

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

Criminal Appeal-S No. 3622-SB of 2013(O&M)

Date of Decision: January 29 , 2018.

Devender APPELLANT (s)

Versus

State of Haryana RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. A.S.Sheoran, Advocate
for the appellant.

Mr. Anmol Malik, AAG, Haryana.

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 has been convicted for the offences punishable under Sections 376/506 IPC by the learned Additional Sessions Judge, Gurgaon vide judgment dated 19.09.2013. By a separate order dated 21.09.2013, the appellant has been sentenced as under:-

Offence u/s	Sentence
376 IPC	Rigorous imprisonment for ten years, besides, pay a fine of ₹30,000/- and in default thereof, undergo further rigorous imprisonment for six months
506 IPC	Rigorous imprisonment for one year, besides, pay a fine of ₹1,000/- and in default thereof, undergo further rigorous imprisonment for one month

Both the sentences are ordered to run concurrently.

Brief facts necessary for adjudication of the case are that, in respect to an incident which took place on 03.05.2013 at 11.00 p.m. in the area of Naurangpur, a written complaint (Ex.PB) was submitted by the complainant/prosecutrix on 13.05.2013 before the Commissioner of Police, Gurgaon. As per the said complaint, the prosecutrix aged about 27 years, married to Satbir belonging to Harijan community, went to attend the call of nature at about 11.00 p.m. on 03.05.2013 in the fields near her house. The appellant, her neighbour is stated to have arrived there, grabbed her and committed rape upon her. It is stated that the complainant is a disabled woman, suffering from 70% disability, therefore, she could not defend herself. After committing rape upon the complainant, the appellant threatened her not to complain about the incident otherwise the complainant, her daughter and son would be kidnapped as the appellant had anti-social persons as his friends. The complainant came back home and disclosed the incident to her family. The complainant's mother-in-law and brother-in-law went to the appellant's house on the next day for lodging a protest in respect to the incident. The appellant and his family members started quarreling with the complainant's family members and a false complaint was got registered by the appellant against them as well as the complainant's husband. The appellant and his family members proclaimed that a case has been registered against them and no harm would come to the appellant's family as they had relations with influential persons. The appellant threatened them not to complain anywhere about the incident otherwise, they would be done to death. It is stated that due to fear of the appellant and the perceived threat to her children and family, no complaint was lodged.

Thereafter when the complainant as well as her daughter aged ten years went to All India Institute of Medical Sciences (AIIMS), New Delhi for treatment on 09.05.2013, the appellant met the complainant and asked her to maintain illicit relations with him, otherwise he would kidnap her daughter. The appellant is stated to have threatened the complainant on telephone as well. Due to danger to her self-respect and life of her family and children, report was lodged before the Commissioner of Police, Gurugram on 13.05.2013. Legal action against the appellant was prayed for.

PW10 ASI Des Raj disclosed that on receipt of the complaint on 13.05.2013, he was directed to reach the office of the Commissioner of Police, Gurugram on which he alongwith other officials reached there. The complaint, duly signed by the prosecutrix, was delivered to him. On the basis of the abovesaid complaint (Ex.PB), formal FIR (Ex.PK) was registered on 13.05.2013.

Statement of the complainant/prosecutrix under Section 161 Cr.P.C. was recorded. On the basis of secret information, the appellant was arrested on 13.05.2013 itself. Medical examination of the accused as well as the prosecutrix was conducted on 13.05.2013 itself. MLR (Ex.PA) of the prosecutrix is available on record. As per the MLR (Ex.PA), no external mark of injury was detected on the person of the prosecutrix. Possibility of sexual intercourse, it is opined, could not be ruled out. As per MLR (Ex.PD/1) of the appellant, there is nothing on record to suggest that the appellant is incapable of performing sexual act. No injury was found on his person.

Statement of the complainant/prosecutrix (Ex.PC) under Section 164 Cr.P.C. was recorded on 13.05.2013 at 7.45 p.m. She reiterated the averments in the complaint while adding that the appellant and her husband had good relations

with each other. PW10 ASI Des Raj went to the place of occurrence. Rough site plan (Ex.PJ) was prepared. The appellant also demarcated the place of occurrence (Ex.PF). Disclosure statement (Ex.PE) was suffered by the appellant. Scaled site plan (Ex.PG) was prepared on 14.05.2013. Challan/final report under section 173 Cr.P.C. was submitted on completion of the investigation. The case was committed to the court of Sessions on 01.07.2013. Charge against the appellant was framed under Sections 376/506 IPC on 08.07.2013. He pleaded not guilty and claimed trial.

Prosecution examined as many as ten witnesses to prove its case against the appellant. The appellant in his statement under Section 313 Cr.P.C. while pleading false implication and innocence stated that the matter has been registered against him after due deliberations with a delay of ten days. The prosecutrix and the family members sought to avoid prosecution in proceedings emanating from a quarrel which had taken place between the family members of the prosecutrix with the mother of the accused. It is further stated that he was falsely implicated due to party faction in the village as well. Four witnesses were examined in defence.

DW1 Smt. Sneha, JBT Teacher in the Government Primary School, Naurangpur, Gurgaon proved the attendance register of the complainant's daughter according to which she was present in school on 09.05.2013. DW2 Karan Singh, a driver in the Haryana Roadways, Gurgaon stated that the appellant was working as a Conductor with him. The complainant used to travel in his bus. She did not pay the fare when travelling with the appellant in the bus. The appellant used to receive telephone calls from the complainant in his presence. The appellant would state that he had received messages from his

sister-in-law (Bhabhi). DW3 Israr Babu, Alternate Nodal Officer, Vodafone Mobile Service Limited proved the customer application forms of the appellant as well as the complainant. The call detail records of the mobile numbers of the appellant as well as the complainant/prosecutrix from 01.01.2013 to 13.05.2013 were proved by him. DW4 Dr. Pawan Kumar Chaudhary, Medical Officer, Government Hospital, Gurgaon has proved Ex.D8, the Medico Legal Report of Krishna wife of Bhim Singh i.e., the mother of the appellant in respect to injuries sustained by her on 11.05.2013.

The learned trial court on considering the evidence on record, facts and circumstances of the case concluded that the prosecution has proved its case against the appellant beyond reasonable doubt, thereby convicting him for the offences punishable under Sections 376/506 IPC and sentenced him as detailed above. Aggrieved therefrom the present appeal has been filed by the appellant.

Learned counsel for the appellant argues that conviction of the appellant on the basis of evidence on record is not sustainable. It is argued that the prosecutrix has admitted cordial relations between the appellant and her husband. Moreover, it is proved on record that the appellant and the complainant were in touch with each other. The call detail records reveal conversation between them even after the alleged incident on 03.05.2013. Phone calls from the complainant/prosecutrix to the appellant even on 09.05.2013 are proved on record. Seven (7) messages, it is submitted, are on record between the appellant and the complainant at about 11.00 p.m. on 03.05.2013. At 7.00 a.m. on 04.05.2013, messages are again available on record. Furthermore, delay in lodging of the complaint is a clear indication of concoction and falsity of the prosecution case. Learned counsel for the appellant argues that it is opposed to

all probabilities that in case such an incident had taken place on 03.05.2013, the complainant's mother-in-law and brother-in-law would go to the house of the accused on 04.05.2013 merely to lodge a protest in this respect. The husband of the complainant did not admittedly raise any kind of protest. It is submitted that the school attendance record of the complainant's daughter on 09.05.2013 also reflects the falsity of the case against the appellant. The complainant specifically stated that she went to AIIMS, New Delhi for her treatment as well as of her daughter on 09.05.2013. Apart from the fact that there is no evidence on record to show any kind of treatment of the complainant or her daughter from AIIMS, New Delhi on 09.05.2013, the complainant's daughter is proved to be present in her school at Naurangpur on 09.05.2013. It is strenuously urged that there is nothing on record to indicate the complainant suffering from 70% disability of any kind. It is submitted that the distance of the place of the incident from the complainant's house is such that in case the complainant had raised an alarm, she could easily have been heard. It is reiterated that there is nothing on record to show the disability suffered by the complainant and nothing specific could be pointed out as to why she did not even raise an alarm. Learned counsel for the appellant thus submits that the entire prosecution case is doubtful and the appellant has undergone actual imprisonment of four years and about three months and in case remission is included the total sentence undergone is seven years for no fault on his part. Therefore, conviction of the appellant be set aside and he be acquitted of the charges against him and the present appeal be allowed.

Learned counsel for the State while refuting the abovesaid arguments submits that the prosecution has proved its case beyond reasonable doubt. There is specific evidence in the shape of testimony of the prosecutrix as

well as her husband duly corroborated by medical evidence. PW1 Dr. Meenakshi Baswana, Medical Officer, General Hospital, Gurgaon who examined the prosecutrix on 13.05.2013 has opined that possibility of sexual intercourse cannot be ruled out. It is urged that the sole testimony of the prosecutrix in this case is enough for the conviction of the appellant. The prosecutrix stood by the prosecution version in a steadfast manner and there is nothing to impeach her credibility. Therefore, the impugned judgment and order dated 19/21.09.2013 passed by the learned Additional Sessions Judge, Gurgaon be maintained and the present appeal be dismissed.

I have considered the arguments raised by learned counsel for the appellant as well as the State and have carefully gone through the record with their able assistance.

The prosecutrix (PW2) in her statement before the learned trial court has reiterated the version in the written complaint (Ex.PB), though she makes an improvement by stating that on 03.05.2013 she was suffering from dysentery, though the same was not mentioned earlier. It is further stated that as her house did not have any lavatory, she went to the adjoining field to ease herself at about 11.00 p.m. When she was getting up after relieving herself, the appellant who is her neighbour, gagged her mouth and forcibly committed rape upon her. The complainant stated that she suffers from a 70% handicap. The appellant then threatened that in case she revealed this incident to anyone, her daughter aged 11 years and son aged 13 years would be done to death. He also threatened her of imminent ruin. She returned back home and on inquiry from her husband, she revealed the incident to him in the presence of her mother-in-law. The complainant's mother-in-law said that they would go to the appellant's house

next morning. Accordingly, her mother-in-law and brother-in-law visited the house of the appellant, who retaliated by threatening to repeat the crime and involve them in some false case. They returned home. Thereafter, there was pressure in the village not to lodge a complaint in this regard to avoid infamy. They were threatened by the appellant a number of times.

Complainant and her daughter were dropped by her husband at Rampura stand near P.S. Kherki Daula on 09.05.2013 as they had to go to AIIMS, New Delhi for treatment of both the mother and daughter. It is stated that when the complainant and her daughter were waiting for the bus, the appellant arrived and threatened her to have illicit relations with him, otherwise she and her children would be ruined. She was frightened due to these threats. After returning from AIIMS, New Delhi, the complainant disclosed the incident to her mother-in-law. The complainant's mother-in-law and two of her brothers-in-law went to the appellant's house on 10.05.2013 but none was present there. The complainant's mother-in-law and two brothers-in-law again visited the appellant's house on 11.05.2013. The appellant is alleged to have assaulted them, called the police and given threats. It is stated that they could not approach the police on 12.05.2013. A written complaint was submitted before the Commissioner of Police, Gurgaon on the next day i.e. 13.05.2013. She was medico legally examined in the Government Hospital, Gurgaon.

The prosecutrix in her cross-examination stated that she did not mention anything about her suffering from dysentery in her earlier statement. She further stated that despite 70% handicap, she can walk. It is admitted by the complainant that since her marriage in the year 2001, she had called the appellant telephonically about 8-10 times. It is sought to be explained that in connection

with her visits to AIIMS, New Delhi, the complainant would sometimes call the appellant on his phone to inquire whether he was going towards metro station as he used to go for his duty as a Conductor. The complainant boarded the bus in which the appellant was Conductor 2-4 times. She revealed the mobile phone number of the appellant to be 9811372802 and her own mobile number 7838820276. The complainant admitted that her father is a retired policeman and she informed him about the incident. However, he suffered a heart attack. She denied the suggestion that the complaint (Ex.PB) was dictated by her father and stated that the complaint was got typed from a typist at the Gurgaon Court compound. While admitting that Nathu is her Chacha (uncle), the complainant denied the suggestion that he had seen her in a compromising position with the appellant and it is on his instigation that her mother-in-law and brother-in-law assaulted the mother of the appellant after forcibly entering the appellant's house. The complainant denied any knowledge of her husband, mother-in-law and brother-in-law assaulting the appellant's mother, who was then admitted in the hospital. The complainant admitted that she did not receive any injury when rape was committed upon her on 03.05.2013.

PW4 the complainant's husband has supported the prosecution case. PW4 stated that he did not accompany his mother and brother when they went to lodge a protest to avoid any untoward incident. PW4 admitted that a complaint was lodged against them by the appellant. A Panchayat was also called to resolve the matter. PW4 reiterated that he dropped his daughter and wife at Auto stand at Rampura chowk on 09.05.2013 as they had to go to the AIIMS, New Delhi for their treatment. Altercation between the mother and two brothers of PW4 and the dispute with the appellant's side on 11.05.2013 is admitted. It is

stated that the police came to arrest PW4 on 11.05.2013 but when the villagers disclosed all the facts, he was not arrested. The police asked them to visit the police station on 12.05.2013 but his wife was unwell on that day. A written complaint by his wife/the complainant was moved before the Commissioner of Police, Gurgaon on 13.05.2013.

PW10, the investigating officer ASI Des Raj in his cross-examination stated that the Numberdar, Sarpanch and Chowkidar of the village refused to say anything in this regard. No information regarding the incident was received at the police station. Distance of the house of the prosecutrix and the place of occurrence is stated to be 200-250 yards.

A careful scrutiny of the evidence on record leads to an inevitable conclusion of a shadow of doubt being cast upon the prosecution version. This is so for various reasons which are detailed as below. It is a matter of record that the prosecutrix (PW2) and the appellant, a neighbour of the complainant/prosecutrix(PW2), were on talking terms with each other. It is stated by the prosecutrix (PW2) and her husband (PW4) that they had cordial relations with the appellant, though PW10 ASI Des Raj stated that during the course of investigation, he did not find the complainant and accused family to be on visiting terms prior to the incident. The prosecutrix stated that when she went to visit AIIMS, New Delhi in connection with her disease, she would often be given a lift by the appellant. DW3 Israr Babu, Alternate Nodal Officer, Vodafone Mobile Service duly proved on record the customer application form (Ex.D2) of the appellant having mobile number 9811372802. The call detail record of this phone from 01.01.2013 to 13.05.2013 is proved as Ex.D3.

Similarly, the customer application form of the complainant/prosecutrix (PW2)

with the mobile number 7838820276 is proved as Ex.D4 with call detail records of this phone from 01.01.2013 to 13.05.2013. Certificate under Section 685B of the Indian Evidence Act is proved as Ex.D6. It is evident that the appellant and the complainant were in touch telephonically on 03.05.2013 itself at about 11.00 p.m. and thereafter, they were in touch till 09.05.2013. Phone calls from the complainant's cell phone on the appellant's cell phone are available on record. The complainant in her testimony has tried to explain the same by saying that the appellant would often take the phone from her son. The learned trial court has accepted the said explanation while observing that possibility of misuse of the cell phone by the appellant himself in this situation, cannot be ruled out. It is highly improbable and far fetched that even after the occurrence of 03.05.2013, the appellant would be handed over the complainant's cell phone by her son, thereby affording the appellant an opportunity to misuse the same. There is no such evidence on record. It is for the prosecution to prove its case beyond reasonable doubt against the accused. In case a doubt is raised, the benefit necessarily has to accrue to the accused and no presumption can be drawn against the accused in such a manner.

Moreover, there is nothing on record to indicate the nature and extent of disability suffered by the prosecutrix/complainant (PW2) except the bald statement of the complainant and her husband. No evidence has been placed on record to show the treatment being received by the prosecutrix or her daughter at AIIMS, New Delhi. As per the attendance register (Ex.D1), the complainant's daughter is marked present on 09.05.2013 in the school. The class attendance register has been duly proved by DW1 Smt.Sneh, JBT Teacher at the Government Primary School, Naurangpur, Gurgaon. There is no reason for

DW1 to depose falsely or untruthfully. Absence of any evidence of the medical treatment received by the complainant and her daughter on 09.05.2013 at AIIMS, New Delhi or at any earlier stage as well as absence of any evidence to show the nature of disability suffered by the complainant heightens the shadow of doubt cast on the prosecution case.

It is further relevant to note that the incident in question is alleged to have taken place on 03.05.2013 at 11.00 p.m. when the complainant went to ease herself in the fields adjoining her residence. PW2 prosecutrix in her statement mentioned that she could not defend herself due to the handicap suffered by her. PW10 ASI Des Raj in his cross-examination has specifically mentioned that the house of the prosecutrix is situated at 200-250 yards from the place of occurrence and in case a loud alarm is raised from the place of occurrence, it can be heard at the house of the prosecutrix. In case a hue and cry was raised by her, it could have been easily heard by her husband and family members who would necessarily have come to her rescue. As per the medical evidence on record no injury was detected on the person of the complainant. It is further to be noted that MLR (Ex.PA/1) does not mention the complainant to be suffering from a disability. Medical examination of the prosecutrix, a married lady having two children was conducted on 13.05.2013 in respect to the incident alleged to have taken place on 03.05.2013. The opinion of PW1 Dr. Meenakshi Baswana that possibility of sexual intercourse cannot be ruled out by itself, is of no avail to the prosecution in the facts and circumstances of the case.

There is no doubt that the sole testimony of the prosecutrix would be sufficient for conviction of an accused provided the same inspires complete confidence. However, in a given situation the attending circumstances and

corroborating material on record can be taken into consideration to examine the veracity of the prosecution case. In the present case, it would be unsafe to convict the appellant solely on the basis of the testimony of the prosecutrix. This is so for the various reasons as detailed above which raise a substantial doubt on the prosecution case as mentioned above. It is a settled position of law that in case a substantial and concrete doubt is raised upon the prosecution version, the benefit thereof should necessarily accrue to the accused. The learned trial court has therefore wrongly concluded that the prosecutrix, a married lady of about 34 years was ravished by the appellant on 03.05.2013 at about 11.00 p.m. and the appellant had criminal intimidated her several times. The appellant is indeed entitled to the benefit of doubt in the facts and circumstances of the case.

Accordingly, the present appeal is allowed, the impugned judgment of conviction dated 19.09.2013 and order of sentence dated 21.09.2013 passed by the learned Additional Sessions Judge, Gurgaon is set aside, consequently acquitting the appellant of the charges against him. The appellant is in custody. He be released forthwith in case he is not required in any other case.

January 29 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No