

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Appeal No. 3543-SB of 2012(O&M)

Date of Decision: November 27 , 2017.

Hem Raj APPELLANT (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rohit Rana, Advocate for
Mr. Kunal Dawar, Advocate
and Mr. Tarundeep Kumar, Advocate
for the appellant.

Mr. Saurav Khurana, DAG, Punjab.

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

LISA GILL, J.

The appellant – Hem Raj has been convicted for the offences punishable under Sections 376/506 IPC by the learned Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 06.09.2012. By a separate order dated 08.09.2012, the appellant has been sentenced to undergo rigorous imprisonment for ten years, besides, pay a fine of ₹3,000/- and in default thereof, undergo further rigorous imprisonment for two months for the offence punishable under Section 376 IPC. He has been sentenced to undergo

imprisonment for one year for the offence punishable under Section 506 IPC. Both the sentences are ordered to run concurrently. Aggrieved therefrom, present appeal has been preferred.

Brief facts of the case are that, the prosecutrix/complainant suffered a statement (Ex.PA) on 14.05.2011 before ASI Harpal Singh (PW4), Police Station Balongi stating that she was working as a domestic help at House No.129, Phase 4, Mohali. She had gone back to her parental home in Azad Nagar, Balongi on 18.03.2011 after seeking leave for three days on account of festival of Holi. It is stated that the complainant's mother alongwith both her brothers had gone to the market for making some purchases in regard to Holi festival. The complainant was alone at her house. She had bolted the door from inside. At about 6.00 p.m., someone knocked at the door of the house. She opened the door and discovered that it was her father i.e., the appellant. He came inside and bolted the door. It is stated that that the appellant threw her on the bed and committed rape upon her. Thereafter, he threatened and intimidated her that in case she disclosed anything about this incident, he would kill her. The complainant stated that she out of fear did not disclose this incident to anyone. Her father committed rape upon her subsequently on two or three occasions as well. The complainant further reveals that she disclosed about the said incident to her employer Naveen Soni and Alka Soni on 14.05.2011. Her employer and his wife consequently took her to the police station when ASI Harpal Singh met them at the Tax Barrier, Balongi and her statement was recorded on 14.05.2011 itself. Legal action against the appellant was prayed for.

FIR No.37 dated 14.05.2011 (Ex.PW4/B) was registered on the basis of the statement of the complainant. Investigation was carried out by PW4 ASI Harpal Singh. PW4 ASI Harpal Singh accompanied the complainant and her employers to the scene of the crime. Rough site plan (Ex.PW4/C) was prepared. An application (Ex.PW4/D) was moved for conducting the medico-legal examination of the complainant before the Civil Hospital, Kharar. Medical examination was conducted. A copy of the MLR (Ex.PW6/A) alongwith vaginal swabs were handed over to PW4 ASI Harpal Singh. The sealed parcel was deposited by him with the MHC. They were not tampered with. Urine test of the complainant/prosecutrix was conducted. Ultrasound and x-ray examination could not be conducted due to low voltage of electricity. Thereafter on 17.05.2011, ultrasound was conducted at Civil Hospital, Kharar. It transpired that the complainant was carrying a dead foetus of gestation period of nine weeks and two days in her womb. It was advised that abortion was to be conducted otherwise life of the complainant would be in danger. The procedure was carried out on 17.05.2011 by PW7 Dr. Sonia Gulati. Parcel containing the dead foetus and sealed envelope were handed over to PW4 ASI Harpal Singh. It was taken in possession vide memo Ex.PW4/M.

The accused appellant was arrested on 22.05.2011. Blood samples and the dead foetus were sent to CBI Laboratory, New Delhi for DNA profiling. Fresh blood samples were sent on request of the Laboratory. FSL report (Ex.PW6/D) dated 14.06.2011 was received whereby it is reported that spermatozoa were detected in the contents of Ex.I (vaginal swabs of the prosecution). Reports of the DNA profiling is Ex.PW4/N and Ex.PW4/P. The

DNA report was inconclusive.

Final report under Section 173 Cr.P.C. was presented on completion of the investigation. Charge under Sections 376/506 IPC was framed against the appellant on 03.11.2011 to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as nine (9) witnesses.

The appellant in his statement under Section 313 Cr.P.C. has denied all the incriminating material and evidence put to him. He pleaded false implication and has stated that his daughter was not holding a good character. She was apprehended in a compromising position with some persons due to which he had beaten her in order to prevent her from indulging in such activities. It is further stated that brother as well as maternal uncle of the prosecutrix had also apprehended her in compromising positions. It is due to this reason that a false case was registered against him.

The learned trial court on consideration of the facts and circumstances as well as the evidence on record concluded that the prosecution succeeded in proving its case against the appellant beyond the shadow of reasonable doubt. Consequently, the appellant was convicted and sentenced as detailed above. Aggrieved therefrom, the present appeal has been filed.

Mr. Rohit Rana, learned counsel for the appellant vehemently argues that the appellant has been falsely implicated in this case. The evidence on record does not unerringly point out to the guilt of the appellant. It is contended that as per the FSL report dated 14.06.2011 (Ex.PW6/D), spermatozoa was found present in Ex.1, thereby indicating that the prosecutrix had indulged in sexual activity around the time when her medical examination

was conducted on 14.05.2011. Incident in question is alleged to have been taken place on 18.03.2011. Though the prosecutrix in her initial statement mentioned that her person was violated twice or thrice subsequent to 18.03.2011 by the appellant, however in her statement under Section 164 Cr.P.C. as well as her statement before the trial court, she stated that she never visited her parental home after the incident on 18.03.2011. It is urged that this fact by itself lends credence to the defence version that the prosecutrix was in relationship with some other persons and her father has been falsely implicated as he had physically abused her due to her conduct. It is further submitted that a dead foetus of about nine (9) weeks and two (2) days was evacuated from the womb of the complainant on 17.05.2011. There is nothing on record to indicate as to when the foetus had expired. Therefore, yet again the prosecution version rings hollow because even a period of sixty days had not elapsed from 18.03.2011 till 17.05.2011. Moreover, the DNA profiling report was inconclusive. The appellant had willingly given his blood samples as he wished that truth should come to light.

Learned counsel for the appellant further points out that the statement of the complainant/prosecutrix (PW1) is riddled with the discrepancies and inconsistencies. Moreover, the prosecutrix in her cross-examination admitted that her marriage was fixed with one Raju. After her betrothal with Raju, the complainant's mother was opposed to the idea of marriage of the complainant with said Raju as it came to light that he belonged to a different caste. It is stated that Raju had moved an application against the complainant's parents before the police that her parents were not solemnizing their marriage. She further stated that a mobile set was given to her by Raju

when she was at the house of her employer. The prosecutrix (PW1) further revealed that her marriage was fixed with another person of U.P., namely, Shri Ram. She has denied the suggestion that she did not wish to marry Shri Ram.

Learned counsel for the appellant argues that the defence evidence has been wrongly ignored by the learned court below. The mother of the prosecutrix while deposing as DW4 clearly stated that the complainant developed illicit relations with one Raju. Engagement ceremony of the prosecutrix was performed with Raju but when they came to know that said Raju belongs to a lower caste, they broke the engagement. However, the prosecutrix continued to meet Raju. The prosecutrix tried to slip away with Raju. She was brought back from the house of her employer on a complaint by the father of Naveen Soni. When her husband gave severe beatings to the prosecutrix, she (DW4) rescued the prosecutrix (PW1) from her husband i.e., the appellant. It is revealed that father of Naveen Soni fell ill and she was requested to again send the prosecutrix to their home to do the domestic work. It was promised that they would not allow the prosecutrix to go out of their home and would keep a close watch on her. Marriage of the prosecutrix was fixed with someone at U.P. A suspicion was raised that the prosecutrix may have developed illicit relations with the son of her employer as well. They were not allowed to meet their daughter by their employer. She further revealed that no complaint was ever made to her by the complainant against the conduct of the appellant. Learned counsel states that the son and daughter-in-law of the appellant have duly deposed in his favour. It is submitted that it is beyond any stretch of imagination that the mother, brother and sister-in-law of the prosecutrix collectively would not support the case of the complainant in case

there was any truth in the allegations. It is thus prayed that this appeal be allowed, the impugned judgment and order dated 06.09.2012/08.09.2012 passed by the learned Additional Sessions Judge, SAS Nagar, Mohali be set aside and the appellant be acquitted of the charges against him.

Learned counsel for the State while refuting the abovesaid arguments submits that the prosecution has proved its case beyond all reasonable doubts. The evidence on record clearly points to the guilt of the appellant. There is no reason for the prosecutrix to falsely implicate the appellant, who is none other but her own father. There is nothing on record to indicate the involvement of the prosecutrix with anyone else. The medical evidence on record indicates that the prosecutrix was subjected to sexual intercourse. She developed a pregnancy as well. Report of the DNA profiling being inconclusive, it is submitted, does not detract from the prosecution version in any manner. It is thus prayed that the impugned judgment and order dated 06.09.2012/08.09.2012 passed on proper and due appreciation of the evidence be maintained.

I have heard learned counsel for parties and have carefully gone through the record of the case with their able assistance.

As per the allegations in the FIR, the incident in question occurred on 18.03.2011 when the complainant was at her parental home. She had gone to her parental home for the festival of Holi after seeking leave for three days from her employer. It is not in dispute that she did not disclose about this incident to anyone till the recording of her statement (Ex.PA) before the police on 14.05.2011. She disclosed about the alleged incident to her employer Navin Soni and his wife Alka Soni, who took her to the police station. FIR No.37

dated 14.05.2011 was consequently lodged.

It is to be noted that in her initial statement, the prosecutrix stated that her person was violated twice or thrice subsequent to 18.03.2011 by the appellant, who is none other but her father. However in her statement under Section 164 Cr.P.C. as well as her statement before the learned trial court, the prosecutrix categorically stated that she never visited her parental home after the incident on 18.03.2011. There is no mention, whatsoever, of violation of her person by the appellant subsequently. In her cross-examination, the prosecutrix states that none had ever violated her person prior to the incident in question which took place on 18.03.2011 and neither was her person violated subsequent thereto. When confronted with her initial statement, she tried to explain by stating that the appellant had committed rape upon her in the year 2010 and twice before the occurrence in question.

In this scenario, FSL report dated 14.06.2011 (Ex.PW6/D) assumes importance. As per the said report, spermatozoa was detected in the contents of Ex.1 i.e., one of the vaginal swabs taken from the victim at the time of her medical examination on 14.05.2011. It clearly indicates about sexual activity indulged in by the prosecutrix around the time of her medical examination on 14.05.2011. A serious doubt is thus cast on the prosecution version by this fact itself. Moreover, the DNA profiling report was admittedly inconclusive. The appellant had willingly given his blood samples.

It is further relevant to note that a foetus of about nine weeks and two days was removed from the womb of the complainant on 17.05.2011. Medical examination of the prosecutrix was admittedly carried out on 14.05.2011. The ultrasound was conducted on 17.05.2011 when it transpired

that the prosecutrix was carrying a dead foetus as above. It is to be noted that even as on 17.05.2011, the period of nine weeks from the date of the alleged incident i.e. 18.03.2011, had not elapsed. In this context, it is extremely imported to note the statement of the doctor PW7 Dr. Sonia Gulati to the extent that as per the ultrasound report the observation that a foetus of about nine weeks and two days was detected means that the foetus was alive upto nine weeks of gestation. It could not be opined as to since when the foetus was lying dead in the womb. In this view of the matter, argument raised on behalf of the appellant indeed carries weight. It is highly improbable in the facts and circumstances that pregnancy of the prosecutrix/complainant was caused due to the incident which is alleged to have occurred on 18.03.2017, even if the gestation period is counted from the last menstrual period.

A perusal of the testimony of the prosecutrix reveals that she has specifically admitted her relation with one Raju. It is stated by the prosecutrix that her marriage with Raju was fixed by her parents in the year 2010 though without consulting her. She however approved the said boy. The prosecutrix further stated that her mother started disliking the said Raju after finalization of their marriage on account of difference in their castes. She specifically admitted that Raju submitted an application against her parents as they refused to solemnize her marriage with him. It is admitted by the prosecutrix that a mobile phone was given to her by Raju when she was present at the house of her employer. The prosecutrix stated that when she went out of the house to deliver the clothes to washerman, Raju after placing a mobile set outside her employer's house in her presence, went away. The said mobile phone had been given to her a year prior to the occurrence. The prosecutrix/complainant further

stated that after snapping ties with said Raju, her parents fixed her marriage with a person, namely, Sri Ram from U.P. Invitation cards of her marriage with Sri Ram were also printed. Her father had gone to U.P. to make arrangements in connection with marriage.

PW2 Alka Soni, employer of the complainant stated that they had employed the victim as domestic help in their house. The victim had taken leave of three days and gone to her parental home on 18.03.2011. The victim, it is stated, told PW2 on 14.05.2011 that she had not been menstruating for two months and complained for vomiting. The victim was taken to a medical practitioner, some medicines prescribed but she did not stop vommiting. PW2 stated that the victim revealed that on the festival of Holi the victim's father committed rape upon her when she was all alone at home. The victim disclosed that her father had threatened to kill her if she revealed about the incident to anyone. Thereafter, the victim was taken to the police. Her statement was recorded and prosecution was set in motion. The victim was medically examined and she was found pregnant. The foetus on ultrasound was detected to be dead. Custody of the victim was handed over to PW2. Abortion was carried. The victim was brought back by PW2 to their home. In respect of the mobile phone with the complainant, PW2 affirmed that the complainant had a mobile phone with her for a few days though PW2 presumed that she got the said mobile phone from her parental house. It is stated that the complainant had brought the mobile phone after her engagement and she might be talking to her fiancé or her parents on the said mobile phone. It is admitted by PW2 Alka Soni that engagement ceremony of the complainant was performed with a boy named Raju living at Balongi though their engagement were later broken. It is

not denied by her that custody of the complainant was handed over to them by the police on 14.05.2011 and not to the parents of the victim. PW2 denied the suggestion that when the mother and sister-in-law of the complainant came to meet the complainant at her home, she insisted that they should talk to the complainant only in her presence. It is to be noted that PW2 admitted that the complainant was taken to a medical practitioner before the police was approached as she complained of vomiting. However, it is noted that there is nothing on record to substantiate the same. Leave alone examine such a practitioner, even name of the said doctor is not forthcoming. No prescription which may have been given by such a medical practitioner is on record.

The complainant's own mother while deposing as DW4 stated that the complainant had developed relations with one Raju which was not to their liking. Prior to that also, she had developed relations with another person. They had employed her at the house of Mr. Navin Soni to prevent the complainant from developing illicit relations. On persuasion of their neighbour, marriage between the complainant/prosecutrix and Raju was fixed. Engagement ceremony was held but the engagement was broken when they came to know that Raju belonged to a lower caste. However, the complainant continued to meet the said Raju. She tried to slip away with him upon which her husband i.e., the present appellant gave severe beatings to the complainant/prosecutrix. DW4, it is stated, had rescued her from the appellant. DW4 has denied that her husband had ever violated the complainant in any manner. DW2 i.e., the sister-in-law (Bhabi) of the complainant as well as DW3 i.e., the brother of the complainant's mother have also deposed on similar lines.

A careful scrutiny of the evidence on record brings to the fore

material discrepancies and inconsistencies which are not in consonance with the hypothesis of the guilt of the appellant being proved beyond reasonable doubt. Doubtlessly the complainant has raised serious allegations against the appellant, who is none other than her own father. It is not in dispute that the sole statement of the prosecutrix in given circumstances can be sufficient for convicting an accused for the offence punishable under Section 376 IPC provided the credibility of the said prosecutrix/victim is unimpeachable. It is however open to the court to look for corroboration in a given set of circumstances. In the facts and circumstances, it would not be safe to solely rely upon the same to convict the appellant. Even if the delay in lodging of the FIR in question is ignored, there are material inconsistencies in the statement of the prosecutrix which renders it unsafe to be relied upon without corroboration. Engagement of the victim with Raju, their subsequent break-up and an application by Raju against the victim's parents is admitted by the victim herself. She has also admitted her subsequent engagement to one Shri Chand from U.P. at the instance of her parents. Similarly, the employer of the victim, PW2, narrated the incident as disclosed to her by the victim on 14.05.2011 after two months of the alleged incident. PW2 has no personal knowledge of the occurrence. PW2 admitted that the victim was in contact with the said Raju. Therefore, in the factual matrix of the case, it is considered unsafe and inexpedient to rely solely on their statements without corroboration.

The medical evidence on record as discussed earlier does not corroborate the version given by the prosecutrix. There is no explanation for the presence of spermatozoa in the vaginal swabs of the prosecutrix taken during her medical examination on 14.05.2011, especially in view of her

statement to the effect that she had not been raped by her father at any point of time after 14.03.2011. The victim and PW2, in fact, stated that the victim had not gone to her parental home after the said incident on Holi. The wife of the appellant i.e., the mother, sister-in-law (Bhabi) and maternal uncle (Mama) of the prosecutrix have steadfastly supported the stand taken by the appellant. There appears to be no reason on record to indicate as to why even the mother of the complainant/prosecutrix would be inimical towards her. It is opposed to all probabilities that all the abovesaid in one voice would not have supported the complainant's version. A veritable, palpable and reasonable doubt is indeed cast upon the prosecution version on consideration of the entire conspectus of facts. The benefit thereof necessarily has to accrue to the accused who in this case is definitely entitled to the benefit of doubt.

In view of the facts and circumstances as above, it is held that the prosecution has not succeeded in proving its case against the appellant beyond the shadow of all reasonable doubts.

Accordingly, this appeal is allowed. Judgment and order dated 06.09.2012 and 08.09.2012, respectively, passed by the learned Additional Sessions Judge, SAS Nagar Mohali are set aside. The appellant is acquitted of the charges against him.

The appellant is in custody. He be released forthwith, if not required in any other criminal case.

(**LISA GILL**)
JUDGE

November 27 , 2017.
'om'