

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

(1)

CRA-S-3845-SB-2013

Gagandeep Singh @ Gagan

...Appellant

Versus

State of Haryana

...Respondent

(2)

CRA-S-3846-SB-2013

Jagroop Singh @ Roopa

...Appellant

Versus

State of Haryana

...Respondent

Date of decision:-20.9.2018

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

Present: Mr.Satnam Singh Gill, Advocate
for the appellant in **CRA-S-3845-SB-2013**.

Mr.Ved Parkash, Advocate
for the appellant in **CRA-S-3846-SB-2013**.

Ms. Aditi Girdhar, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two appeals i.e.

CRA-S-3845-SB-2013 filed by appellant – Gagandeep Singh @ Gagan

and **CRA-S-3846-SB-2013** filed by appellant – Jagroop Singh @ Roopa,

both of them being accused in FIR No.295 dated 14.5.2011, under Sections 294, 506, 376, 120-B IPC and 67(a,b,c) and 68 of Information Technology Act, registered with Police Station Assandh, who were tried by learned Additional Sessions Judge (Exclusive Court of the cases of Heinous Crime against Women), Karnal and vide order dated 7.10.2013, they along with their co-accused Gur Lal Singh @ Lali were convicted for the offences under Sections 376 and 506 read with Section 120-B IPC, whereas for the remaining offences they were acquitted and vide order dated 9.10.2013 they (the appellants) were sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.10,000/- each for the offence under Section 120-B read with Section 376 IPC and in default thereof, to further undergo simple imprisonment for a period of six months each and they were further sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- each for the offence under Section 506 read with Section 120-B IPC and in default thereof, to further undergo simple imprisonment for a period of three months each. However, it was ordered that if fine was paid, 50% of the same shall be released in favour of the victim in view of the provisions of Section 357-A Cr.P.C.

All the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court prayed that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, facts of the case, as per prosecution story, are that complainant Narinder Singh had submitted a complaint dated

14.5.2011 to the police stating therein that his daughter (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court in case titled ***State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC)*** (hereinafter referred to as the 'prosecutrix/victim') aged about 15 years was student of 10+1 class going to the school daily; that accused Gur Lal Singh @ Lali, a resident of Khijrabad by photographic tricks put face of the victim on the nude body of some woman, uploading the same on the social media to cause mental harassment to the victim and to defame her; that he also used to give threats to kill the victim.

On the basis of such written complaint by complainant Narinder Singh, father of the prosecutrix/victim, an FIR No.295 dated 14.5.2011, under Sections 294 and 506 IPC as well as under Section 67(a,b,c) of Information Technology Act was registered. The matter was investigated, during the course of which, it transpired that Gur Lal Singh @ Lali was lodged in District Jail, Karnal in another criminal case, therefore, his production warrants were got issued and he was joined in the investigation and formally arrested in this case. During the course of investigation, on 22.5.2011 the complainant Narinder Singh had submitted a CD as well as mobile phone make Nokia before the investigating agency, which were taken into possession vide a seizure memo. Accused Gur Lal Singh @ Lali was interrogated, during the course of which, he suffered a disclosure statement that about two years ago, he had met the victim at marriage function of his maternal uncle's son and they got acquainted with each other and that he had taken photographs of the victim with his mobile phone, thereafter, preparing

CD of that photograph by computer at Goldi Communication belonging to accused Pardeep @ Goldi, where Gur Lal Singh @ Lali used to work earlier. Such accused further disclosed that in the month of November, 2010 nude photo of the victim with him was prepared by Gagan in his Alto car at Malikpur with a mobile phone belonging to his friend Satinder Singh and thereafter he had taken out the mobile chip from that mobile and prepared a CD with the help of computer at the said shop and returned mobile to Satinder Singh and that he had kept concealed the two CDs and the mobile chip in an almirah in the house of his sister Raman Kaur at Nissing, which he could get recovered. Thereafter, such accused Gur Lal Singh @ Lali in pursuance of his disclosure statement got recovered the Alto car bearing temporary No.HR99EP-3615 used in the commission of crime from the house of his co-accused Gagan, which was taken into police possession. He also demarcated the scene of occurrence and a memo in that respect was prepared besides other documents.

On 24.5.2011, accused Gur Lal Singh @ Lali while in police custody in pursuance of the disclosure statement suffered by him led the police party to the place disclosed by him and got recovered two CDs and two chips from the house of his relative namely Gur Lal, which were taken into possession vide memo.

Then accused Pardeep @ Goldi was arrested in this case on 24.5.2011 and he got recovered a computer having monitor LG company, CPU make Odyssey, keyboard make Intex and a mouse, which were taken into possession.

On that very day i.e. 24.5.2011 Satinder Pal Singh had

produced his mobile phone make Nokia 5233 by which the obscene video of the victim and accused Gur Lal Singh @ Lali was prepared. It was identified by accused Gur Lal Singh @ Lali and taken into police possession vide a memo.

On 25.5.2011, accused Gur Lal Singh @ Lali while being interrogated had suffered a disclosure statement to the effect that about eight months earlier, he had taken nude photographs of the victim in the tubewell room of Kashmir Singh and thereafter committed rape upon her and he had also committed rape upon the the prosecutrix where nude video of the victim was prepared in the Alto car and that in March, 2011 in order to defame the victim, he had downloaded his nude video with the victim by CD in the folder in E-drive of the computer, wherein there were already blue films at the shop of Virk Mobile of Sonu @ Bachhitar, where he used to work and thereafter he had downloaded that film in the mobile chips of the customers and charged Rs.50/- from each customer and when the matter had become talk of town, then he and Sonu had deleted that film from the computer and he had left the shop.

In such statement Gur Lal Singh @ Lali offered to get the computer, CPU, mouse and keyboard recovered. In pursuance of his disclosure statement, accused Gur Lal Singh @ Lali demarcated the scene of occurrence. A cot on which rape had been committed upon the victim by Gur Lal Singh @ Lali was recovered from the tubewell room of Kashmir Singh.

Gur Lal Singh @ Lali was got medically examined from PW3 Dr.Munish Kumar, who did not find any sign of external injury on his person. The doctor gave an opinion that there was nothing to suggest

that accused was incapable of doing sexual intercourse and a medico legal certificate was issued in that regard.

Accused Bachittar Singh @ Sonu was arrested and a computer set comprising CPU, monitor, keyboard and mouse with data cable were taken into possession from his shop being run under the name and style of Virk Communication, Assandh.

On 26.5.2011 statement under Section 164 Cr.P.C. of the victim was got recovered by Judicial Magistrate, wherein she stated about role of accused Gagandeep Singh @ Gagan and Jagroop Singh. She stated that sports activities were going on in their school i.e. DAV Public School, Assandh; that after school hours, she had gone with Gur Lal Singh @ Lali in a vehicle towards the passage leading to Danoli; that Gagan was driving the vehicle; that Gagan and one another boy along with him went outside of the vehicle; thereafter Gur Lal Singh @ Lali offered her a glass of water and after drinking it, she does not know what happened to her and when she regained consciousness, she found herself to be without clothes, then she put on clothes; that Gur Lal Singh @ Lali told her that he had committed wrong act with her; that thereafter she returned to her home but did not tell the occurrence to anybody; thereafter she made a call to Gur Lal Singh @ Lali and asked him as to why he did so to which he replied that he was desirous of doing so; that then her maternal uncle residing in Patiala informed her that her film was on the internet.

On the same day, the victim demarcated the scenes of occurrence and site plans of the same were prepared. The victim was got medically examined from PW1 Dr.Neeru Bala, who did not find any

external mark of fresh injury on her person, however, on examining her private parts, hymen was found ruptured on all sides and posterior vaginal wall was visible, which could admit one finger loosely. The doctor concerned gave an opinion that possibility of sexual assault could not be ruled out. She proved the medico legal certificate of the victim.

Thereafter, Section 376 IPC was added in the FIR.

On 18.6.2011, accused Gagandeep @ Gagan, who was on anticipatory bail was made to join the investigation. Accused Jagroop Singh was yet to be arrested.

During the investigation, it came out that accused Gagandeep @ Gagan had provided his Maruti Alto car to Gur Lal Singh @ Lali with an intention to commit rape by him upon the prosecutrix and had taken the victim in the said car from village Danoli to *kacha* path, leading to village Malikpur and accused Jagroop @ Roopa had remained present at the time of committing of rape upon the victim. He had assisted the accused Gur Lal Singh @ Lali and Gagan in that illegal act besides helping them in preparing the obscene video of the victim.

Accused Manoj Kumar was arrested in this case on 4.7.2011 and from his cyber cafe under the name and style of Magnet Computer Gallery, 5 CPUs were recovered, which were taken into possession, a register having entries of users of internet maintained by accused Manoj Kumar was also seized by the Investigating Officer.

During the course of investigation, the Investigating Officer had obtained a copy of birth certificate of the victim issued by Registrar (Births & Deaths), Municipal Committee, Assandh.

After completion of investigation and other formalities,

challan against accused Gur Lal Singh @ Lali, Pardeep @ Goldi, Bachittar Singh @ Sonu and Manoj Kumar under Sections 294, 506 and 376 read with Section 120-B IPC as well as under Sections 67(a,b,c) and 68 of Information Technology Act was filed in the Court. Accused Gagandeep @ Gagan and Jagroop Singh remained to be arrested in this case, therefore it was mentioned in the challan that supplementary challan would be submitted in the Court after their arrest.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Assandh, copies of documents relied upon in the challan were supplied to accused Gur Lal Singh @ Lali, Pardeep @ Goldi, Bachittar Singh @ Sonu and Manoj Kumar free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Sections 376 IPC is exclusively triable by the Court of Sessions, learned Sub Divisional Judicial Magistrate, Assandh committed the case to the Court of learned Sessions Judge, Panipat from where it was entrusted to the Court of learned Additional Sessions Judge, Karnal.

Accused Jagroop Singh @ Roopa was arrested in this case on 19.8.2011 and while being interrogated on 20.8.2011, he suffered a disclosure statement regarding the manner of occurrence and in pursuance thereof, he demarcated the scene of occurrence.

Accused Gagandeep @ Gagan was arrested on 5.9.2011 and he also demarcated the scenes of occurrence.

On completion of investigation, supplementary challan against accused Jagroop Singh @ Roopa and Gagandeep Singh @ Gagan was filed in the Court on 6.9.2011.

After complying with the provisions of Section 207 Cr.P.C.,

learned Sub Divisional Judicial Magistrate, Assandh committed the case to the Court of Sessions and supplementary challan was tagged with the main challan.

On receipt of case in the Court of learned Additional Sessions Judge, Karnal, observing that charge for offences under Sections 376, 294 and 506 read with Section 120-B IPC as well as for the offences punishable under Sections 67(a,b,c) and 68 of Information Technology Act read with Section 120-B IPC was disclosed against the accused charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution has examined as many as twelve witnesses i.e. Dr.Neeru Bala as PW1, victim as PW2, Dr. Munish Kumar as PW3, Ramesh Kumar, Patwari as PW4, SI Gajraj Singh as PW5, ASI Sumer Singh as PW6, Nazar Singh as PW7, EHC Surjit Singh as PW8, complainant Narinder Singh, father of the victim as PW9, EASI Kuldeep Singh as PW10, Inspector Subhash Chand, Investigating Officer as PW11 and Ms.Shashi Chauhan, Additional Chief Judicial Magistrate, Panipat as PW12.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Accused did not lead any evidence in defence despite

availing opportunity.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the parties besides going through the record and find that there is no merit in the appeals.

The prosecution by bringing cogent and convincing evidence both oral as well as documentary had successfully proved its charge against accused Gur Lal Singh @ Lali for the offences under Section 376 read with Section 120-B IPC and Section 506 read with Section 120-B IPC, whereas against accused Gagandeep Singh @ Gagan and jagroop Singh @ Roopa under Sections 120-B read with Section 376 IPC and 506 read with Section 120-B IPC. It comes out that all the three had prior meeting of mind with regard to committing of the crime and they had hatched a conspiracy to do so.

PW2, the victim had reiterated on oath the version given by her to the police categorically stating that Gur Lal Singh @ Lali had taken out her photographs from the marriage album of his sister and then prepared an obscene video from those photographs with the assistance of his friends and later on he started pressurising and blackmailing her that if she did not accompany him, he would display the photographs on the net or upload the same on the net, upon which the victim got nervous and followed him. She supported the prosecution story with regard to Gur Lal Singh @ Lali riding her in the Alto car after making her consumed a liquid resulting in her getting unconscious and on regaining consciousness finding herself to be nude. She further deposed

regarding raping her in tubewell room of Kashmir Singh between 3 to 5 p.m., Gur Lal Singh @ Lali holding out threats to her. She gave her date of birth as 25.1.1996 proving her birth certificate as Ex.P6.

PW1 Dr.Neeru Bala, who had medico legally examined the prosecutrix did not rule out the possibility of sexual assault upon her.

From the testimony of PW3 Dr.Munish Kumar, it comes out that Gur Lal Singh was capable of doing sexual intercourse.

PW4 Ramesh Kumar had prepared a scaled site plan of the spot on pointing of the victim on 30.5.2011.

PW5 SI Gajraj Singh deposed regarding accused Gur Lal Singh suffering a disclosure statement with regard to concealing of CD and mobile chip in an almirah in the house of his sister Raman Kaur in Nissing and subsequently in pursuance thereof getting those items recovered. He further deposed regarding what had transpired in his presence.

PW6 ASI Sumer Singh stated that registration certificate of Alto car used in the commission of crime was taken into possession in his presence.

PW7 Nazar Singh, a relative of the complainant Narinder Singh deposed that in the month of April, 2011, he had gone to Virk Communication, Assandh of accused Bachhitar Singh for getting *Gurbani* downloaded in his mobile phone and accused while downloading *Gurbani* also downloaded the blue film of the victim and Gur Lal, which was talk of the town by the name of Assandh Kand.

PW8 EHC Surjit Singh, who had remained associated in the investigation of the case deposed regarding what had transpired in his

presence proving various documents.

PW9 complainant Narinder Singh supported the case of the prosecution on material aspects proving various documents.

PW10 EASI Kuldeep Singh deposited regarding Investigating Officer depositing case property with him on various dates and then his depositing the same with FSL, Madhuban on different dates. He proved his affidavit Ex.P26 stating that till the case property remained in his possession, neither he nor anybody else was allowed to tamper with the same.

PW11 Inspector/SHO Subhash Chand, who had carried out the investigation in the case initially before whom Narinder Singh complainant had submitted a written complaint on 14.5.2011, on the basis of which FIR was recorded deposed regarding special reports sent to the higher authorities, going to the house of complainant, meeting the prosecutrix, recording her statement under Section 161 Cr.P.C. and then searching for accused Gur Lal Singh @ Lali, on coming to know that he was lodged in District Jail, Karnal in a case under NDPS Act, reaching there got issued production warrants from Illaqa Magistrate. He otherwise testified regarding what he has done in the case and what has been done in his presence.

PW12 Ms.Shashi Chauhan, Additional Chief Judicial Magistrate, Karnal had got her statement recorded through video conferencing with respect to recording of statement of the victim under Section 164 Cr.P.C. on 26.5.2011 on police application besides proving other documents.

In the instant case, the most important witness for the

prosecution happened to be PW2 the victim, who has fully supported the case of the prosecution. Although this PW was cross-examined at length on behalf of the accused but she stuck to her guns and could not be shattered on any material point. A few minor contradictions and variations in her statement do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witness has deposed in a natural and truthful manner unlike tutored witnesses who testify in a parrot like manner.

Similarly no previous enmity between the complainant and other accused has been alleged or proved prompted by which he might have embarked upon treading the danger path of false implication to wreak vengeance.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction. Remaining evidence also supports the prosecution story.

I do not find any illegality or infirmity with the impugned judgment passed by the trial Court. Rather it is based upon proper

appraisal and appreciation of evidence and correct interpretation of law.

Keeping in view the gravity of allegations against the appellants, no ground is there to reduce the sentence of imprisonment.

Therefore, both the appeals stand dismissed.

Appellants – Gagandeep @ Gagan and Jagroop @ Roopa are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Karnal is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

20.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No