

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1723-SB-2004

Date of decision: 19.11.2018

Rohit Saini

... Appellant

versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rahul Vats, Advocate
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

1. The instant appeal has been preferred against the judgment of conviction dated 20.08.2004 and order of sentence dated 23.08.2004 vide which the accused-appellant has been convicted under Section 313 of the Indian Penal Code (in short 'IPC') and sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of ₹ 1000/-, in default, to suffer rigorous imprisonment for a further period of 03 months.

2. The prosecution case, in brief, as set up during trial is that PW-2 - Anita w/o accused-appellant Rohit was brought to Primary Health Centre, Shahbad on 07.05.2003 by her father Ran Singh – PW-5 with alleged history of assault and forced abortion. On receipt of medical rukka Ex.PA on 07.05.2003, when the police arrived at the said Primary Health Centre to record the statement of prosecutrix – Anita, she was declared unfit by PW-1 - Dr. Raman Deep Kaur vide endorsement Ex.PA/1. It was only on 09.05.2003 vide Ex.PA/3 PW-2 the prosecutrix was declared fit by the

attending doctor PW-1 Dr. Raman Deep Kaur to make her statement after which her statement Ex.PB was recorded by PW-7 ASI Prabhu Ram wherein she alleged that she was about two months pregnant. Her husband i.e. accused-appellant Rohit wanted her to terminate the pregnancy as he was planning to go abroad and the pregnancy would thus have caused hindrance in his plan. She further alleged that on 04.05.2003 she developed tooth ache. On her asking, the accused-appellant gave her medicine for the same. After a couple of hours of taking the medicine, she started bleeding from the uterus. On questioning the husband about the medicine, she was slapped by him. She also alleged that the parents of her husband namely Amar Nath and Giano Devi (since acquitted by the trial Court) asked her husband to take the prosecutrix to Dr. Alka Grover (since acquitted by the trial Court) for getting her pregnancy terminated. Further, she alleged that on reaching Dr. Alka Grover's clinic she was forcibly made to lie down on the bed and administered an injection, which led to her becoming unconscious. When she regained consciousness, she was bleeding and her pregnancy had been aborted. As per the prosecutrix, after the alleged abortion she was taken back by her husband to her matrimonial home where the bleeding persisted. Finally she revealed everything to her father Ran Singh – PW-5 telephonically through her paternal uncle, who then took her to the Primary Health Centre, Shahbad on 07.05.2003 in a tractor trolley.

3. On the basis of the aforesaid statement Ex.PB dated 09.05.2003 the present case was registered. During investigation, Dr. Alka Grover was found innocent and thus, not challaned. However, the appellant and his parents Amar Nath and Giano Devi were arrested, challaned and

prosecuted for offence under Sections 323, 313, 506 and 323/34 IPC respectively. During trial, the prosecutrix Anita appearing as PW-2 named Dr. Alka Grover in the commission of crime. Accordingly, Dr. Alka Grover was summoned under Section 319 Cr.PC for commission of offence punishable under Section 313 IPC. All the accused at the time of framing of aforementioned charges pleaded not guilty and claimed trial.

4. During the course of trial, prosecution examined PW-1- Dr. Raman Deep Kaur, PW-2 -prosecutrix Anita, PW-3- SI Gulab Singh, PW-4 Head Constable Jagdish Chander, PW-5 Ran Singh, PW-6 Dhanno Devi and PW-7 ASI Prabhu Ram.

5. On conclusion of the prosecution evidence, statement of all the accused under Section 313 Cr.PC was recorded wherein they denied all the incriminating circumstances appearing against them in the prosecution evidence and pleaded innocence.

6. The defence also examined DW-1 Dr. Sunil Kumar Juneja, DW-2 Satinder Pal, Clerk, DW-3 Kanta Devi, DW-4 Satya Devi and DW-5 Balbir Singh.

7. Trial Court vide impugned judgment dated 20.08.2004 found Amarnath, Giano Devi and Dr. Alka Grover innocent and accordingly acquitted them of the offences charged with. However, trial Court found accused-appellant guilty of offence under Section 313 IPC only and sentenced him to undergo the imprisonment as mentioned above.

8. Learned counsel for the appellant has contended that the approach of trial Court is totally erroneous and the evidence has not been appreciated in the right perspective. He has challenged the impugned

judgment primarily on the following grounds:

- (i) Firstly, there is no reliable medical evidence on the record to suggest that the prosecutrix Anita was subjected to forced abortion at the hands of accused-appellant Rohit.
- (ii) There is an unexplained and inordinate delay in lodging the First Information Report (FIR) with the police, which has been utilized by the complainant party in fabricating a false version against the accused-appellant in order to wreak personal vengeance.
- (iii) There are material improvements and discrepancies in the statements of the prosecution witnesses, which cast a shadow of doubt on the prosecution version.

9. Learned State counsel, on the other hand, has vehemently opposed the submissions made by learned counsel for the appellant by contending that there is sufficient circumstantial evidence to hold the accused-appellant guilty and fully liable for offence under Section 313 IPC and prays for dismissal of the instant appeal.

10. I have heard Mr. Vats appearing for the appellant as well as Mr. Ayuwan Singh, State counsel and perused the evidence and other material available on record.

11. On consideration of evidence and other material on record, I find merit in the contentions of learned counsel for the appellant.

12. Coming to the contention qua medical evidence, a perusal of the testimony of PW-1 Dr. Raman Deep Kaur leaves much to be desired and in fact is not convincing enough. Not only in the rukka Ex.PA sent by her

to the police but also in her examination-in-chief, she categorically mentioned that it was a case of history of assault and forced abortion by the accused-appellant and her parents-in-law namely Amar Nath and Giano Devi as revealed to her by the prosecutrix. But when Dr. Raman Deep Kaur – PW-1 was cross-examined, she deposed that she might have been told about the forced abortion by the accused-appellant Rohit himself. This falsifies the stand of both Dr. Raman Deep Kaur – PW-1 and Anita (prosecutrix) – PW-2 because it is not the case of the prosecution that the accused-appellant Rohit had taken the prosecutrix to the Primary Health Centre, Shahbad or he was present on any of the days at the Primary Health Centre, Shahbad during the period prosecutrix remained admitted there. Rather it has been the consistent case of the prosecution that it was in fact PW-5 Ran Singh, father of the prosecutrix, who along with her brother, took her to the Primary Health Centre on their tractor trolley on 07.05.2003.

13. In the case in hand, the prosecution version is that the pregnancy of the prosecutrix was about 8 weeks old i.e. the prosecutrix was in the first trimester of the pregnancy. It was therefore, all the more incumbent upon the attending doctor to give an opinion and certify after an examination of the prosecutrix whether there was any indication of termination of pregnancy especially when the signs of abortion in the early months of pregnancy like in the instant case disappear very soon after the abortion. As per ***Modi's Medical Jurisprudence and Toxicology*** the woman should be medically examined as soon as possible after an abortion since there would still be usual signs of not only cervical bleeding but also the mucus plug would be found disturbed. The attending doctor was thus,

casual in not carrying out a detailed clinical examination to assess the physical and mental state of the patient to find out whether the history given by her at the time of admission corroborated her medical condition.

Very strangely, no medico-legal report (MLR) was ever prepared by PW-1 Dr. Raman Deep Kaur as per her own admission in her cross-examination. This doctor rather seems to be totally ignorant of the basic procedure and law that must be adhered to, in such like cases.

Medico-legal report is a crucial document, which the doctor must prepare in criminal cases relating to assault/rape/murder/poisoning and accident. MLR must include:

- i) the preliminary data of the patient
- ii) facts which would have been observed at the time of admission and on examination of such patient
- iii) last but not the least and most importantly the opinion or inference which can be drawn from the facts since they form chief documents in judicial inquiries.

In cases of such nature, the patient/victim should mandatorily be medico-legally examined and a report qua her condition be prepared to commence legal process.

The role of the investigating agency in this regard also raises eyebrows as to why it too did not bother to get the MLR of the prosecutrix prepared by the attending doctor in the light of the history of assault and forced abortion of the prosecutrix.

It was in fact incumbent upon the prosecution not only to get the MLR of the prosecutrix prepared by the attending doctor but also to obtain expert opinion with regard to the cause of alleged abortion of the prosecutrix.

There is no clear cut evidence on record as to the exact cause leading to the abortion of the prosecutrix. In her deposition as PW-2, she has categorically deposed that on 04.05.2003 when she developed tooth ache, she asked her husband (accused-appellant) to give her medicine (pain killer) for the same. Further she deposed that the accused-appellant then gave her some medicine for her tooth ache leading to the bleeding from uterus a couple of hours later. The Investigating agency hence was duty bound to interrogate the accused-appellant about the nature of medicine given to the prosecutrix for the tooth ache and the source from where the same was procured. Had the investigating agency conducted the investigation with regard to the source of procurement of the medicine and the nature of medicine allegedly given by the accused to the prosecutrix for her tooth ache, it would have gone a long way to establish whether the medicine so given to the prosecutrix by the accused-appellant was in fact for a tooth ache or for the termination of the pregnancy as alleged by the prosecution. Hence, in the absence of any such evidence, it would not be just to attribute any motive on the part of the accused for getting the pregnancy of the prosecutrix aborted.

The accused-appellant deserves benefit of doubt in this regard.

14. The trial Court has in fact drawn self-contradictory conclusion qua the evidence on record. On the one hand, trial Court has acquitted Dr. Alka Grover, who had allegedly administered an injection on the prosecutrix leading to her abortion and on the same set of evidence recorded a finding of conviction qua the accused-appellant. Thus, the observations made by the trial Court in the impugned judgment while convicting the accused-appellant is clearly erroneous in the absence of any qualitative evidence much less medical evidence.

15. A perusal of the impugned judgment reveals that on the one hand trial Court has held the accused-appellant guilty of not taking any steps to take the prosecutrix to a doctor for her continuous bleeding after her return from the clinic of Dr. Alka Grover but strangely at the same time, did not take into account the conduct of PW-5 Ran Singh, who is none other than the father of the prosecutrix. Had the condition of the prosecutrix been as serious as alleged on 05.05.2003, there was nothing to stop the father of prosecutrix i.e. PW-5 from driving her straight to a doctor. Rather the father of the prosecutrix chose to take her to Primary Health Centre, Shahbad only on 07.05.2003 at 7.15 pm, which is evident from the rukka Ex.PA i.e. after a delay of two days. Hence, going by that analogy the conduct of the father is highly unnatural especially when he had already been apprised by none other than the prosecutrix about the sequence of events leading to her bleeding from the uterus. What happened in the intervening period between 05.05.2003 and 07.05.2003 has gone unexplained on record by the prosecution and definitely creates a doubt about the truthfulness of the

prosecution version.

16. Another significant fact, which cannot escape notice is that the prosecutrix was stated to be unfit to make a statement on 07.05.2003 to the police. Her statement was recorded two days later i.e. on 09.05.2003 after she was declared fit by attending doctor PW-1 Dr. Raman Deep Kaur and interestingly she was discharged on the same day. There is no explanation worth the name on record as to why the investigating agency chose not to seek the opinion of the doctor on 08.05.2003 about the fitness of the prosecutrix to make a statement or to record the statement of PW-5 – Ran Singh, father of the prosecutrix, who actually took the prosecutrix to Primary Health Centre, Shahbad and had been duly apprised about the sequence of events leading to her abortion. This definitely raises a big question mark about an embroidered version having been set up by the prosecution.

17. The net result of the above discussion is that the prosecution in the present case has failed to pass the first basic test to enable it to weigh the evidence on which it relies in support of its case. The evidence led by the prosecution is thus, not sufficient enough to hold the accused-appellant guilty of the offence for, which he has been charged with.

18. I, therefore, have to hold that the conviction of the accused-appellant is not legally tenable and thus, the same deserves to be set aside.

19. Accordingly, the instant appeal is allowed and the judgment and order dated 20/23.08.2004 passed by Addl. Session Judge (Ad hoc) Fast Track Court, Kurukshetra is set aside and the appellant is acquitted of the charges levelled against him. The appellant shall be released from the

custody forthwith, if not required in any other case.

19.11.2018
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No