

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

CRA-S-3163-SB of 2013 (O&M)

Date of decision : November 27 , 2017

Dheeraj Kumar @ Sonu

...Appellant.

Vs.

State of Punjab

...Respondent.

CRA-S-3769-SB of 2013 (O&M)

Paramjit Kaur @ Sukhi and another

...Appellants.

Vs.

State of Punjab

...Respondent.

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Dinesh Goyal, Advocate
for the appellants (in CRA-S-3769-SB of 2013)

Mr. Amaninder Preet, Advocate
for the appellant (in CRA-S-3163-SB of 2013)

Mr. Saurav Khurana, DAG, Punjab.

LISA GILL, J.

This judgment shall dispose of two appeals i.e. CRA-S Nos. 3163 of 2013 and 3769-SB of 2013 as both these appeals arise out of a common judgment and order.

The learned Additional Sessions Judge, Ludhiana has convicted all the appellants vide judgment dated 20.07.2013 for the

offences punishable under Sections 376(2)(g), 506 IPC. By a separate order of even date, they have been sentenced as under:-

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>Sentence</i>	<i>Further sentence in case of non payment of fine</i>
1.	Chaman Lal	U/s 376(2)(g)IPC : R.I. for ten years with fine of Rs. 20,000/- U/s 506 IPC : RI for two years	Six months
2.	Dheeraj Kumar	U/s 376(2)(g)IPC : R.I. for ten years with fine of Rs. 20,000/- U/s 506 IPC : RI for two years	Six months
3.	Paramjit Kaur	U/s 376(2)(g)IPC read with Section 120B IPC : R.I. for ten years with fine of Rs. 20,000/- U/s 506 IPC : RI for two years	Six months

CRA-S-3163-SB of 2013 has been preferred by the appellant - Dheeraj Kumar @ Sonu and CRA-S-3769-SB of 2013 has been preferred by Paramjit Kaur @ Sukhi and Chaman Lal.

It is informed that Chaman Lal – appellant No. 2 in CRA-S-3769-SB of 2013 has since passed away on 03.01.2016. This fact is verified by learned counsel for the State, who refers to custody certificate dated 28.01.2016 verified by Sh. Surinder Pal Khanna, PPS, Superintendent, Central Jail, Ludhiana, wherein it is mentioned that the appellant – Chaman Lal was admitted in Rajindra Hospital, Patiala on 31.12.2015 and further referred to PGI, Chandigarh on 03.01.2016. However, the appellant – Chaman Lal passed away on 03.01.2016 while being taken to PGI, Chandigarh.

Learned counsel for the appellants submits that this appeal qua appellant No. 2 – Chaman Lal has, thus, abated.

Ordered accordingly.

The above said appeals, thus, survive qua the appellants - Paramjit Kaur @ Sukhi and Dheeraj Kumar @ Sonu.

Brief facts of the case are that FIR No. 15 dated 15.01.2008 was registered on the basis of statement of the prosecutrix. The prosecutrix (PW3) in her statement (Ex.PA) stated that she had studied up to 2nd standard and she has three sisters, who are married and one brother. She is the youngest of all siblings. The victim's mother, it is stated, was working as domestic help in various houses in the locality and her father was working as a labourer. The appellant – Chaman Lal was a resident of their locality and his house was situated in front of their house. The mother of the prosecutrix is stated to be working in the house of Chaman Lal as well. The prosecutrix stated that her mother on 14.01.2008 left the house in the morning for doing her work. Her father and brother had also gone out for work and she was alone in the house. At about 11.00 a.m. Paramjit Kaur @ Sukhi came to their house and said that there was some work at her house and asked the prosecutrix to come alongwith her and do the said work. The prosecutrix accompanied Paramjit Kaur and went to her house where Chaman Lal – her husband (since deceased) and son of their brother-in-law (*Jeth*) namely Dheeraj Kumar were present. Paramjit Kaur forcibly took the prosecutrix to a room on the first floor of the house. Dheeraj Kumar caught hold of the legs of the prosecutrix and they both took her towards the bed. Chaman Lal removed his clothes and broke the sting of the prosecutrix's salwar. When the prosecutrix tried to raise

alarm, Paramjit Kaur, who was holding the arms of the prosecutrix, covered her mouth with a shawl to prevent the prosecutrix from screaming out. Chaman Lal thereafter committed rape upon the prosecutrix. Thereafter, appellant - Dheeraj Kumar also violated the person of the prosecutrix. The complainant stated that her condition became bad. Paramjit Kaur alias Sukhi threatened the prosecutrix not to reveal the occurrence to anybody as in that situation she would have the prosecutrix killed while proclaiming that she wields influence at very high levels. The prosecutrix being very scared came back home. When the mother of the prosecutrix returned home, the prosecutrix started weeping loudly and on inquiry she narrated the incident to her mother. The father and brother of the prosecutrix were called home and the prosecutrix was taken to the Civil Hospital. The prosecutrix was admitted in the civil hospital at 10.25 p.m. on 14.01.2008 and intimation was sent to the police authorities on 14.01.2008 itself and thereafter a reminder (Ex.PW6/B) on 15.01.2008.

Statement of the prosecutrix was recorded on the next day i.e. 15.01.2008, on the basis of which formal FIR No. 15 (Ex. PC) was recorded. Medical examination of the prosecutrix was conducted by Dr. Surinder Pal Kaur, PW6. Copy of the MLR is Ex. PW6/A, report of the Chemical Examiner is Ex. PW6/C, the doctor's opinion is (Ex.PW6/D). Ossification test and the ultra sound of the pelvis of the prosecutrix was conducted by Dr. Hitinder Kaur, Medical Officer, PW9 on 15.01.2008. As per report of the ossification test (Ex. PW9/A), age of the prosecutrix is opined to be 17-20 years. Accused Chaman Lal

was arrested on 19.01.2008 and Dheeraj Kumar on 18.05.2008. They were subjected to medical examination.

The appellant - Paramjit Kaur @ Sukhi was found innocent during investigation and she was placed in column no. 2. Report under Section 173 Cr.P.C. was presented on completion of the investigation against Chaman Lal and Dheeraj Kumar. The case was committed to the court of sessions. Charge was framed on 13.03.2009 against Chaman Lal and Dheeraj Kumar. The appellant - Paramjit Kaur was subsequently summoned on an application under Section 319 Cr.P.C. to face trial as an additional accused. Amended charge was framed on 16.07.2013.

The accused in their statements under Section 313 Cr.P.C. denied the incriminating evidence put to them. They pleaded innocence and false implication in this case.

Chaman Lal (since deceased) while pleading false implication and innocence in his statement under Section 313 Cr.P.C. stated that the father of the prosecutrix had a dispute with Dheeraj, Mewa Singh, Shano and Vicky. Chaman Lal had supported Dheeraj due to which father of the prosecutrix was enraged and threw dirty water in front of the gate of their house (house of the appellant - Chaman Lal). A complaint was moved by the father of the prosecutrix. Thereafter, with the help of Charanjit Singh @ Channi, a false case was registered against him.

Dheeraj Kumar, who was aged 18 years at the time of occurrence (as mentioned in Ex. PB/10), in his statement under Section

313 Cr.P.C. specifically stated that he was falsely implicated in this case being a nephew of Chaman Lal and Paramjit Kaur. There was a dispute regarding disposal of dirty water between Paramjit Kaur and the family of the prosecutrix. Before registration of this case, the accused had beaten one Channi, his neighbour. The father of the prosecutrix and Channi had moved an application against the accused and Chaman Lal. The present case was registered against him at the instance of Channi.

Appellant - Paramjit Kaur pleaded innocence and specifically stated that she was not present at her residence on the date of occurrence. She came back to her house in the evening and then came to know that a dispute had arisen between Dheeraj, Mewa Singh, Shanu, Vicky and father of the prosecutrix. The accused supported Dheeraj due to which Charanjit Singh Channi and father of the prosecutrix got angry and threw dirty water in front of their gate. Father of the prosecutrix thereafter moved an application before the police in respect to beating being given to them. It is thereafter that a false case was registered against her and co-accused. She moved an application before Senior Superintendent of Police, Ludhiana for an inquiry which was conducted by Ms. Dhanpreet Kaur, IPS, stationed as SHO Police Station Sarabha Nagar. Paramjit Kaur was declared innocent.

Two (2) witnesses were examined in defence in order to project that an altercation had taken place between the family of the prosecutrix and family of the accused regarding discharge of water.

Learned trial Court on considering the evidence on record,

facts and circumstances of the case, concluded that the prosecution had proved its case beyond reasonable doubt qua all the accused persons and, accordingly, convicted them for the offences as mentioned above and sentenced them as detailed above.

Aggrieved therefrom, the present appeals have been filed.

Learned counsel for the appellants vehemently argued that evidence on record does not justify the conviction of the appellants. It is submitted that the incident in question is alleged to have taken place at about 11.00 a.m. on 14.01.2008. The mother of the prosecutrix allegedly came back home at about 12.00 noon. The prosecutrix was admitted in hospital after considerable delay at 10.25 p.m. on 14.01.2008. However, the mother of the prosecutrix while deposing as PW4 stated that she took her daughter to the hospital on the next day i.e. on 15.01.2008. The accused - Chaman Lal specifically requested for DNA testing on 19.01.2008 itself as reflected in Ex. PF/1. Dr. Jasbir Singh was even directed to do the needful on 21.01.2008 as is reflected in the said document. However, no action, it is submitted, was taken in this regard causing grave prejudice to the defence. Chaman Lal moved an application as well for conducting his DNA test on 27.10.2009 but the said application was dismissed by the learned trial Court on 14.11.2009. Moreover, age of the prosecutrix has been wrongly mentioned to be 13-14 years whereas medical evidence on record proves that she was 17-20 years of age as on 15.01.2008.

It is vehemently argued that the present case has been foisted upon the appellants solely because of political rivalry. The

appellant - Paramjit Kaur was the President of the Bazigar Association, appellant - Chaman Lal is her husband and Dheeraj Kumar her nephew being the son of her brother-in-law (Jeth). Paramjit Kaur was found innocent during investigation and there is no other evidence on record to prove her complicity in the matter. It is urged that it is impossible for a wife to have connived and conspired for the commission of said offence by her own husband and nephew, that too in her own presence. Moreover, the medical evidence on record, it is submitted, does not corroborate the version of the prosecutrix. Therefore, reliance solely on the testimony of the prosecutrix is not justified in the facts and circumstances of this case. Learned counsel for the appellants submits that as per report of the Chemical Examiner (Ex.PW6/C), spermatozoa was found only on the contents of exhibit C i.e. pyjama of the prosecutrix and not on the contents of exhibit A and B i.e. vaginal swabs of the prosecutrix. The so-called injuries on the wrist and shoulder of the prosecutrix in fact corroborate the defence version that an altercation had indeed taken place during the day on 14.01.2008 in respect to which a complaint was made by the father of the prosecutrix as reflected in the entry Ex. DA. In these circumstances, it is submitted that the present appeal be allowed and the impugned judgment and order dated 20.07.2013 passed by the learned Additional Sessions Judge, Ludhiana be set aside thereby acquitting the appellants of the charges against them.

Learned counsel for the State while refuting the said averments submits that the prosecutrix has stood by her version. There

is nothing on record to impugn her credibility. Injuries on the person of the prosecutrix as well as the medical evidence on record, specifically the chemical examiner's report prove the commission of the offence by the accused persons. Prosecution, it is submitted, has proved its case beyond the shadow of reasonable doubt against the accused persons. Therefore, the well reasoned and logical judgment of conviction passed after consideration of the entire evidence on record as well as the sentence imposed upon the appellants should be upheld. Thus, it is prayed that these appeals be dismissed.

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

FIR No. 15 dated 15.01.2008 was registered on the basis of the statement (Ex. PA) by the prosecutrix. The prosecutrix in her testimony before the Court stated that she is the youngest of four siblings. Her mother worked as domestic help in the houses of various people. Her father was a labourer. Her parents had gone out for work on 14.01.2008 and she was alone at home. Appellant - Paramjit Kaur alias Sukhi came to their home at about 11.00 a.m. and asked her to accompany her to her residence as there was some work to be done. The prosecutrix has reiterated the allegations as narrated in her statement (Ex. PA). In her cross examination, she stated that she returned home from the residence of Paramjit Kaur at about 12.30 noon. The prosecutrix called her mother, who was working in another *mohalla* (locality) about 4/5 houses away. It is further stated that she alongwith her parents went to the police station at about 1 o'clock at

noon but no action was taken. They came back home and thereafter at about 3.00 p.m. they proceeded to the hospital. There is however no such evidence on record to show that the police authorities were approached by the victim or her parents prior to 15.01.2008. The prosecutrix has denied any knowledge about the quarrel between the appellant – Dheeraj and their neighbour – Charanjit Singh @ Channi. She has denied that any complaint was moved by her father against the accused persons alongwith others in respect to disposal of dirty water on 14.01.2008. It is, however, admitted that there is a water tank (*howdi*) beside their house where they stored waste water. It is stated that whenever it is full, the same is emptied by taking out water with buckets and throwing it out.

The mother of the prosecutrix (PW4) revealed that when she came back home at 12.00 noon, she found the prosecutrix weeping. She narrated the entire incident on inquiry. Consequent thereto, the prosecutrix was admitted at the Civil Hospital, Ludhiana. PW4 in her cross examination has admitted that about 2/3 months after the incident, a lady police officer accompanied by other police officials had visited them regarding the occurrence. Inquiries were made but she denied any knowledge about the appellant - Paramjit Kaur being found innocent in the said inquiry. It is stated by PW3 and PW4 that they were tutored by their counsel before recording of their statement.

As per the medical evidence on record, injuries were found on the person of the prosecutrix as reflected in the MLR (Ex.PW6/A), which was duly proved by PW6 Surinder Pal Kaur. PW6 stated that on

external examination of the victim, small abrasions were detected on her left wrist and below the right shoulder. The victim was complaining of pain in the vaginal area. No bleeding or discharge was found on vaginal examination. Hymen was torn, admitting one finger loosely. Dr. Surinder Pal Kaur, PW6 stated that she was posted as a Medical Officer at Civil Hospital, Ludhiana on 15.01.2008. The victim was brought to the emergency with alleged history of rape. She was accompanied by lady Head Constable Kashmir Kaur and mother Charno. It is stated by PW6 that after conducting of the medical examination, vaginal swabs duly sealed in a jar, forwarding letter, black pyjama (slacks) of the victim duly sealed alongwith sample of the seal and envelop bearing six seals, were duly handed over by her to the police officials. As per report (Ex. PW6/D) submitted by PW6, it is opined that the prosecutrix was subjected to sexual intercourse especially keeping in view the presence of spermatozoa detected on the contents of exhibit C. Chemical examiner's report is Ex. PW6/C. PW6 in her cross examination stated that the victim and her mother did not disclose either the name of the accused or the place of occurrence.

As per PW9 Dr. Hitinder Kaur, Medical Officer, Radiologist, Civil Hospital, Ludhiana, radiological bone age of the prosecutrix was between 17-20 years. It is to be noted that there is no birth certificate or any other documentary evidence in respect to the age of the victim at the time of occurrence.

A perusal of the evidence on record, entire facts and circumstances of the case, the prosecution has indeed proved its case

beyond reasonable doubt against the appellant – Dheeraj Kumar. It is to be noted that the prosecutrix has given a consistent version in respect to the offence committed by the appellant - Dheeraj Kumar. Much stress has been laid on the absence of spermatozoa on the vaginal swabs. However, the fact which cannot be lost sight of is the Chemical Examiner's report (Ex. PW6/C) wherein spermatozoa was found present on the pyjama (slacks) of the victim. PW6 has specifically stated that the said piece of clothing of the victim was handed over by her to the police after conducting the victim's medical examination. In this situation, argument of learned counsel for the appellant that the victim in her statement mentions that she was wearing a salwar kameez, therefore, question of pyjama being subjected to chemical examination does not arise is untenable. It is to be noted that the occurrence took place in the month of January i.e. extreme winters in North India, therefore, statement of the victim that she was wearing a salwar kameez, does not in any manner detract from the prosecution case as it is a common practice to wear pyjama/slacks underneath the salwar.

Another argument raised is that the defence of the appellants has been wrongly rejected. Reference is made to Ex. DA i.e. a copy of an entry in the Register maintained at the police station. There is an Entry dated 14.01.2008 in respect to a complaint made by Charanjit Singh and father of the prosecutrix against the appellant - Paramjit Kaur, her husband – Chaman Lal, Mewa Singh, Shano, Vicky and 5-6 others in respect to beating and tearing of clothes of the girl. It was vehemently argued that the said Entry reflected in Ex. DA has been

admitted by PW5 Inspector Gurpreet Singh, the Investigating Officer. Moreover, the victim, in this case, has admitted that there is a water tank beside their house where they store dirty water. Therefore, the defence version is buttressed and has been wrongly ignored by the learned trial Court. It is to be noted that the victim PW3 nor her mother PW4 have not been confronted with Ex. DA though a suggestion has been put to them that a complaint was moved by the victim's father against the appellants and others. This suggestion has, however, been denied by both the said witnesses. It is pertinent to note that the application, which was purportedly moved by the victim's father has not seen the light of the day. It is further relevant to note that in the Inquiry report (Ex. D1), the concerned officer has not made any mention of the said dispute regarding dirty water neither is there any mention of such an application moved by the victim's father. It is opposed to all probabilities that, in case, there was indeed such an altercation, the same would not have been brought to the notice of the officer conducting the inquiry at the instance of the accused - Paramjit Kaur.

Learned counsel for the appellants with great vehemence argued that the accused - Chaman Lal (since deceased) had made a specific request for conducting his DNA profiling to show that he was innocent. However, the investigating agency failed in its duty and DNA testing was not done. As noted earlier Chaman Lal has since died. Appeal qua him has abated. The controversy qua Chaman Lal is not under consideration. Moreover, request by Chaman Lal for DNA

testing is of no avail to the appellant - Dheeraj Kumar, who has admittedly not made any such request. The prosecutrix has rendered a consistent version qua the commission of offence as far as the appellant – Dheeraj is concerned. There is nothing on record to discredit her testimony in this regard. Injuries on the person of the victim as well as the medical evidence on record corroborate her stand. The victim was admitted to the Civil Hospital on 14.01.2008 at 10.25 p.m. Intimation was sent to the police by the hospital authorities on 14.01.2008 and thereafter a reminder on 15.01.2008 pursuant to which the statement of the victim was recorded and prosecution set in motion. Thus, keeping in view the entire conspectus of the facts and circumstances, it is held that the prosecution has proved its case beyond reasonable doubt against the appellant - Dheeraj Kumar who has been rightly convicted by the learned trial Court vide impugned judgment dated 20.07.2013.

There is, however, merit in the argument raised by the appellants for reduction of the sentence imposed upon the appellant - Dheeraj Kumar, who has been sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Section 376 (2)(g) IPC.

It is relevant to note that the incident in question relates to January, 2008 i.e. before the amendment in the relevant provisions under Section 376 IPC in February, 2013. As per the un-amended provision a minimum sentence of ten years is provided for an accused convicted under Section 376 (2)(g) IPC. The Court for adequate and special reasons to be mentioned in the judgment may, however, impose

a sentence of imprisonment of either description of less than ten years. Explanation 1 of the un-amended provision explains that where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. It is pertinent to mention that appeal preferred by Chaman Lal, who had raised a specific ground of his DNA test not being conducted despite requests, stands abated. The merits or otherwise thereof are not being deliberated upon by this Court. For reasons mentioned in the subsequent paras, prosecution case against the co-accused Paramjit Kaur @ Sukhi has been found to be doubtful. It is not in dispute that the appellant - Dheeraj Kumar had barely attained majority at the time of the alleged incident. He is not involved in any other criminal case – either prior or subsequent to the present case. As per the custody certificate dated 18.11.2017, the appellant - Dheeraj Kumar has undergone actual imprisonment of seven years, nine months and four days of the sentence imposed upon him as on 17.11.2017. In case, the period of remission is included the imprisonment undergone is eight years, nine months and four days. As noted above, the incident in question relates to the year 2008 when the un-amended provisions of the IPC are applicable, there is thus no impediment in reducing the sentence imposed upon the appellant.

In view of the above said circumstances, I find it a fit case to reduce the sentence imposed upon appellant - Dheeraj Kumar from that of ten years to the period already undergone by him.

However, in respect to the appellant - Paramjit Kaur @ Sukhi, the prosecution has not been able to discharge its burden to prove its case beyond reasonable doubt. It is relevant to note that the appellant - Paramjit Kaur was found innocent in an inquiry conducted by Ms. Dhanpreet Kaur, IPS. As per the said report (Ex.D1), it was found that the allegations against Paramjit Kaur were not substantiated by any evidence on record, thus, being found innocent she was placed in column No. 2. She was summoned to face trial as an additional accused on an application under Section 319 Cr.P.C. As per inquiry report (Ex.D1), it was found that Paramjit Kaur was not present at her residence at the time of the incident. There is nothing on record to discredit the officer, who conducted the inquiry. Evidence on record does not lead to an irrefutable inference about complicity of the appellant - Paramjit Kaur in the commission of the offence. There is weight in the argument of learned counsel for the said appellant that it is highly improbable that the other co-accused would have been facilitated in the commission of such an offence by the appellant. She is the wife of one of the appellants and an aunt of the other appellant. A palpable and reasonable doubt is raised regarding the complicity of the appellant - Paramjit Kaur in this case. The victim PW3 and her mother PW4 in their testimonies before the learned trial Court stated that they were duly tutored by their counsel before recording of their statements before the learned trial Court. In the facts and circumstances of the case, it is not safe to rely solely on the testimony of the victim to convict Paramjit Kaur @ Sukhi. A palpable and reasonable doubt is

cast on the prosecution version qua the appellant - Paramjit Kaur @ Sukhi who is, thus, entitled to the benefit of doubt.

Conviction of the appellant - Dheeraj Kumar @ Sonu is upheld. However, sentence of ten years imposed upon him is reduced to that already undergone by him. Fine imposed upon him and the imprisonment in default is maintained. Accordingly, CRA-S-3163-SB of 2013 is dismissed with the modification in the sentence imposed upon the appellant. The appellant - Dheeraj Kumar is in custody. He be released forthwith, if not required in any other criminal case.

Impugned judgment and order dated 20.07.2013 passed by the learned Additional Sessions Judge, Ludhiana qua the appellant - Paramjit Kaur @ Sukhi is set aside. Consequently, the appellant - Paramjit Kaur @ Sukhi is acquitted of all the charges against her. The appellant - Paramjit Kaur alias Sukhi is on bail. Bail bonds and surety furnished by her shall stand discharged.

Accordingly, CRA-S-3769-SB of 2013 qua Chaman Lal stands abated and is allowed qua Paramjit Kaur @ Sukhi.

November 27, 2017

rts/om

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No