

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S No.186-SB OF 2004
DATE OF DECISION : 13.05.2015**

MANTINDERJIT SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present : Mr. Amaninderpreet Singh, Advocate
Legal Aid Counsel for the appellant.

Mr. R.S. Randhawa, Addl. A.G. Punjab.

FATEH DEEP SINGH, J.

The appellant-Mantinderjit Singh has challenged the judgment of his conviction under Section 376 read with Section 511 IPC dated 18.12.2003 passed by the Court of learned Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur, whereby he has been sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.2,000/- and in default to undergo further rigorous imprisonment for a period of six months.

Upon hearing, Sh. AmninderPreet Singh, Legal Aid Counsel on behalf of the appellant and Mr. R.S. Randhawa, Addl. A.G., Punjab for the

State. The allegations in brief are that the prosecutrix who is a graduate, aged about 24 years a co-villager of the appellant, claimed in her complaint that in the first week of August, 2001, appellant along with his co-accused since acquitted mother-Manjit Kaur and sister-Kuljinder Kaur came to their house as they were on visiting terms and on the pretext that father of the accused who was very well placed in Delhi can arrange a suitable job for the prosecutrix at Delhi and for which all the accused demanded Rs.5000/- which was given to them. It is alleged that the appellant took the complainant to Delhi and used to commit rape with her and even threatened her not to disclose the same.

It is stated by the complainant that after she came back from Delhi, she disclosed the entire episode to her family. It is further alleged that on 15.09.2001 around 1/1:30 PM while she had gone to answer the call of nature in the fields, the accused-appellant tried to commit rape upon her and on her raula her brother was attracted and a scuffle took place between the appellant and her brother and matter was referred to the village Panchayat, and thereafter a written complaint was sent to Senior Superintendent of Police on 20.11.2002. After inquiry FIR PW10/D was registered.

The prosecution to prove its case, examined the prosecutrix as PW1-Rupinder Kaur, PW2-Amarjit Singh, PW3-Sukhjinder Singh, PW4-Dr. Vijay Kumar, PW5-S.I. Baldev Singh, PW6-C. Kewal Kumar, PW7-Ashwani Kumar, PW8-Surinder Kumar, PW9-S.I. Sawinder Singh and PW10-S.I. Batchiter Singh.

The accused denied the allegations in a stand taken under Section 313 Cr.P.C. and examined DW1-Shiv Singh his father, DW2-Dr. Sudhir Kumar, DW3-Dwarka Nath, DW4-Jaspal, DW5-Amarnath and closed the defence.

It is consequent upon orders, the mother and sister of the appellant were acquitted whereby he was held guilty.

The first and foremost argument that has been raised by the counsel for the appellant is that the girl is well read aged around 24 years, thus, a major and had never objected to the illicit relationship through out her stay at Delhi and even after the alleged incident on 15th September, 2001, till the registration of the FIR on complaint dated 20th November, 2002, the inordinate delay shows a false concocted story having been put up for obvious reasons. Though on behalf of the State, a semblance of opposition has been raked up to justify the delay because of the Village Panchayat's intervention and that fear of ignominy kept the complainant from moving the Police.

Appreciating these submissions, no doubt mere delay is not fatal in a prosecution story, however, the prosecution has a bounden duty to explain what has led to this delay. Even the allegations of the prosecutrix as to the escapades in Delhi are not only vague and in her testimony as PW1, she never discloses when she went to Delhi and rather claims in her examination-in-chief that she was brought back by father of the appellant after 2 ½ months and in the Court question she has answered that during her

stay in Delhi she was raped daily. It is not her stand that she was kept in illegal solitary confinement and being a metropolitan city could have easily escaped herself from the hands of the appellant and rather shows that being a grown aged lady there was an element of active consent and submission to the appellant. Even the Investigating Officer who initially investigated the case S.I. Sawinder Singh, PW-9, nor the complainant had even given any faint reason for this delay are matters which are detrimental to the interest of the prosecution and have escaped judicial scrutiny of the trial Court.

The most improbable stand of the complainant is reflected that after coming to her village and on disclosing the incident at Delhi to her family on 15th September, 2001, an alleged attempt to rape her was also made by the accused in the fields of the village rather bares out in the light of the submissions of the appellant's counsel to be a case of shifting the jurisdiction from Delhi to this place as well as to get condoned this belated act of informing the Police and are matters which have adverse impact on the case of the prosecution. Even the allegations of his scuffle with the prosecutrix are not materially proved by any means.

It has been readily accepted by the State Counsel that there is no medical proof of this rape and thus the testimony of Dr. Vijay Kumar, Medical Officer, PW4, who has examined the appellant by way of Exhibit PW-4/A does not have much of a significance and so is the fate of S.I. Baldev Singh, PW-5 who had only collected documents through Exhibits PW5/A and PW5/B, including employment of father of accused

though not of much relevance.

The most significant aspect is the Compromise agreement Ex.PA to which even the complainant has admitted to be one of the executants only brings forth the subsequent event in the village and is totally silent of the alleged allegations of rape in Delhi are matter which could not escape judicial scrutiny that the same are belated after thought.

Moreover, as has been discussed even in the impugned judgment based on the testimony of the prosecutrix regarding their first visit to Delhi together in the month of August, 2001 and DW5-Amarnath, Booking Supervisor, Railway Station Gurdaspur has proved the fact that there was no booking in the name of complainant or the appellant in this period on the trains so claimed by the girl.

Since, as has been argued on behalf of the appellant side under the golden principle of criminal jurisprudence, onus lies heavily on the prosecution to prove their case beyond shadow of reasonable doubt and all these pieces of vital evidence so detailed in these paras rather pull the case of the prosecution towards doubt and improbabilities. The learned Lower Court has heavily relied on the compromise agreement Ex.PA which cannot take the place of legal admissible evidence, so cogent and convincing, rather creates that there was some sort of relationship between the two, are matters which needs to be considered in the right earnest.

So, from all these evidences nothing is overwhelmingly proved attraction of offence under Section 376 read with Section 511 IPC and rather

what could be reasonably perceived is that to this amorous relationship, a colour is being added to make it a crime for obvious reasons when the relationship had gone sour. Thus, from these wantings in the prosecution story a serious doubt is created for its credence and worthiness and thus appreciation of the evidence by the trial Court is not only illegal and perverse but even the impugned judgment suffers from infirmity and needs to be set-aside by way of acceptance of the instant appeal.

May 13, 2015

Dpr

(FATEH DEEP SINGH)
JUDGE