

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 306

Criminal Appeal No.S-235-SB of 2011 (O & M)
Date of Decision: *December 02, 2017*

Jaspal Singh @ Jaswant Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. S.S. Kharb, Advocate, Amicus-Curiae, for the appellant.

Mr. Jasdeep Singh Walia, Senior Deputy Advocate General, Punjab.

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Jaspal Singh, J

The instant appeal, through jail, has been preferred by accused – appellant Jaspal Singh @ Jaswant Singh against judgment of conviction and order of conviction dated November 26, 2010 passed by the Additional Sessions Judge, Ferozepur, vide which, he has been convicted in case FIR No.47 dated April 11, 2010, under Sections 376, 506 IPC, Police Station, Khuian Sarwar, and sentenced under Section 376 IPC to undergo RI for a maximum period of seven years alongwith fine of ₹ 1,000/- and in default of payment of fine, to undergo RI for one month as well as under Section 506 IPC to undergo RI for a period of two years alongwith fine of ₹

500/- and in default of payment of fine, to undergo RI for 15 months. However, both the sentences were ordered to run concurrently.

The present case was registered at Police Station, Khuian Sarwar, on the statement of prosecutrix to the effect that on April 09, 2010 she went to fetch water from the hand pump installed outside her house. Accused – appellant came there and after keeping his hand on her mouth, took her to the school and committed rape upon her, forcibly and threatened her of dire consequences and she became unconscious. In the midnight, her brother Sukhdev Singh and sister-in-law Bhajan Kaur came to school in search of her and took her to their house. On April 10, 2010, she narrated the entire incident to her mother Preeto Bai, who informed the same to her father. She was got admitted in Civil Hospital, Abohar; was medico legally examined and discharged. Her statement was recorded by the Investigating Officer. Accused was arrested on April 12, 2010.

After completion of necessary formalities, final report under Section 173 (2) Cr.P.C. was presented in the court. Copies of documents as required under Section 207 Cr.P.C. were supplied to the accused, free of cost. As the offence punishable under Section 376 IPC is exclusively triable by the court of Sessions, case was committed by the Illaqa Magistrate to the court of Sessions Judge, Ferozepur, which was further entrusted to the court of Additional Sessions Judge. Accused was chargesheeted under Sections 376, 506 IPC, to which, he pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined as many as eight witnesses.

When incriminating circumstances appearing in prosecution evidence were put to accused for eliciting his explanation as required under

Section 313 Cr.P.C., he pleaded innocence and false implication at the instance of party faction in the village.

After hearing learned counsel for the parties and on appraisal of evidence, trial court vide the impugned judgment of conviction and order of sentence held the accused guilty, convicted and sentenced him as detailed above.

Aggrieved by the aforesaid judgment/order, accused – appellant has approached this Court by way of instant appeal.

Learned counsel for the appellant has submitted that misreading of evidence has resulted into miscarriage of justice. Appellant has been falsely implicated. The version put-forth by the prosecution is highly improbable and there is no independent corroboration. There are discrepancies in the statements of the witnesses. Prosecutrix was major and no injury was found on her person at the time of her medical examination which casts serious doubt on the genuineness of the case. Prosecution has failed to prove charges against him beyond shadow of reasonable doubt. Accordingly, impugned judgment/order is liable to be set side and appellant deserves acquittal.

Per contra, learned counsel for the State has supported the judgment of conviction and order of sentence submitting that each and every aspect of the case has been considered by the trial court in correct perspective. There is clear statement of prosecutrix that accused has committed forcible sexual intercourse with her and medical evidence duly corroborated her version.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scanned the record

The prosecutrix was below 18 years as she gave her age as 17 years while appearing as PW-1. During her examination-in-chief, she stated that she has 8th class pass in the year 2007 and she was 6 years of age at the time of admission in school. As per report (Ex.DA) of Principal, Government Primary School, Toota Wala, her date of birth is mentioned as February 18, 1990. The occurrence in this case is stated to be dated April 09, 2010. Moreover, from the evidence on record, learned trial court rightly held that she was not less than 16 years.

As regards, plea of accused with regard to party faction, during cross-examination of prosecutrix, a question was put to her on behalf of accused that there was a property dispute between her father and father of accused. Prosecutrix denied this fact. Moreover, it is not the case of appellant that it was a consent case. Accused – appellant has come up with the plea of complete denial and false implication. No evidence was led by the accused in defence. Party faction in the village cannot be said to be a ground for false implication at the instance of prosecutrix and her family members. It is well settled by judicial pronouncements that any such occurrence of rape casts a stigma on the woman and her family. So, it is highly improbable that her own family would implicate a person of committing rape on their daughter and moreover, it would be difficult to find a suitable match from the respectable family once the allegation of rape has been publicized.

Medico legal examination of prosecutrix was conducted by Dr. Alka Khurana, PW-5, who did not find any mark of external injury on the body of prosecutrix. But that itself cannot be a ground to discard her testimony. The Hon'ble Apex Court in **State of Himachal Pradesh vs.**

Gian Chand, AIR 2001 SC 2075 held that mere absence of mark of external injury does not negate the prosecution case.

Further, statement of prosecutrix finds corroboration from the statement of Sukhdev Singh, PW-3, who stated that he alongwith his wife searched for prosecutrix and found her in unconscious state in the school premises. The parents of prosecutrix were stated to be out of house. Prosecutrix narrated the incident to her mother, on the next day when they returned home. Lateron, her mother disclosed this fact to his husband. She was got medically examined and instant case was got registered. Thus, delay in registration of FIR is also no ground for holding the prosecution case to be doubtful. It is well settled proposition of law that delay by itself is not fatal to the prosecution case in the cases of present nature where the honour of a woman is involved and a complaint made to the police carries a whole life stigma on the woman. The prosecution witnesses were cross examined at length but nothing could be brought on record to caste a doubt upon their testimonies. Moreover, statement of prosecutrix finds further corroboration from the report of Chemical Examiner wherein it is mentioned that ‘Spermatozoa were detected in the contents of exhibit I’.

In the light of aforesaid discussion, this Court does find any merit in the instant appeal and the same is dismissed so far as it relates to the conviction of appellant – accused under Section 376/506 IPC.

However, it would be appropriate to mention here that the appellant – accused was sentenced under Section 376 IPC for a period of seven years and with fine to the tune of ₹ 1,000/- and in default of payment of fine, to undergo RI for one month as well as under Section 506 IPC to undergo RI for a period of two years alongwith fine of ₹ 500/- and in default of payment of fine, to undergo RI for 15 days, and that, both the sentences

were ordered to run concurrently. However, he has already undergone the period of seven years as is evident from Custody Certificate issued by the Superintendent, Central Jail, Ferozepur. Besides, he has already deposited the necessary fine. Since the appellant has already undergone the period of sentence imposed upon him, no further action is required and if he is still in custody, he should be released.

Disposed of.

December 02, 2017

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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No