

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

**CRA-S-2492-SB-2004
Date of decision:-17.9.2018**

Wazir Singh alias Ghulli

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Ms.G.K.Mann, Advocate with
Mr.Chandeep Singh Nagi, Advocate
for the appellant.

Mr.Dhruv Dayal, Sr.DAG, Punjab.

H.S. MADAAN, J.

Accused Wazir Singh alias Ghulli faced trial by learned Additional Sessions Judge, Amritsar, who vide judgment dated 7.12.2004 convicted him for the offences under Sections 450 and 376 IPC and vide order of the even date he was sentenced as under:

Under Section	Sentence Awarded
450 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

376 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.
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If realised out of the fine imposed Rs.5,000/- be paid to the prosecutrix as compensation.

Both the sentences were ordered to run concurrently.

The accused-convict – Wazir Singh alias Ghulli, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence passed against him be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story, are that on 22.9.2003, the prosecutrix wife of Ajmer Singh was alone in her house at village Tejechak, Police Station Chhehartta, District Amritsar standing in the court-yard, since her husband Ajmer Singh had gone out of the house in connection with his work and her elder son Gurpreet Singh had gone to provide food to her husband; at about 12/12:30 p.m., Wazir Singh @ Ghulli accused came to the house of the prosecutrix and inquired about her husband; the prosecutrix informed him that her husband had gone to the fields, thereafter accused inquired from the prosecutrix regarding her two sons; the prosecutrix accordingly replied that her elder son Gurpreet Singh had gone to the fields taking food for his father, whereas the other son had gone to school; the accused asked the prosecutrix to come inside the house and listen to him; the prosecutrix asked from the accused as to what he wanted to tell her and he could do it there itself and that she would not go inside the house; accused took the prosecutrix in his grasp (JAFFA)

and pulled her inside the house using force; he then put the prosecutrix on a cot, tied her arm with a dupatta and untied the string of her salwar (trouser) and had forcible sexual intercourse with her against her wishes; the prosecutrix had offered protest and raised noise, in the meanwhile son of prosecutrix namely Gurpreet Singh returned from the fields and came inside the house on hearing the noise being raised by prosecutrix, on arrival of Gurpreet Singh inside, the accused ran away from the spot; Gurpreet Singh untied arms of his mother – the prosecutrix; on the same day in the evening, the prosecutrix narrated the entire incident to her husband Ajmer Singh; several residents of village came to know about the incident and tried to work out a compromise between the parties, however, the prosecutrix did not agree as she had felt humiliated and ravaged; the prosecutrix along with her husband Ajmer Singh and son Gurpreet Singh left home for going to police station on 23.9.2003, however, in the way, they came across ASI Bhagwant Singh (hereinafter referred to as the Investigating Officer/I.O.); the prosecutrix got her statement recorded regarding the incident with the Investigating Officer, who put his endorsement below such statement and sent ruqa to the police station for the purpose of registration of the case and a formal FIR was recorded on the basis thereof; then the police party went to the spot i.e. the house of the complainant – prosecutrix; the prosecutrix produced her dupatta before the Investigating Officer, which was taken into possession. The Investigating Officer prepared rough site-plan of the place of occurrence. During the course of investigation, accused was arrested in this case. Statements of witnesses were recorded. The accused and the prosecutrix were got medico-legally examined.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Area Magistrate.

On presentation of challan in the Court of learned Area Magistrate, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offences under Sections 376/450 IPC are exclusively triable by Court of Sessions, learned Area Magistrate committed the case to the Court of learned Sessions Judge, Amritsar from where it was entrusted to the Court of learned Additional Sessions Judge, Amritsar

On receipt of case in the Court, learned Additional Sessions Judge, Amritsar observing that prima facie charge for offences under Sections 450/376 IPC was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as six witnesses namely the prosecutrix as PW1, Gurpreet Singh as PW2, Investigating Officer ASI Bhagwant Singh as PW3, HC Tejinder Singh as PW4, Dr.Guneet as PW5 and Dr.Sukhwinder Singh as PW6.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to such accused but he denied the allegations contending that he is innocent and had been falsely involved in this case at the instance of Sarpanch – Mewa Singh.

In defence evidence accused examined S.S. Sandhu, DSP as

DW1, Davinder Singh as DW2 and Sajjan Singh as DW3.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused – convict, learned Sr.DAG for the State of Punjab besides going through the record.

Learned counsel for the appellant has contended that the appellant has not committed any offence, rather the prosecutrix was a consenting party inasmuch as she had been involved in an affair with the accused; that it was only when his son Gurpreet Singh saw her in a compromising position with the accused, in order to save her skin, she lodged the FIR projecting herself to be an aggrieved party; that this contention is corroborated that no marks of injuries had been there on the prosecutrix and the accused. In support of her such submission, learned counsel has referred to authority **Pratap Misra and others Versus State of Orissa, 1977 AIR(SC) 1307** wherein it was observed that when in a rape case in terms of the medical evidence, no injuries had been found on the person of the prosecutrix or the accused, that led to the inference that the prosecutrix was a consenting party. She has further referred to authority **Gokul Versus State of Uttar Pradesh, 2003 Cri.L.J. 1110** by High Court of Allahabad wherein it was observed in para No.9 as under:

It is further pertinent, to find out that there is no physical evidence to support the contention of rape (forcible sexual intercourse) having been committed on her. She said that

she had been dragged and thrown on the ground behind the bushes where the appellant forcibly did sexual act with her. She , according to her, kept struggling to extricate herself from the clutches of the appellant, but all in vain. Her medical examination report states that she did not suffer any injury on any part of her body. She claimed that she suffered bruises and her bangles had been broken down, pricking in her wrists. But no abrasion or bruises were found on her body. The medical examination report completely negatives the application of any force on her, which would have been the case if she had forcibly been subjected to sexual intercourse. Moreover, her version is that two witnesses, namely, Shyam Lal PW2 and Chauda PW3 were attracted tot he scene who had witnessed the incident. They allegedly challenged the appellant who ran away. But these witnesses have not supported the prosecution case. Shyam Lal PW2 stated that prosecutrix had also gone to the market but he had turned back all alone without having witnessed anything in the way. When the Investigating Officer visited the spot he did not find any broken pieces of bangles. It may be relevant to state that under ordinary circumstances, it is not possible for a single man to rape an adult female in full possession of her sense without any resistance at all. When subjected to forcible sexual intercourse, the victim is likely to offer resistance resulting in some injury in the form of bruises, abrasions,

etc., Indeed, that would offer physical evidence regarding the incident which is missing in the present case.

On the other hand, learned State counsel has submitted that the prosecution has fully proved its case and the trial Court has rightly convicted and sentenced the accused.

After hearing the rival contentions of learned counsel for the parties, I find that the prosecution has not been able to bring home guilt to the accused conclusively and affirmatively and there are many reasons for saying so. Firstly, as per the prosecution story, the accused had taken the prosecutrix in his grasp (JAFFA) and dragged her inside the house using force, then he put the prosecutrix on a cot, tied her arms with a *dupatta* and then untied string of her *salwar*, subjecting her to forcible sexual intercourse. If that was so, some injuries and marks of struggle, may be of minor type, were bound to appear on the person of the prosecutrix and the accused, but strangely enough nothing of that sort was observed by the doctors, who had medically examined the prosecutrix and the accused. PW5 Dr.Guneet, Medical Officer, Civil Hospital, Amritsar, who had medically examined the prosecutrix on 23.9.2003 in her examination-in-chief stated that there was no evidence of any fresh external injury on the person of the prosecutrix. In her cross-examination also, she stated that no injury mark was seen on the body of the prosecutrix. PW6 Dr.Sukhwinder Singh, Medical Officer, SAD Bhagtanwala, Amritsar, who had medically examined the accused on 24.9.2003 at about 1:40 p.m. has not made mention of observing any

external injury on the person of the accused.

Such circumstances point out towards consensual sex. Furthermore, as it comes out from the record that house of the prosecutrix is located in a residential area with shops nearby. If accused had gone to house of the prosecutrix and had forcible sexual intercourse with the prosecutrix offering opposition raising hue and cry, that would have attracted the attention of people present nearby, who in ordinary circumstances would have rushed to the place to rescue the prosecutrix, but that was not to be. According to the prosecution story, the accused had tied hands of the prosecutrix with a *dupatta*. It being so, with prosecutrix struggling that must have left some marks of struggle in the form of abrasions etc. but during medical examination of the prosecutrix no such marks were detected. If in fact the accused had sexual intercourse with the prosecutrix by use of force and prosecutrix intended to resist, she could have given scratches on his body with nails and bites with teeth but no such marks were detected during the medical examination of the accused. Furthermore, it is very difficult for an aggressive male to have sexual intercourse with a fully grown woman against her wishes, if such woman offers resistance.

The trial Court ignored these factors while coming to the conclusion that charge for the offence of rape against the accused stood established. Though the prosecutrix herself appearing as PW1 in her cross-examination stated that Gurpreet Singh had returned within 15 minutes of the entry of the accused in the house and during that period, she was struggling to save herself from the accused, but it seems unlikely that the incident could have lasted for so much time without

attracting the attention of people available nearby, especially when according to the prosecutrix, she was calling bad names to the accused with outer door of the room being opened as stated by PW1, the prosecutrix in her cross-examination. According to the prosecutrix, she was struggling to save herself from the accused. She further stated that Gurpreet Singh is aged about 7-8 years, however, when Gurpreet Singh got his statement recorded in the Court on 12.5.2004 i.e. after about eight months of the incident, he gave his age as 12 ½ years. There is considerable difference of age and a child from 7-8 years to 11 years around. There seems to be some merit in the explanation rendered on behalf of the defence that it was a case of consensual sex and when Gurpreet Singh son of the prosecutrix came home all of sudden and observed his mother, the prosecutrix and the accused in a compromising position, then to avoid stigma on her moral character and loss of face, the prosecutrix after due deliberations and consultations lodged the FIR.

The prosecution failed to prove its charge against the accused beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and misinterpretation of law wrongly convicted the accused for the offences under Sections 450 and 376 IPC. No proper reasoning has been given while coming to the conclusion that charge for offences under Section 450 and 376 IPC stood proved against the accused.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable, the same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge for which he has been held guilty and convicted vide the

impugned judgment.

The appeal stands allowed accordingly.

Necessary intimation be sent to the quarter concerned.

17.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No