

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

CRA-S-2344-SB-2012

Date of decision : January 12, 2016

Subhash Kumar alias Ram Bharos

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Dhawaljeet Dutta, Advocate for
Mr. M.S. Khillan, Advocate
for the appellant.

Mr. Deepak Garg, Assistant A.G., Punjab.

GURMIT RAM, J.

1. Vide this appeal the abovesaid appellant has assailed the judgment and order of sentence dated 12.06.2012 passed by the Court of learned Additional Sessions Judge, S.A.S. Nagar Mohali in criminal case bearing FIR No.6 dated 14.01.2011 under Sections 376, 323 and 511 of the Indian Penal Code ("IPC"- for short), Police Station Lalru vide which he was held guilty for the offences punishable under Sections 376 and 323, IPC and sentenced thereunder.

2. The case of prosecution in nut-shell before the learned trial Court was that on 14.01.2011, a telephonic message was received from M.H.C. Police Station Lalru with regard to admission of Anjali daughter of Tek Chand Rana resident of village Jalalpur in Civil Hospital Dera Bassi

due to her rape. Upon this SI Santokh Singh, In-charge Police Post Nahar Lehli, Police Station Lalru along with other police officials reached at Civil Hospital, Dera Bassi and obtained Medico Legal Report (“MLR”– for short) of Injured-Anjali. Her father Tek Chand Rana met him in the hospital who made his statement before him which was as under:-

“That presently he is residing as a tenant of Sarpanch, village Jalalpur, Police Station Lalru, District S.A.S. Nagar Mohali. He is working in Nahar Fabric Loom Shed, Lehli. He is residing in village Jalalpur along with his family. There are also some other rooms of Gram Panchayat of village Jalalpur adjoining to his room wherein workers of said Nahar factory have been putting up as the tenants. Today he was sleeping in his house due to his night shift. His wife Lata Devi and daughter Anjali aged 2 years were also present in the house. At about 1:40 p.m., his wife told him that their daughter Anjali has been missing while playing herein. Upon this complainant and his wife along with their neighbour Jasbir Kaur started making search of Anjali. When they reached near quarter No.11, then they heard weeping voice of a child from inside this quarter. When they peeped inside this quarter through window then they found that the clothes of their daughter had been removed. Accused Subhash Kumar @ Ram Bharosa had also removed his trouser and underwear towards the lower side and was lying on the floor. He was trying to commit rape upon his daughter by holding her upon him. He had also gagged the mouth of his daughter by putting his hand on her

mouth in order to prevent her from raising any kind of voice. They knocked the door of the quarter with force but accused took some time in opening the door despite the knocking. His wife and neighbour Jasbir Kaur started taking care of Anjali. When he (complainant) tried to over-power accused-Subhash then he succeeded to run away by pushing him aside. He brought his daughter to Civil Hospital, Dera Bassi for her treatment since blood was oozing out from her mouth, nose and secret part. After recording the above statement of the complainant, it was read out to him and he signed the same after admitting it to be correct.”

Thereafter SI Santokh Singh made his endorsement on the above statement of the complainant and sent ruqa to the police station, on the basis of which instant case was registered against the accused. He also visited the spot of the occurrence and prepared the site-plan as pointed out by complainant Tek Chand Rana. From the spot, blood-stained floor was broken and the same was taken into police possession vide a memo. Accused was apprehended in this case on 15.01.2011. Statements of witnesses were recorded.

3. On receipt of report of Chemical Examiner and Director, Forensic Science Laboratory, Punjab, Chandigarh and on completion of investigation challan against the accused was presented in the Court of learned Illaqa Magistrate, Dera Bassi, who further committed this case to the Court of learned Additional Sessions Judge, SAS Nagar Mohali for trial after making compliance of the provision of Section 207 Cr.P.C..

4. Finding a prima facie case for the offences punishable under

Sections 376 and 323 of the Indian Penal Code, the accused was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

5. During trial of the case, prosecution examined eight witnesses in all, besides tendering reports of Chemical Examiner Ex.PX and Ex.PY.

6. Accused was also duly examined as per provision of Section 313 Cr.P.C., in which, he denied the entire prosecution evidence, which came on record against him during trial of the case. Further he took the plea of his innocence and false implication. In addition to this, it was also his plea that complainant had borrowed a sum of ₹50,000/- from him, which he was not returning. When he demanded this amount from him, then he in connivance with the police had got implicated him in the instant case.

7. Learned trial Court after hearing learned counsel for both the parties and going through the record as well held the accused guilty for the offences punishable under Section 376 and 323, IPC and awarded him sentence as detailed below:-

Under Section 376, IPC	Rigorous imprisonment for a period of 10 years and to pay a fine of ₹5,000/-	In default of payment of fine, he shall further undergo rigorous imprisonment for 3 months
Under Section 323, IPC	Rigorous imprisonment for a period of 1 year and to pay a fine of ₹500/-	In default of payment of fine, he shall further undergo rigorous imprisonment for 1 month

8. The appellant/accused being not satisfied with the impugned judgment of conviction and order of sentence has come up with the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

9. Learned counsel for the parties were heard and with their able assistance record was also perused minutely.

10. Learned counsel for the appellant has contended that PW-2 Lata Devi, mother of prosecutrix had not supported the case of prosecution, who was declared hostile for this reason. The statement made by her in the Court is not in consonance with the alleged prosecution version. It is further his contention that one Jai Parkash was also arrested in this case and during investigation of this case efforts were made by investigating agency to shield him and in his place, the present appellant was implicated as an accused in this case falsely.

Then it is also his contention that there was some financial dispute between the appellant and the complainant party. Complainant had borrowed a sum of ₹50,000/- from the appellant, which he did not return. When this amount was demanded by the appellant from the complainant, then he was involved in the instant case in connivance with the police. Lastly, he has contended that the impugned judgment is based on mere surmises and conjectures and as such, the same is not tenable in the eyes of law. Further he has prayed for the acceptance of the appeal and setting aside of the impugned judgment.

11. On the other hand, the learned State counsel has denied the above entire contentions of learned counsel for the appellant and has contended that there is nothing on the record to warrant any kind of interference in the impugned judgment. Further, he has prayed that the impugned judgment is perfectly in order being in consonance with the evidence available on the record. Further he has prayed for dismissal of the appeal.

12. Now I deem it necessary to have a look on the evidence of prosecution in brief, which was produced during trial of the case and the same is as under:-

Tek Chand Rana, complainant, father of the prosecutrix appeared as PW-3. He narrated the prosecution story in all ins and outs as stated by him before the police vide his statement Ex.PF. He had stated that when he along with his wife and Jasbir Kaur in the search of his missing daughter Anjali, reached near room No.11, then he heard cry of a child from inside that room. He saw through window *“that the accused was lying on the floor of said room in nude position and the underwear of her daughter had also been put off, he was trying to commit rape upon his daughter”*. He opened the door of room after sometime despite its knocking and ran away from the spot by pushing him. Then he also proved the memo Ex.PG vide which blood-stained floor after breaking the same from the spot was taken into police possession.

Lata Devi, mother of prosecutrix appeared as PW-2 and had stated about the missing of her daughter on 14.01.2011. It was in her statement that when the door was opened by the accused present in the Court, then he was carrying her daughter, who was bleeding from mouth, nose and was also having scratch marks over her body. Then she was declared hostile and cross-examined by the Addl. P.P. for the State. In her said cross-examination, it was specifically stated by her that she had seen the accused inside the room and at that time underwear of her daughter had been put off and accused was lying nude on the floor with his underwear removed to lower side and attempting to commit rape upon her daughter.

PW-1 Dr. Neena Singla, Medical Officer, had medico legally

examined (victim) prosecutrix-Anjali on 14.01.2011, who was brought by her father Tek Chand Rana. The information to the Police in this connection was sent. During her medical examination, she found the following injuries on her person:-

- “1. 1 cm. Linear bruise below left eye red in colour.*
- 2. Irregular bruise .5 cm. X 1.0 cm. on the left side of nose. Dried blood seen around the nostrils. Bruise was red.*
- 3. 0.25 cm. abrasion with surrounding bruised area over the upper lip on left side and 0.5 cm. abrasion with surrounding bruised area on lower lip. Red in colour.*
- 4. 0.5 cm. X 0.5 cm. abrasion in front of right ear. Red in colour.*

Examination of mouth: 4+4 teeth present in upper jaw and 4+4 in lower jaw.

Breasts not developed.

- 5. Irregular bruises like petechial haemorrhages seen over front of neck and upper part of chest.*

Local examination of genitalia:

Mons veneris normal, pubic hair not present. Labia Majora showing diffuse signs of bruising on both sides with dried blood present over the vulva and thighs. Labia minora very small and bruised. On separating the Labia, blood seen oozing from the vaginal orifice. The area around the hymen red, bruised and oedematous with blood oozing from edges. Tenderness present on examination. One swab was taken from the vaginal orifice and 2 slides smears made, sent to Chemical

Examiner for evidence of spermatozoa.”

After medical examination, she handed over to police a sealed parcel containing clothes, one box with two slides and one tube with swab stick, copy of the MLR along with sample seal and one sealed envelope containing letter to Chemical Examiner. She produced in the Court original MLR of said patient, carbon copy of which is Ex.PA. On receipt of report of Chemical Examiner Ex.PB, she gave her opinion vide endorsement Ex.PD that act of sexual intercourse had taken place in case of prosecutrix.

PW-7, SI Santokh Singh was Investigating Officer in this case. On the date of alleged occurrence, he was posted as Incharge, Police Post Nahar Lehli. On receipt of telephonic message from Police Station Lalru, he reached at Civil Hospital Dera Bassi and received the copy of MLR of Anjali. Further he recorded the statement of complainant Tek Chand Rana Ex.PF, upon which he made his endorsement Ex.PW7/A, on the basis of which formal FIR Ex.PW7/B was registered in this case. Further he proved the memo Ex.PW7/C vide which one parcel containing clothes and one envelope both duly sealed with the seal of 'CHD' along with one sample seal were taken into possession. Further he proved the rough site-plan of the place of occurrence Ex.PW7/D as well as memo Ex.PG vide which a portion of the floor stained with blood from the spot was taken into police possession. He arrested the accused on 15.01.2011 and conveyed to him grounds of his arrest vide memo Ex.PW7/E. Accused was also got medically examined. He recorded the statements of witnesses. Further he also proved a parcel duly sealed containing broken floor as Ex.P1 and a parcel containing clothes of the accused as Ex.P2.

PW-6 Jaswinder Singh was the husband of Ex-sarpanch of

village Jalalpur namely Smt.Karamjit Kaur. It was in his statement that Panchayat had constructed 16 rooms in which workers of Nahar factory were residing on rent. Tek Chand Rana was his tenant in room No.14 whereas accused Subhash Kumar was putting up in room No.11.

PW-5 Baljinder Singh, Draftsman had proved scaled site-plan as Ex.PW5/A which he prepared after visiting spot of occurrence.

PW-4 HC Subash Chand and PW-8 HC Surjit Singh were formal witnesses in this case and they tendered their duly sworn affidavits Ex.PW4/A and Ex.PW8/A as a part of their respective statements.

13. Both PWs 2 and 3 in their respective cross-examinations had stated that one Jai Parkash was also apprehended in this case, but at the same time PW-2 had also stated that at the time of alleged occurrence said Jai Parkash was sleeping, though he was inside room No.11. Then both PW-2 and PW-3 as above discussed had deposed consistently that they had seen only the accused (appellant) while attempting to commit rape with their daughter. They did not state about any kind of participation on the part of said Jai Parkash in the commission of the alleged crime. Then interestingly the learned counsel for the accused did not put any question to PW-7 SI Santokh Singh the Investigating Officer in his cross-examination regarding arrest of said Jai Parkash in this case. If the appellant was innocent and he was substituted as an accused in this case in lieu of said Jai Parkash by the Police in order to defend him, then certainly PW-7 was to be cross-examined on this point which as abovesaid the learned counsel for the appellant failed to do so.

14. PW-2 as above discussed had supported the above entire version of prosecution in her cross-examination made by learned Addl. P.P.,

for the State when she was declared hostile. If her entire statement is to be read in between the lines, then it can safely be held that she had supported the version of prosecution out and out.

15. Then it is the plea of learned counsel for the appellant that the appellant was involved in this case falsely due to some financial dispute between him and the complainant. In this connection, it was his contention that complainant had borrowed a sum of ₹50,000/- from the appellant for his treatment and when he demanded the same from him, then the complainant had got implicated him in this case falsely in connivance with the police. The status of the appellant as had come on the record was that of a labourer at the time of alleged occurrence. No evidence was led by him during the trial of the case as to from which source he earned ₹50,000/- and advanced the same to the complainant party. Then there is nothing on the record to say that complainant had ever been suffering from any ailment and hence requiring the money for his treatment. A sum of ₹50,000/- is not a small amount. In case such an amount is to be advanced to any person, then the person making this payment will certainly get something in black and white in the shape of receipt etc. from the borrower in order to secure its repayment.

16. Then the learned counsel for the appellant has also pointed out some discrepancies in the statements of PWs. Firstly, he has referred to cross-examination of PW-3 wherein he stated that he does not know Punjabi, so he cannot say as to what was written in his alleged statement Ex.PF. But at the same time he had stated before the Court that after recording of his statement, the same was read over to him and he had signed the same after admitting it to be correct. Then this witness is the resident of

Himachal Pradesh and not of any foreign country. Then PW-7 Santokh Singh, Investigating Officer of this case also stated that after recording of statement of the complainant it was read over to him which was signed by him, after admitting it to be correct.

17. Then the learned counsel for the appellant has further contended that it has come in the cross-examination of PW-2 that she signed her statement, but during trial of the case no such statement which was allegedly signed by her had come on the record. But as per the case of prosecution, statements of witnesses were recorded by the police during investigation of the case under Section 161 Cr.P.C. only. So her statement that police had obtained her signature on her statement during investigation of the case is nothing else but the result of some misconception on her part due to her lengthy cross-examination made by learned State counsel as well as learned defence counsel.

18. Victim in this case was of the age of about two years and whereas the accused (appellant) was of the age of about twenty three years at the time of alleged occurrence. So the appellant does not deserve for any kind of leniency.

19. In the light of the above discussion, this appeal being devoid of any merits stands dismissed. The impugned judgment of conviction and order of sentence under appeal stands upheld. Copy of this judgment be sent to all the quarters concerned for its strict compliance.

January 12, 2016
Gaurav Sorot

(GURMIT RAM)
JUDGE