

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

**CRA-S No.2778-SB of 2012
Date of Decision: 16.12.2017**

Gurpreet Singh

.....Appellant

Vs

State of Punjab

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Tarundeep Kumar, Legal Aid Counsel
for the appellant.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Appellant has preferred this appeal against the judgment of conviction and order of sentence dated 09.08.2012 passed by the Additional Sessions, Judge Bathinda vide which he was convicted for the offences under Sections 366 and 376 IPC and was sentenced to undergo rigorous imprisonment for 2 years along with fine of Rs.2,000/- under Section 366 IPC and rigorous imprisonment for 7 years along with fine of Rs.3,000/- under Section 376 IPC along with default mechanism. The sentences were ordered to run concurrently.

[2]. Prosecution story started with the allegations that on

11.05.2011 SI Mohan Singh was present along with other police officials at Verka Chowk on patrolling duty. Prosecutrix along with her mother Gurnam Kaur met him and filed an application addressed to the SHO of Police Station, Talwandi Sabo against the appellant, Bholi w/o Gurpreet Singh, Beant Kaur w/o Makhan Singh, Makhan Singh, Tara Singh, Banti Singh and brother-in-law of Gurpreet Singh. The prosecutrix stated in the application that she was 20 years of age. On 16.03.2011, she was sleeping with her mother. At about 3.00 a.m. Beant Kaur, who was tenant in the house woke her up. Beant Kaur asked her that she want to talk to her and took her outside. After taking her out of the house, Beant Kaur and Makhan Singh bolted the door of the house. The aforesaid persons were standing there with car and motorcycle. They forcibly lifted the prosecutrix and gagged her mouth with cloth. Gurpreet Singh took her to Rajasthan and committed rape upon her continuously for a period of two months. Whenever the prosecutrix requested Gurpreet Singh to allow her to talk to her parents, he used to stand nearby and as and when mother asked her whereabouts, he used to disconnect the mobile phone.

[3]. It was further stated in the application that on the request of the prosecutrix, he made her to board bus and the prosecutrix reached Dabwali. There Banti, Tara Singh and a

police official of Raman Mandi took her out of the bus at Dabwali on the pretext that her parents have come. They brought the prosecutrix to Raman Mandi to the house of said police official, at about 12.00 noon. Bholi Kaur her neighbour Gursar Wali and wife of said police official beat the prosecutrix and threatened her to make statement according to their wishes failing which a threat of elimination was given. Thereafter they left the prosecutrix with her parents during night.

[4]. FIR was registered. The accused was arrested on 11.05.2011. The prosecutrix got medically examined from Civil Hospital, Talwandi Sabo. Vaginal swabs were taken by Dr. Sonia Gupta and were handed over to SI Mohan Singh. Parcel was sent to chemical examiner on 20.05.2011. Report from chemical examiner was received and opinion of Dr. Sonia Gupta was obtained, who confirmed the commission of rape upon the prosecutrix. The Investigation Officer prepared the site plan and recorded the statements of witnesses and on completion of the investigation a final report was presented in the Court. The charges were framed on finding *prima facie* case under Section 366, 376 IPC. The accused pleaded not guilty and claimed trial.

[5]. The prosecution examined the prosecutrix as PW-1, Gurnam Kaur mother of the prosecutrix as PW-2, Dr. Sonia Gupta as PW-3, Dr. Balbir Singh as PW-4, ASI Bikar Singh as

PW-5, SI Mohan Singh as PW-6, HC Kashmir Lal as PW6-A and HC Raghbir Singh as PW-7.

[6]. Statement of the accused was recorded under Section 313 Cr.P.C., where he pleaded false implication and led evidence in his defence in the form of DW-1 Kamal Noori @ Noori and also brought on record documents mark A to mark I. The accused denied all the circumstances appearing against him and pleaded false implication. He further stated that the prosecutrix was having love affair with him and she left the house of her own free will without any pressure. She lived with him of her own free will in a rented house of Veerpal Kaur as well as in Gurudwara Baba Farid, Faridkot. The accused denied any rape having been committed by him upon the prosecutrix forcibly and without her consent. The accused claimed that the prosecutrix was a consenting party. She remained in his company for about 1½ months and never objected, nor made any hue and cry, neither disclosed this fact to anyone. The case was registered against the accused/appellant at the instance of the mother of the prosecutrix in order to extort money from the the accused/appellant.

[7]. I have heard the submissions made by learned counsel for the parties.

[8]. The statement of prosecutrix was recorded as PW-1 wherein she stated that Beant Kaur was living as tenant in their house. On the fateful night, she was sleeping with her mother and at about 3.00 a.m. Beant Kaur woke her up on the pretext of phone call of her sister, who wanted to talk with her. Beant Kaur took her outside the house, where Banti, Tara, Bholi, accused Gurpreet Singh and driver were present in a car and a motorcycle. They took the prosecutrix to village Kotli. On 2nd day, she was given some intoxicant by Beant Kaur and Bholi and kept her for about 2 months. Gurpreet Singh committed rape upon her forcibly during the said period of two months. She was threatened on pistol point. She came to know that Gurpreet Singh used to receive phone calls of one woman namely Noori. Thereafter accused Gurpreet Singh made her to sit in a bus for Dabwali, but Banti, Tara Singh and a police Head Constable took her out of the bus before reaching Dabwali at Raman Mandi. There she was given beatings and her signatures were obtained, then they made call to Noori to tell mother of the prosecutrix that she has come back. Head Constable Mohan Singh came to Raman Mandi and took Rs.50,000/- from accused Gurpreet Singh and got recorded her statement that the prosecutrix had gone with the accused on her own. Mother of the prosecutrix along with Noori and HC Mohan Singh

brought her from Raman Mandi to Talwandi Sabo and thereafter she was allowed to go her home. The prosecutrix visited the police station continuously for two days, but no action was taken on the application filed by her. The application was torn by HC Mohan Singh. The application dated 11.05.2011 was filed by her for taking action against the accused.

[9]. In her cross-examination the prosecutrix admitted that the application was got typed from Talwandi Sabo Courts and at that time mother of the prosecutrix, Noori and her uncle were present with her. The prosecutrix got typed in the application that she was taken to village Kotli, but the Police got it deleted from the application. No complaint was filed before the higher authorities. Prosecutrix admitted that she had filed only one application with the police which was torn. The witness stated that in her application, the factum of payment of Rs.50,000/- by the accused to HC Mohan Singh was mentioned, but the same was got deleted. The attention of the witness was drawn towards the place in the statement, where this fact was not mentioned. The witness could not tell the places where she was kept for two months. She gave the name of village Kotli, but thereafter she did not know where she was kept. Prosecutrix was married about one and half years ago with Balbir Singh. She has not obtained any divorce from him. She was living

separately from her husband for the last one year. The witness did not record in her statement before the police that on 16.03.2011 accused Gurpreet Singh alone came to her. She got recorded in her statement that the accused Gurpreet Singh told her that he will marry her. This fact was got recorded by the prosecutrix in the application Ex.PW-1/A, but when the attention of the witness was drawn to the application, where this fact was not recorded. The accused was known to the prosecutrix for the last 2 years and the prosecutrix cohabited with her husband only for 3-4 months.

[10]. Mother of the prosecutrix was examined as PW-2 and in her statement the witness deposed that she requested SHO Nazar Singh that her daughter Gurpreet Kaur has not been found. Thereafter police told her that her daughter was forcibly taken away by Gurpreet Singh. Noori used to call her and intimated her that Gurpreet Singh and the prosecutrix can be found. On 02.05.2011 ASI Mohan Singh informed her that the prosecutrix was in Raman Mandi. She went to Raman Mandi and took custody of the prosecutrix. Prosecutrix narrated her that the accused had committed rape upon her for a period of about 1½ months. Prosecutrix was taken away forcibly by Tara, Bholi, Banti, Makhan Singh and Beant Kaur. They approached the police, but police did not take any action. After ten days, te

prosecutrix was medically examined at Civil Hospital, Talwandi Sabo. The witness identified her signature on the MLR Ex.PW2/1. In her cross-examination the witness admitted that marriage of the prosecutrix was solemnized with Balbir Singh about two years ago. She lived with her husband for about 1½ years ago and thereafter prosecutrix came to her house about 6/7 months ago. The witness had admitted that they earlier tried to compromise for rehabilitation of her daughter and still efforts were being made for compromise. Her son-in-law Balbir Singh used to visit to her house. When she gave the application to police, then her daughter and husband were with her. From 02.05.2011 to 11.05.2011, Gurpreet Singh never came to their house and never met the prosecutrix. The witness told about this occurrence to her son-in-law on 18.03.2011.

[11]. In the statement of Dr. Sonia Gupta as PW-3, there was no mark of external injury seen on the body of the prosecutrix. Secondary sex characteristics were found developed and normal. Hymen was found ruptured and edges of torn hymen were found not congested, nor bleeding was found. No blood was seen through introitus. On pervaginal examination, vagina admitted two fingers easily. In cross-examination, the Doctor opined that living sperms can be detected up to 12 to 24 hours but the dead sperms can be detected from 3 to 5 days after the

sexual intercourse. The sperms belonging to the persons could be detected through DNA test. The Doctor had no idea about the factum of DNA test whether it was conducted or not?. The patient did not tell about the name, who had the sexual intercourse with her. The prosecutrix did not tell before the Doctor that she was married for the last two years.

[12]. As per statement of Dr. Balbir Singh PW-4, the accused was found fit to perform sexual intercourse.

[13]. During course of investigation, Bholi Kaur @ Jaspal Kaur, Beant Kaur, Makhan Singh, Tara Singh and Banti were declared to be innocent by DSP Parvinder Singh, Talwandi Sabo. This fact was admitted by ASI Bikkar Singh as PW-5.

[14]. SI Mohan Singh PW-6 admitted that he did not conduct any raid where the complainant was kept by the accused. When he recorded the statement of prosecutrix, her mother was with her. He did not take any clothes which were worn by the complainant. The Investigating Officer did not record the statement of mother of the prosecutrix.

[15]. From the perusal of aforesaid material on record, it can be noticed that when the prosecutrix was medically examined by Dr. Sonia Gupta PW-3, slight whitish discharge was found on the examining finger. The Doctor opined that the slight whitish

discharge could be due to leucorrhea, but volunteered that leucorrhea is not only the cause of discharge. Dr. Balbir Singh PW-4 in his cross-examination stated that the sperms cannot be detected from 3 to 5 days after sexual intercourse.

[16]. In the FSL report, Spermatozoa were detected in the contents of Ex.P-1. On the basis of said report from the chemical examiner, the Doctor opined vide Ex.PW-3/5 that probably the sexual intercourse had taken place.

[17]. If the FSL report is co-related with the statement of mother of the prosecutrix, then it can be noticed that after 10 days, the prosecutrix was medically examined in Civil Hospital, Talwandi Sabo. The mother of the prosecutrix admitted in her cross-examination that her son-in-law used to visit her house. From 02.05.2011 to 11.05.2011 accused Gurpreet Singh never came to the house of the prosecutrix and never met with her. The presence of Spermatozoa as per FSL report was not on account of any intercourse done by the accused. Though the DSP Parvinder Singh, Talwandi Sabo had independently did some inquiry in the case and found Bholi Kaur @Jaspal Kaur, Beant Kaur, Makhan Singh, Tara Singh and Banti to be innocent. While acting on the aforesaid inquiry, the police has not proceeded against the aforesaid persons and only tried the accused/appellant for the offences in question. The report of

DSP Parvinder Singh was not proved by the accused with reference to any evidence except to mark the same as mark 'A', but PW-5 ASI Bikkar Singh had admitted in his cross-examination that on the basis of inquiry done by DSP Parvinder Singh, the co-accused were found to be innocent. In this way, the inquiry report was duly acted upon by the prosecution and was accepted *qua* the alleged complicity of the co-accused in the offence.

[18]. The prosecution story is not solely revolving around the complicity of the accused/appellant, rather the initial version given by the complainant was in respect of involvement of other co-accused also, who took the prosecutrix from her house. Thereafter at Raman Mandi, complicity of co-accused was alleged in the context of taking out the prosecutrix from the bus and keeping her confined where role of a police official was also alleged in the context of taking bribe from the accused/appellant.

[19]. The prosecutrix was a married woman having strained relationship with her husband. She remained in the company of the accused for about 1½ months at different places. She never made any attempt nor raised any hue and cry at any point of time. No complaint was made by her to the police, when she was made to board the bus for Dabwali.

[20]. Since the prosecutrix remained in the company of appellant/accused for about 1½ months, she travelled various places, even on public transport and had an opportunity to escape and raise alarm, therefore, the silence on the part of prosecutrix on every occasion can be termed as consenting party and, therefore, the accused is entitled for acquittal under Sections 366 and 376 IPC.

[21]. For the reasons recorded hereinabove, the judgment of conviction and order of sentence dated 09.08.2012 passed by the Additional Sessions, Judge Bathinda is hereby set aside and the appellant is acquitted of the charges levelled against him. Normal consequences to follow.

December 16, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No