

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

Criminal Appeal S-2380-SB of 2003

Date of Decision : April 27, 2016

Gulzar Singh	Versus	Appellant
State (U.T.) Chandigarh		Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Pawan Kumar Sharma, Advocate
for the appellant.

Mr. G.S.Chahal, Additional Public Prosecutor
for U.T., Chandigarh.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing offences punishable under Sections 376 and 506 IPC on the allegations that on 6.5.2000 at about 11.00 a.m., he committed rape upon the prosecutrix, aged seventeen years and also criminally intimidated her. Vide judgment and order dated 13/14.11.2003, learned Additional Sessions Judge, Chandigarh, convicted him under Section 376 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. He was, however, acquitted of the

charge under Section 506 IPC.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 8.1.2004. Subsequently, on 22.7.2004, he was granted the concession of bail.

The case of the prosecution, in nutshell, is that the prosecutrix had been serving as maid servant with complainant Surinder Kaur for the last six years. The complainant had arranged 'Akhand Path' at her residence on 5.5.2000. The Bhog ceremony was to be performed on 7.5.2000 at 10.00 a.m. Pathies (persons who recite Guru Garanth Sahib during the 'Akhand Path'), were provided one room on 1st floor for taking rest. On 6.5.2000, in the morning, the complainant went to the market for purchasing articles required for Bhog ceremony. At about 11.00 a.m., the appellant, who was one of the Pathies and having rest in the room, called the prosecutrix and asked her to bring water for him. When she brought a glass of water for him in that room, he asked her to place it on the shelf. When she went inside, the appellant immediately closed the door of that room from inside and gagged her mouth. He threw her on the bed, took off her salwar and removed his own clothes. Then, he had forcible sexual intercourse with her. When she tried to raise an alarm and resisted his action, he threatened to kill her with the Kirpan

(sword), which he was wearing. At about 11.30 a.m., complainant Surinder Kaur and her husband returned from the market. They found the prosecutrix frightened and asked her the reason for the same. She narrated the entire episode to them. Police was immediately informed. Sub-Inspector Bakshish Singh after receiving the message from the control room rushed to the spot. He recorded statement Ex.PA of the complainant narrating the above facts. After making endorsement Ex.PA/2 thereon, SI Bakshish Singh sent it to the police station. On its basis FIR Ex.PA/1 was registered at Police Station Central Chandigarh. During investigation of the case, SI Bakshish Singh inspected the spot and prepared rough site plan Ex.PL. He took into possession the bed sheet from the place of occurrence vide memo Ex.PM. He also recorded the statement of the prosecutrix under Section 161 Cr.P.C. On the identification of the prosecutrix, the appellant was arrested from the place of occurrence itself. The appellant and prosecutrix were sent to General Hospital for their medical examination. PW5 Dr. Vandana Gupta, conducted the medico-legal examination of the prosecutrix and issued MLR Ex.PG. The appellant was also medico-legally examined by PW4 Dr. Deepak Bakshi, who vide MLR Ex.PE found him fit to perform sexual intercourse. His underwear was taken into possession and made into parcel. Statements of Constable Smt. Paramjit Kaur and

Constable Surjit Singh, who were entrusted with the job of getting the medico-legal examinations of the prosecutrix and the appellant, were recorded. The case property was deposited in the Malkhana. On 19.5.2001 scaled site plan Ex.PB of the place of occurrence was prepared by Constable Yash Pal. Statements of other prosecution witnesses under Section 161 Cr.P.C. were also recorded. After completion of necessary investigation and presentation of challan, the case was committed to the Court of Sessions, where the appellant was charged for the aforementioned offences, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the prosecutrix as PW1, complainant Surinder Kaur as PW2, Constable Yash Pal as PW3, Dr. Deepak Bakshi as PW4, Dr. Vandana Gupta as PW5, Constable Paramjit Kaur as PW6, HC Balbir Singh as PW7, Head Constable Mahi Pal as PW8, Head Constable Suresh Kumar as PW9, ASI Surinder Pal as PW10, Constable Surjit Singh as PW11, Sub-Inspector Bakshish Singh as PW12 and Constable Kulvinder Singh as PW13.

When examined under Section 313 Cr.P.C., the appellant stated that it was a false case and the witnesses had deposed falsely against him. He also stated that he was to be on duty from 11.00 a.m. to 1 p.m. At about 10.30 a.m., he went to

take bath before sitting on Path and when he came out after taking bath, the owners of the house were not there. Someone on the 1st floor was having sexual intercourse with the prosecutrix against her wishes. He asked an old lady, who was in the house to save the prosecutrix, but he was told by another maid servant that the couple up stairs was husband and wife. The elderly lady told him to sit for the Path, as per duty after taking tea. After he had taken the breakfast, he wore his Pajama and went upstairs. In the meantime, owners of the house came and they found the door of the room locked, which was meant for the Pathies. They went and got the door of the room opened from where Nishan Singh, Pathi and the prosecutrix were recovered in compromising position. They were brought downstairs. The husband of the complainant called the police. Before the police could reach, Nishan Singh succeeded in running away from the spot. The police came and asked the name of the other Pathi. He replied that he was Nishan Singh. Accordingly, the police detained him. Lateron, the police also detained Nishan Singh. At that time, the police told him that Nishan Singh was offering Rs.30,000/- to them and in case, he could give them Rs.50,000/-, they would release him and implicate Nishan Singh in the case. Both of them were kept in Police Post Sector 22, Chandigarh. The money was paid by Nishan Singh to the police in his presence. The appellant

being a poor person could not arrange the money and, accordingly, he was falsely implicated.

In defence, the appellant examined DW1 Mittar Singh and DW2 Budh Singh, who belonged to the village of the appellant and testified that the appellant was a Granthi and having no criminal background. He was married and having four children.

The trial Court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

After hearing learned counsel for the parties and on going through the impugned judgment as well as the records of the case, this Court finds that though the occurrence in question was stated to have taken place in a room on the 1st Floor of House No. 1555 Sector 22 B Chandigarh, which house belonged to complainant Surinder Kaur, yet scaled site plan Ex.PB prepared by PW2 Constable Yash Pal was in respect of 1st Floor of adjoining House No. 1556 Sector 22-B Chandigarh. Even rough site plan Ex.PL prepared by PW12 SI Bakshish Singh was pertained to a room on the 1st Floor of House No. 1556, Sector 22-B, Chandigarh. From both the site plans, it is made out that House No. 1556, Sector 22-B, Chandigarh, is an independent house though adjoining House No. 1555 belonging to PW2 complainant Surinder Kaur. It was the consistent case of the

prosecutrix while appearing as PW1 as well as of complainant Surinder Kaur as PW2 that complainant Surinder Kaur was resident of House No. 1555 Sector 22-B Chandigarh and on the day of the occurrence, the appellant was taking rest in a room on the 1st Floor of the said house. The prosecution did not bring any material on the record that the appellant was taking rest and had committed rape in a room on the 1st Floor of the adjoining House, i.e. House No. 1556. Even in the DDR No.13 dated 6.5.2000 recorded at 11.42 a.m. (Ex.PJ), it was recorded that some unlawful activity was underway in House No. 1555 Sector 22-B Chandigarh but while deposing before the trial Court as PW1 SI Bakshish Singh stated that on receipt of information about something wrong going on in House No. 1555 Sector 22-B, Chandigarh on wireless through control room, he along with his fellow officials reached the spot. Under these circumstances, the very basis of the prosecution that the occurrence in question having taken place in a room on the 1st floor of House No. 1555 Sector 22-B Chandigarh is shrouded in mystery.

It is the case of the prosecution that after recording the statement of prosecutrix, PW12 Sub-Inspector Bakshish Singh prepared application Ex.PF for her medical examination. Similarly, after arresting the appellant, he prepared application Ex.PD for his medical examination also. Thereafter, PW6 lady

Constable Paramjit Kaur was called and the prosecutrix was sent with her to the hospital. The custody of the appellant was entrusted to PW11 Constable Surjit Singh for his medical examination. PW12 Sub-Inspector Bakshish Singh further testified that Constable Paramjit Kaur came back and handed over to him sealed parcel prepared by the doctor of the clothes of the prosecutrix, which was taken into possession vide recovery memo Ex.PN. Similarly, the sealed parcel containing underwear of the appellant was taken into possession vide memo Ex.PO. He also deposed that on 19.5.2000, he had sent the sealed parcels to the Central Forensic Laboratory for chemical examination. However, for reasons best known to the prosecution, the report of the Central Forensic Laboratory has not been brought on record.

It is the prosecution case that the prosecutrix was about seventeen years of age and used to work as a maid servant with complainant Surinder Kaur. The prosecutrix was medico-legally examined by PW5 Dr. Vandana Gupta on 6.5.2000, who found her conscious, well oriented to space and time. Secondary sex character and pubic and axillary hair were well developed. No external marks of injury on her body or breasts were found. On local examination, no matting of pubic hair was seen. No injury was seen on external genitalia. No

bleeding per vagina was present. Hymen was torn. Vagina admitted two fingers easily. No fresh tear or bleeding was present. The doctor while handing over two sealed parcels containing salwar and vaginal swabs to Constable Paramjit Kaur, referred the prosecutrix to Radiologist for determination of her age. PW6 Constable Paramjit Kaur also testified that on the advice of Dr. Vandana Gupta, he took the prosecutrix to General Hospital, Sector 16, Chandigarh, on 8.5.2000 for her X-ray examination. Further, that it was Dr. P.D.Jain of General Hospital, who conducted X-ray of the prosecutrix. However, no such report as prepared by Dr. P.D.Jain has been brought on record. So much so, that the report of the Radiologist was also not appended with the challan. It is another thing that Dr. P.D.Jain was cited as one of the witnesses by the prosecution and his name appeared at Serial No. 6 in the list of witnesses. However, neither Dr. P.D.Jain was examined nor any reason assigned as to why he could not be examined as a witness for the prosecution. Under these circumstances, it cannot be said with certainty that the prosecutrix was about seventeen years of age. Going by her physical characteristics, the possibility of her being much older cannot be ruled out. In any case, she could be competent to give consent for sexual intercourse. From the medical evidence brought on record by the prosecution by way of testimonies of

PW5 Dr. Vandana Gupta, who had conducted medico-legal examination of the prosecutrix as well as of PW4 Dr. Deepak Bakshi, who had conducted medico-legal examination of the appellant and finding no marks of any struggle/resistance being offered by the prosecutrix or the prosecutrix suffering any injury on her body or on private parts, possibility of the prosecutrix having consensual sex with the appellant cannot be ruled out.

In view of the above, this Court is of the considered view that the prosecution has not been able to establish its case against the appellant beyond reasonable doubt.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellant is acquitted of the charge against him.

April 27, 2016
amit rana

(T.P.S. MANN)
JUDGE