

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

CRA No.S-2341-SB of 2003

Date of decision: 23.04.2015

Ashwani Kumar alias Achhi

..... Appellant

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. C.L. Verma, Advocate for the appellant.

Ms. Rimplejeet Kaur, Assistant Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 04.12.2003, vide which the accused-appellant Ashwani Kumar alias Achhi was held guilty and convicted for the offences punishable under Sections 354/452 of Indian Penal Code (in short 'IPC') and the order of sentence of the even dated, vide which he has been sentenced to undergo

rigorous imprisonment for a period of two years for the offence punishable under Section 354 IPC. He was further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for a period of one month, for the offence punishable under Section 452 IPC.

2- In nutshell, the facts of the prosecution case are that on 30.06.2002, the husband of the prosecutrix had gone out of station for some domestic work and she along with her children was sleeping on the roof of the house. Her youngest son was lying with her, whereas, her other three children were lying on the separate cots. At about 11:00 P.M., accused-appellant Ashwani Kumar alias Achhi came to their roof after scaling the common wall and started fondling her breasts. She protested. The accused-appellant broke open the string of her salwar and attempted to forcibly commit rape upon her. She raised alarm. Her brother-in-law Vinod Kumar was attracted to the spot. In the meanwhile, the accused-appellant fled away from the spot after jumping over the wall. The accused-appellant while fleeing away, threatened the prosecutrix with dire consequences if she reported the matter. On 01.07.2002, on return of the husband of the prosecutrix, she narrated the facts to him and the matter was reported to the police vide statement of the prosecutrix Ex.PA. On the basis of which, formal FIR Ex. PW4/B was registered and the investigation was started. Accused-appellant was arrested on 01.07.2002. The Investigating Officer inspected the spot and prepared the site plan of

the place of occurrence Ex. PW4/C. The statement of the prosecutrix was also got recorded under Section 164 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') and on completion of the formalities of the investigation, the report under Section 173 Cr.P.C. was presented for the offence punishable under Sections 376, 511, 456, 354, 506 IPC.

3- The accused-appellant was charge-sheeted for the offences punishable under Sections 376 read with Section 511 IPC, 354 and 452 IPC, to which the accused-appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as nine witnesses.

5- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that he is innocent and has been falsely implicated.

6- In the defence evidence, he examined four witnesses.

7- On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court acquitted the accused-appellant for the offence punishable under Section 376 read with Section 511 IPC. However, he was held guilty and convicted for the offences punishable under Sections 354 and 452 IPC and was awarded the sentence as mentioned in the upper part of the judgment.

8- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9- I have heard Mr. C.L. Verma, Advocate, learned counsel for the appellant and Ms. Rimplejeet Kaur, learned Assistant Advocate General for the respondent-State of Punjab and have meticulously

examined the record of the case.

10- Initiating the arguments, learned counsel for the appellant contended that the occurrence is alleged to have taken place on 30.6.2002 at about 11:00 P.M. but the FIR has been lodged on the next day. The delay in lodging the FIR has not been explained.

11- He further contended that the presence of PW2 Vinod Kumar in the house of the prosecutrix at the time of the occurrence, is not believable. Moreover, he is not the witness of the occurrence. He came to upstairs only on hearing the noise and had not witnessed the occurrence taking place. Thus, he contended that the entire case of the prosecution is based on the solitary statement of the prosecutrix, which is not believable as the husband of the prosecutrix was having a dispute with the accused. They were inimical to him.

12- He further contended that all the four defence witnesses are the inhabitants of the locality. They have consistently deposed that no such occurrence had taken place in their locality, as alleged by the prosecutrix. They also deposed that the husband of the prosecutrix was having a dispute with the appellant as the appellant used to supply the water from his tap to Shakti Sharma, the elder brother of the husband of the prosecutrix with whom, they were having dispute. He contended that in view of the statement of the defence witnesses, the sole testimony of the prosecutrix is rendered unreliable and the conviction recorded by the learned trial Court is untenable.

13- He further contended that the appellant is not a previous

convict. He is a poor person having grown up children. He is facing the agony of this litigation for the last 13 years. So, he deserves the benefit of probation. To support his contention, he relied upon cases **Dilbagh Singh alias Bagga Vs. State of Punjab, 2009(4) RCR (Criminal) 666, Rohtash Vs. State of Haryana 2011(1) RCR (Criminal) 231 and Arshad Vs. State of Harayana 2011(1) RCR (Criminal) 111.**

14- On the other hand, learned State counsel pleaded that the accused-appellant had criminally trespassed in the house of the prosecutrix and outraged her modesty. He held her breasts, broken the string of her salwar with intention to commit rape. The version of the prosecution is cogent and convincing. Even the sole statement of the victim on sexual assault can be acted upon. She further contended that the testimony of the prosecutrix is fully corroborated from the statement of PW2 Vinod Kumar, her brother-in-law, who was sleeping on the ground floor at the time of the occurrence and was attracted to the spot on hearing the noise. She contended that the delay in lodging the FIR had occurred as the husband of the prosecutrix was out of station. She further contended that sentence awarded by the trial Court is just and appropriate in view of the offence committed by the appellant.

15- I have given thoughtful consideration to the aforesaid contentions.

16- As per the prosecution version, on 30.06.2002 at about 11:00 P.M., when the prosecutrix was sleeping along with her children on the roof of her house, the appellant came to their roof after scaling the

common wall. He gripped both the breasts of the prosecutrix, when she objected, he used criminal force. Her shirt was torn. In the supplementary statement, the prosecutrix had also alleged that the string of her salwar was also forcibly opened by the appellant and he attempted to rape her.

17- The prosecutrix when stepped into witness box as PW1, corroborated the aforesaid version and deposed that accused Ashwani Kumar alias Achhi came to the roof of her house after scaling the wall and started teasing her breast. He also put hand on her mouth and threatened her with dire consequences. He pulled the string of her salwar and tried to commit forcible rape upon her. She raised alarm, which attracted her brother-in-law, who was sleeping upstairs. Accused then fled away from the spot after scaling the wall. While fleeing away, he threatened her to kill if she ever reported the matter to the police.

18- PW2 Vinod Kumar, the brother-in-law of the prosecutrix, has also corroborated the version of the prosecutrix and deposed that after taking meal, he went to sleep on the ground floor of the house. His sister-in-law along with her children went upstairs and was sleeping there. At about 11:00 P.M., he heard the noise 'Bachao-Bachao'. He went upstairs and witnessed the accused having scuffle with the prosecutrix. On seeing him, accused after scaling the wall of their house fled away. The clothes of his sister-in-law were in torn condition. He has identified the accused present in the Court.

19- PW3 Rakesh Kumar the husband of the prosecutrix was

admittedly out of station at the time of occurrence and has categorically admitted in the cross examination that he had not witnessed any occurrence and has deposed on the basis of information given to him by his wife.

20- The plea raised by learned counsel for the appellant with respect to the delay in lodging the FIR has no substance. The present occurrence had taken place on 30.06.2002 at about 11:00 P.M. The matter had been reported to the police on 01.07.2002 and the statement of the prosecutrix Ex. PA was recorded at 11:30 P.M. The prosecutrix has categorically deposed that on the night of occurrence, her husband Rakesh Kumar had gone out of station. PW3 Rakesh Kumar has also deposed that on 30.06.2002, during night he had gone to Ludhiana to meet his sister. On the next day, i.e. on 01.07.2002, he reached Jagraon at his house when the occurrence was narrated to him by his wife. So, Rakesh Kumar, the husband of the prosecutrix, had returned from Ludhiana on 01.07.2002 at about 11:00 A.M. When the prosecutrix narrated the occurrence to him and immediately thereafter, they started to lodge the report and even the statement of the prosecutrix was completed at 11:30 A.M. In such matters of sexual assault, where the honour of the family is at stake, there is always reluctance on the part of the victim to come forward out of her own without the support of her family members, in case of the married women particularly her husband. In the instant case, the husband of the prosecutrix was out of station. He returned to Jagraon on 01.07.2002 at 11:00 A.M. and immediately thereafter, the

prosecutrix along with her husband reported the matter to the police. Thus, the delay in lodging the FIR is satisfactorily explained.

21- The accused-appellant was charge-sheeted for the offences punishable under Sections 376 read with Section 511 IPC, 354 and 452 IPC. The appellant has been acquitted for the offence punishable under Section 376 read with Section 511 IPC and has only been convicted for the offence punishable under Sections 354 and 452 IPC. The State of Punjab has not preferred any appeal against the acquittal of the appellant for the offence punishable under Section 376 read with Section 511 IPC. So, we are to confine, in the present appeal against conviction filed by the appellant, only with respect to his conviction by the learned trial Court under Sections 354 and 452 IPC.

22- The contentions raised by learned counsel for the appellant that the testimony of the prosecutrix is not reliable, has no substance. The prosecutrix is the victim of sexual assault. The appellant has outraged her modesty by criminally trespassing her house at the night time. The corroboration to the testimony of a victim of sexual assault is not a *sine quo non* for warranting the conviction. To seek corroboration in such cases may amount adding insult to injury. In such cases when the statement of the prosecutrix is trustworthy, the same can be acted upon even without corroboration to establish the guilt because the victim of a sexual assault is not an accomplice to the crime and it is undesirable to appreciate her testimony with suspicion. The testimony of a victim of sexual assault stands at par with the evidence of an injured witness,

which has inherent and intrinsic credibility and credence. Thus, the testimony of a victim of sexual assault carries the great evidentiary value and carries considerable weight, which can even be acted upon without any corroboration. But in the instant case, the testimony of the prosecutrix further stands corroborated from the statement of PW2 Vinod Kumar, her brother-in-law, whose presence in the house at the time of occurrence cannot be doubted. He has categorically deposed that on 30.06.2002, he had visited Jagraon to meet his brother Rakesh Kumar but he was out of station. He has further deposed that on hearing noise 'Bachao-Bachao' at about 11:00 P.M., he went upstairs and witnessed the accused having scuffle with the prosecutrix. On seeing him, the accused fled away from the house after scaling the wall. The clothes of his sister-in-law were in torn condition. In the cross-examination he deposed that he was on the third step of the stairs when the accused was fleeing away. Again said that he was scaling over the wall of their house. The aforesaid testimony of PW2 Vinod Kumar shows that when he went upstairs on hearing the alarm of the prosecutrix, the accused-appellant was scuffling with the prosecutrix and he saw the appellant fleeing away from the spot by scaling the wall of their house. Thus, the statement of PW2 fully corroborates the version of the prosecutrix. The version of the prosecutrix was also corroborated from the recovery of her torn shirt.

23- Learned counsel for the appellant has not been able to point out any serious infirmity/contradiction in the statement of the prosecutrix and PW2 Vinod Kumar. Thus, the evidence adduced by the

prosecution is credible, cogent and reliable.

24- Mere this fact that PW2 Vinod Kumar and PW3 Rakesh Kumar are the close relatives of the prosecutrix, is also no ground to discredit their testimonies. It is well settled principle of law by this time that relationship qua the victim is no ground to disbelieve their testimonies. They cannot be considered to be the interested witnesses. To support this view reference can be made to cases **Shyam Babbu Vs. State of U.P., 2012 (4) RCR (Criminal) 963 (SC)** and **Sahabuddin Vs. State of Assam, 2013(1) RCR (Criminal) 817**. The Hon'ble Supreme Court in case **Dharnidhar Vs. State of U.P., 2010 (4) RCR (Criminal) 291** has laid down that interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity and deposed before the Court only with that intention and not to further the cause of justice.

25- In view of the aforesaid ratio of law, the testimonies of PW2 Vinod Kumar and PW3 Rakesh Kumar, which fully corroborate the version of the prosecutrix, are also worth reliance.

26- There is no substance in the plea raised by learned counsel for the appellant that appellant has been falsely implicated as the husband of the prosecutrix was having a dispute with the appellant as he has been supplying water to Shakti Sharma, the elder brother of the husband of the prosecutrix in spite of the objections raised by her husband. It is a trifle matter that appellant had been supplying the water from the official tap installed at his house to the elder brother of the

husband of the prosecutrix. It is not believable that for such a matter, the prosecutrix, a married lady having four children, will put her honour at stake. The chastity, honour and dignity are very dear to every married woman. There can be various options available to the husband of the prosecutrix to settle the dispute. So, it does not appeal to the reasons that in order to deter the appellant to supply the water to the elder brother of the husband of the prosecutrix, the honour of the family shall be put at stake.

27- The occurrence had taken place on the roof of the house of the prosecutrix at the night time. After committing the offence, the appellant fled away from the spot by scaling over the common wall. So, in those circumstances, the occurrence might not have come to the notice of the other inhabitants of the locality. Thus, the statement of the defence witnesses examined by the appellant are not sufficient to ignore the cogent, consistent and reliable evidence of the prosecution. Consequently, the conviction of the appellant recorded by the trial Court for the offences punishable under Sections 354 and 452 IPC is well founded and deserves to be maintained.

28- I also do not find any substance in the contentions raised by learned counsel for the appellant that the appellant is entitled for the benefit of probation. As per the prosecution allegations, the appellant has criminally trespassed in the house of the prosecutrix at 11:00 P.M. in the night when she alone was sleeping with her children on her roof. The appellant was a matured person of 35 years of age at the time of the

occurrence. As per the prosecution allegations he caught hold the breasts of the prosecutrix, torn her shirt and broke open her string. He has outraged the modesty of a married lady by entering in her house in the night time when her husband was out of station. Thus, the act committed by the appellant dis-entitles him for the benefit of probation. In case **Rohtash Vs. State of Haryana** (supra) the appellant has simply took the prosecutrix into his grip and immediately the alarm was raised by the prosecutrix and noticing the presence of her aunt, he fled away from the scene of occurrence but here in this case, the appellant caught hold the breasts of the prosecutrix, torn her shirt and forcibly open the string of her salwar. In case **Ashrad Vs. State of Haryana** (supra) the appellant has already undergone more than one year in jail. During his detention as an undertrial, he started studies and appeared in 12th class. Thereafter, he completed the graduation and was doing a private job. Whereas, no such circumstance exists in the present case. The appellant has only undergone 18 days of sentence so far. So, in these circumstances, the appellant is not entitled for probation.

29- However, keeping in view the fact that the appellant has no criminal background and is not a previous convict, he has been facing these criminal proceedings for the last about 13 years, he has grown up children, so, even the lenient view in the matter of sentence will suffice the ends of justice. Thus, the order on quantum of sentence deserves to be modified.

30- Thus, keeping in view my aforesaid discussion, the

conviction of the appellant for the offences punishable under Sections 354 and 452 IPC is well founded and is hereby maintained. The appeal against the conviction has no merits and the same is hereby dismissed. However, the sentence awarded to the appellant is hereby modified as under:

Under Sections	Rigorous imprisonment	Fine	In default of payment of fine further imprisonment
354 IPC	1 year	-	-
452 IPC	1 year	500/-	R.I. for one month

31- Both the sentences shall run concurrently. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Ludhiana, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Ludhiana, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 23.04.2015
sunil yadav

(DARSHAN SINGH)
JUDGE