Respondent

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

Argued by: Mr. A.P.S.Deol, Senior Advocate assisted by
Mr. Himmat Singh Deol, Advocate and
Mr. Vishal Lamba, Advocate
for the appellant (in CRA-D-741-DB-2004).

Mr. D.S.Patwalia, Senior Advocate with
Mr. Armaan Dahiya, Advocate (Amicus Curiae)
(in CRA-D-741-DB-2004).

Mr. P.S.Ahluwalia, Advocate (Legal Aid Counsel)
for the appellants (in CRA-D-825-DB-2004).

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 19.7.2004, upon case Sessions case bearing No. 47 of



in respect of charges respectively drawn against the accused qua offences punishable under Sections 376(2)(g) and 506 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the accused.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convicts both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:-

<i>Sr. No.</i>	<i>Name of convict</i>	<i>U/s</i>	<i>Sentence</i>
1.	Mandhir Singh	376(2) (g) IPC	Imprisonment for life and to pay fine of Rs. 5000/- or in its default to further undergo R.I. for three months.
		506 IPC	Rigorous imprisonment for two years.
2.	Tarsem Singh	376(2) (g) IPC	Imprisonment for life and to pay fine of Rs. 5000/- or in its default to further undergo R.I. for three months.
		506 IPC	Rigorous imprisonment for two years.
3.	Gurmail Kaur	376(2) (g) IPC	Imprisonment for life and to pay fine of Rs. 5000/- or in its default to further undergo R.I. for three months.
		506 IPC	Rigorous imprisonment for two years.

4. Both the above imposed sentences of imprisonment were ordered to run concurrently. However, the period of detention undergone by the convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above

imposed sentence(s) of imprisonment.



Factual Background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PE/2 is assigned. As per the prosecution case, on 8.8.2002, prosecutrix made statement before ASI Gurdev Singh to the effect, that she is the resident of village Burj Jhabber, and, is a labourer. They are four sisters and four brothers, and, she is the eldest, besides her date of birth is 15.6.1984. She further alleged therein, that on 6.7.2002, when she was going to fetch a pitcher of water from the hand pump of Sikhs, then at about 5.30 P.M., her aunt Gurmail Kaur (accused) called her to help her in removing the tokra having cow dung cakes from her head.

6. The prosecutrix further alleged that when after getting the said tokra removed, she stopped in the courtyard, thereupon Gurmail Kaur bolted the street door of her house. Thereafter in one of the room of the house of the said Gurmail Kaur, accused Mandhir Singh, and, accused doctor Tarsem Singh were standing. Accused Mandhir Singh put his hand on her mouth and they both dragged her into the room and threw her on a cot. It is further alleged, that Tarsem doctor forcibly removed her salwar, and, thereafter both the accused committed rape upon her. When the complainant tried to raise noise, accused Gurmail Kaur threatened her that in case she narrates anything about the occurrence, she would be done to death.

7. Subsequently, the complainant reached her house and narrated the entire occurrence to her mother Harbans Kaur and her father Bant Singh (PW-4). Her father informed the panchayat and the respectables of the village about the said occurrence, whereupon he was told that since honour of a girl is involved in the said matter, therefore justice would be imparted to them in the panchayat. However, since till date justice has not been



delivered to them. On the basis of the said statement, the appeal FIR became registered.

Investigation proceedings

8. During the course of investigations, the police party reached at the spot and prepared rough site plan. The investigating officer concerned, made a request to the medical officer concerned, for conducting medical examination of the prosecutrix. After the said medical examination of the prosecutrix, HC Budh Ram handed over to the investigating officer concerned, one parcel containing clothes of the prosecutrix, two sample vials along with one envelope, which were taken into possession. All the accused were arrested. Statements of the witnesses were recorded. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

9. Since the offence under Section 376 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 7.11.2002, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against all accused under Sections 376(2)(g) and 506 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.



11. In proof of its case, the prosecution examined 06 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

12. 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. The accused led three defence witnesses into the witness box.

Submissions of the learned counsels for the convicts-appellants

13. The learned senior counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. They rest the above submission on the ground(s)-

(i) That there is a delay of more than one month in the lodging the present FIR, inasmuch as, the alleged occurrence taking place on 6.7.2002, whereas, the present FIR was lodged on 8.8.2002. Moreover when the informant has made a flimsy explanation vis-a-vis the occurrence of the said delay, inasmuch as, the subject matter was brought to the notice of village panchayat, which led to negotiations being undertaken between the accused and the complainant side. Resultantly, the learned senior counsels have argued, that since the said explanation is pretextual, and, is also amenable to a finding, that the prosecutrix was both compliant to a compromise being made with the accused, besides acquiesces that the alleged penal occurrence was purely consensual. Therefore, it is argued, that the sexual overtures, if any, as became committed upon the prosecutrix, thus



becomes borne from Ex. PD.

(ii) That the medical evidence, does not corroborate, the allegations of rape, as the doctor concerned, who medico-legally examined the prosecutrix rather did not find any internal or external marks of injury existing on the person of the prosecutrix. Moreover, though in the MLR of the prosecutrix, no opinion was given by the doctor concerned, with regard to commission of sexual assault upon the prosecutrix. However, though the said doctor after seeing the report of the chemical examiner concerned, (Ex. PC), thus during the course of her examination-in-chief, rather deposed that sexual intercourse(s) did become committed upon the person of the victim. Nonetheless, the results of the examinations, as made over the materials despatched to the chemical examiner concerned, when do not display, that the semen occurring on the relevant materials, thus owed its origin to the blood group of the accused concerned. Therefore, it is argued, that there is no firm inculpatory forensic evidence to connect the accused with the commission of the alleged offence.

(iii) That as per the chemical examination report (Ex. PC), though semen was found on vaginal swabs (Exhibit-I) and on the salwar (Exhibit-III), however, no spermatozoa was found on pubic hair (Exhibit-II) and on the shirt and dupatta (Exhibit-III). They thereby further argue, that since as per medical science, it is not possible to find the presence of semen in the vagina upon a period of 43 days elapsing since the date of occurrence i.e. from 6.7.2002 to 16.8.2002. Moreover, when in her cross-examination, the prosecutrix had admitted that she was having mensuration before and after the occurrence. Therefore, the presence of spermatozoa in the vaginal swabs, after more than one month elapsing since the present occurrence



taking place, does render the said presence of spermatozoa in the vaginal swabs of the prosecutrix, rather to be relatable to the person(s) other than the accused wherebys benefit of doubt is to be assigned to the present accused.

(iv) That the accused have been falsely implicated in the present case on account of a money dispute between Bant Singh, who is the father of prosecutrix with Darshan Singh, who is the father of accused Mandhir Singh.

(v) That there was no motive for accused Gurmail Kaur to hatch a conspiracy with other co-accused to bring the prosecutrix to her home. Moreover, no charge has been framed upon accused-appellant Gurmail Kaur for abetment or aiding the principal accused vis-a-vis the offence under Section 376(2)(g) IPC, therebys she has been erroneously convicted for an offence under Section 376(2)(g) IPC.

Submissions of the learned State counsel

14. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeals (supra), as preferred by the convicts-appellants be dismissed.

Reasons for allowing both the appeals

15. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsels for the appellants rather are worthy of acceptance, and, therebys they are accepted. Consequently, finding merit in the instant appeals, the same are hereby allowed, and, the verdict of conviction and consequent thereto sentence(s)



(supra), as made by the learned trial Court, are quashed and set aside.

Analysis of the submissions (supra)

16. The prosecutrix stepped into the witness box as PW-2. In her examination-in-chief, she deposed that on 6.7.20002, at about 5.30 P.M., she had gone to get water from the hand-pump of Sikhs in a pitcher. When she reached near the house of Gurmail Kaur (accused), she called her in removing tokra from her head carrying cow dung cakes. She further deposed that she went inside the house of Gurmail Kaur and helped her in removing the said tokra from her head. Thereafter accused Gurmail bolted the outer door of the house from inside. Accused Mandhir Singh came out of the room in the house of Gurmail Kaur, and, put his hand on her mouth. Tarsem doctor accused also came there, and, both of them dragged her to a room and threw her on a cot. She further deposed that accused Tarsem doctor removed her salwar forcibly and both of them committed rape upon her. When she tried to raise noise, accused Gurmail Kaur threatened her to kill her in case she narrates the said incident. PW-2 further deposed that thereupon she came back to her house and narrated the said incident to her parents, whereupon his father approached the respectables of the village and apprised the said incident to them. The said witness also deposed that the panchayat told them that since honour of the girl is involved, therefore the matter would be settled in the panchayat and that the panchayat will get the victim compensated.

17. The supra testification as exists in the examination-in-chief of the prosecutrix but is uninspiring, nor any credence can be assigned thereto, thus for the hereinafter reasons.

18. There thus being an unexplained delay in the lodging of the



present FIR. Since the said delay is inordinate, inasmuch as, it lasts upto a period of one month since the occurrence taking place, and, reporting thereof being made to the police, thereby the said delay eclipses the truth of the version propagated by the prosecutrix.

19. Though, the prosecutrix has attempted to explain the said delay through hers making speakings, that she had reported the matter to the panchayat, and, that some talks of compromise(s) were embarked into inter se her and the accused before the panchayat. However, since the said explanation is not supported by any adduced record of the Gram Panchayat, thereby the said explanation becomes invented, besides is flimsy. Resultantly thereupon the supra inordinate delay when remains not tangibly explained, thus thereby the story propagated by the prosecution, is to be declared to be a premeditated version with respect to the crime event.

20. In addition, succor to the said inference becomes borrowed from the factum, that DW-2 Mukhtiar Singh, the member of the Panchayat concerned, on his stepping into the witness box rather falsifying the supra explanation assigned by the prosecutrix, vis-a-vis, the happening of the supra inordinate apposite delay.

Medical evidence

21. Support to the above made inference becomes derived from the MLR of the victim to which Ex. PA, is assigned. Since the appeal FIR, to which Ex. PE/2, is assigned, encapsulates therein a narrative, that a penetrative sexual assault became committed, upon the victim. Therefore, but obviously on the apposite regions, there were enjoined to occur certain injuries. For discerning whether on the apposite regions of the victim, thus the relevant injuries did occur, an allusion is required to be made to Ex.



PA. However, a perusal of Ex. PA unfolds, that no injury marks becoming detected by the medical officer, on the body of the victim, thus upon examinations thereof being made. Resultantly therebys, corroboration is acquired qua the inference (supra) that the alleged sexual encounters, if any, were completely consensual.

Report of the FSL concerned, to which Ex. PC becomes assigned

22. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in three sealed cloth parcels, hence made an opinion thereons, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

The contents of the packets were as follows:-

I. Vaginal swabs.

II. Pubic hair

II. (a) Salwar (b) Kameez (c) Dupatta

3. *The above seals were opened in my presence and the contents of packets were duly examined by me and remained under my immediate custody and examination was complete.*

The poisons I was led to examine for were:-

The result was as follows:- Semen was found on the exhibits No. I & II, III(a). No spermatozoa were found on the exhibits No. II, III(b) and III(c).”

23. Though the prosecution has relied upon the report of the chemical examiner concerned, whereto the incriminatory items, as, enclosed in sealed cloth parcels, thus became sent for examinations, but the results of the examination are yet not incriminatory in nature, inasmuch as, it has been declared therein, that though semen was detected on exhibits-I, II and III(a), but the FSL concerned, yet omitted to declare therein, that the biological origin of the said detected semen became sourced from the blood group of



24. Moreover, the said best forensic evidence comprised in the report of the FSL concerned, 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 month elapsing since the crime event taking place, inasmuch as, the crime event took place on 6.7.2002, whereas, the medical of the prosecutrix became conducted by the doctor concerned, on 8.8.2002. 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 the best affirmative forensic evidence (supra), rather nailing the charges drawn against the accused. 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.

25. Resultantly, the exculpatory pronouncements as made vis-a-vis the accused, by the FSL concerned, whereby the semen, as became found inside the vaginal swabs, which became sent for examination to the FSL concerned, thus became declared to be not originating from the blood group of the accused, did but acquire the firmest evidentiary vigour. Moreover the further effect thereof, is that, the semen found inside the vaginal swab of the victim rather is to be declared to originate from the blood group of some persons other than the accused. In aftermath, benefit of doubt is assigned to the appellants, and, as such they are required to be acquitted.

26. Furthermore, the learned trial Court concerned, has committed a grave error in convicting co-accused Gurmail Kaur in respect of a charge drawn against her under Section 376(2)(g) IPC. The reason for stating so,



becomes garnered from the factum, that there is a complete statutory interdiction against a woman becoming arraigned as an accused for hers committing an offence under Section 376 IPC. In coming to the said conclusion, this Court is fortified from paragraph 8 of the judgment rendered by the Apex Court in case titled as ***Priya Patel versus State of M.P. and another*** reported in ***(2006) 6 Supreme Court Cases 263***, para whereof becomes extracted hereinafter.

“A bare reading of [Section 375](#) makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. [Section 376\(2\)](#) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of sub-section(2)(g) provides that "whoever commits 'gang rape' shall be punished etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention each such person shall be deemed to have committed gang rape within this sub-section (2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. The Explanation only indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group shall be deemed to have committed gang rape. By operation of the deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. "Common intention" is dealt with in [Section 34](#) IPC and provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. "Common intention" denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be



actuated by the same common intention, which is different from same intention or similar intention. The sine qua non for bringing in application of [Section 34 IPC](#) that the act must be done in furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention" as appearing in the Explanation to [Section 376\(2\)](#) relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the counsel for the appellant is right in her submission that the appellant cannot be prosecuted for alleged commission of the offence punishable under [Section 376\(2\)\(g\)](#)."

27. Though, the exception to the above expostulation of law, as made therein, is that, a female may yet become charged for an offence of conspiring with the principal accused or for abetting the principal accused in the latter committing the offence (supra), but when the said charges are not drawn against one Gurmail Kaur. Resultantly therebys also the simpliciter charge drawn against her for an offence punishable under [Section 376\(2\)\(g\) IPC](#), was an inaptly drawn charge, nor she was required to be tried in respect thereof, besides no order of conviction was required to be made against her in respect of the supra charge.

Final order

28. The result of the above discussion, is that, this Court finds merit in both the instant appeals, and, is constrained to allow them. Consequently, both the appeal are allowed. The impugned judgment of conviction and the order of sentence(s), and, as recorded by the learned trial Judge, concerned, are quashed, and, set aside. The appellants are acquitted of the charges framed against them. The fine amount, if any, deposited by accused-appellants, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused-appellants shall stand forthwith cancelled, and,



discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

- 29. Records be sent down forthwith.
- 30. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 16th, 2025
Gurpreet

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