

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRA-S-598-SB of 2013(O&M)
Date of Decision: December 01, 2018

Shonki Khan
..... Appellant
Versus

State of Haryana
..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.S.Brar, Advocate
for the appellant.

Mr.Pawan Kumar Jangra, Addl.AG., Haryana.

LISA GILL, J.

Appellant has been convicted for the offence punishable under Sections 452, 376 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Sessions Judge, Fatehabad, vide impugned judgment dated 16.11.2012 and by a separate order of even date, he has been sentenced as under:-

Offence u/s	Sentence
452 IPC	Rigorous imprisonment for 03years; besides pay a fine of ₹2000/- and in default thereof to further undergo RI for 9 months
366 IPC	Rigorous imprisonment for 07 years; besides pay a fine of ₹10,000/- and in default thereof to further undergo RI for 1 ¾ years.

Aggrieved therefrom, present appeal has been filed by the appellant.

Brief facts essential for the adjudication of this case are that FIR (Ex.P-12) was registered on the basis of a complaint by the prosecutrix herself. Prosecutrix stated that on 06.02.2012, at about 2.00.a.m., in the dead of the night, appellant-accused broke into her house by scaling the wall.

Complainant stated that she was alone as her husband was undergoing imprisonment in some case. Appellant caught hold of the prosecutrix as she was sleeping, committed rape upon her against her wishes. He gagged her with his hand. When she raised alarm, Dyal Singh (PW-6) and Des Raj came to the spot along with some other neighbours. Shonki Khan managed to escape after scaling over the wall. Attempt was being made to settle the matter. Various Panchayats were called, but without any result. Accordingly, complaint was submitted by the prosecutrix on 08.02.2012, on the basis of which FIR (Ex.P-12) was registered. The prosecutrix was medico-legally examined by PW-7- Dr. Vikram Pal Singh on an application (Ex.P-14) moved by the police authorities. Medico legal report Ex.P-8 is on record. Statement of the prosecutrix under Section 164 Cr.P.C., (Ex.P-16), was recorded on 09.02.2012. Rough site plan of the spot (Ex.P-18) was prepared. Accused was arrested and medico legally examined by Dr. Vikram Pal Singh on an application Ex.P-19. Scaled site plan of the place of occurrence Ex.P-4 was prepared. Articles belonging to the prosecutrix as well as swabs etc., were taken in police custody and sent to Forensic Science Laboratory, Madhuban (for short 'F.S.L'). FSL report is on record as Ex.P-21. Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented against the appellant on completion of investigation. Charge under Sections 452, 376 IPC against the appellant was framed on 01.05.2012, to which appellant pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined eleven (11) witnesses.

Appellant in his statement under Section 313 Cr.P.C., while denying the incriminating evidence put to him pleaded innocence and false implication. No evidence was led in defence.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved its case beyond reasonable doubt against the appellant. Consequently, the appellant was convicted for the offence punishable under Sections 452, 376 IPC and sentenced as detailed in the foregoing paras.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that false implication of the appellant is apparent from the evidence on record. The prosecutrix in this case was a married 23 years old lady having two children. There is an unexplained delay of two (02) days in lodging of the FIR, which indicates an element of consent, if at all, it is proved that the appellant was found present at the place of occurrence and sexual inter-course is also proved. It is contended that the version put-forth by the prosecutrix is highly improbable as walls of the house of the prosecutrix were admittedly six and a half feet high as indicated in the site plan Ex.P-4, therefore, it is highly improbable that the appellant would have scaled the wall, broken into the prosecutrix's residence, committed rape upon her and then managed to escape as well, especially when it is the prosecution case that a number of people had gathered at the spot. Moreover, as per FSL report (Ex.P-2), semen could not be detected on any of the exhibits sent for examination. Therefore, commission of offence in question is not proved in any manner. It is thus prayed that this appeal be allowed, judgement and order dated 16.11.2012, passed by the learned trial Court be set aside and the appellant be acquitted of the charges against him.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear and cogent evidence on record, which succinctly reveals the commission of the offences as charged by the

appellant. The appellant has been rightly convicted for the offences punishable under Sections 452, 376 IPC and sentenced accordingly. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment dated 16.11.2012 and order of sentence of even date. It is thus prayed that this appeal be dismissed.

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

Prosecutrix in this case has given a consistent version of the events as they unfolded. She specifically stated about the commission of the offence by the appellant on the intervening night of 06/07.02.2012. It is clearly stated that the appellant broke into the residence of the prosecutrix in the dead of the night and committed rape upon her. Husband of the prosecutrix was not at home as he was serving sentence in a criminal case. When she raised hue and cry, PW-6-Dyal Singh, Des Raj and other persons were attracted to the spot. Appellant managed to flee from the spot. PW-6-Dyal Singh has duly corroborated the version put-forth by the prosecution. PW-6 specifically stated that when he heard the hue and cry raised by the prosecutrix, he went to her house which is three houses removed from his residence. When he reached at the spot, he saw the appellant trying to escape by scaling the wall. PW-6 caught him by his hand. Number of persons gathered at the spot, but the appellant managed to flee from the spot. PW-6 further stated that the prosecutrix revealed the commission of rape upon her by the appellant. Dyal Singh, further explained that the prosecutrix is the daughter of his brother-in-law. Appellant is stated to be on visiting terms with the husband of the prosecutrix. Husband of the prosecutrix was confined in jail since five (05) months prior to the occurrence. It is, but natural that when Dyal Singh heard the cries of the prosecutrix, who is

related to him, he would have proceeded to the spot. Similarly, absence of semen as reflected in the FSL report (Ex.P-21) cannot per se raise an inference that the appellant is not guilty of the offence in question. Mere absence of the injuries on the person of the prosecutrix does not in any manner detract from the prosecution version.

It is a settled position that due weightage has to be given to the evidence of a prosecutrix and conviction can be based solely on her statement provided testimony of the prosecutrix inspires confidence. Reference in this respect can be gainfully made to the decision of the Hon'ble Supreme Court in **Sudhansu Shekhar Sahu Vs. State of Orissa, 2003(5) R.C.R.(Criminal) 447**. In the present case, there is nothing on record which casts a shadow on the testimony of the victim who has withstood lengthy cross-examination. Nothing favourable could be elicited by the defence in its favour. No cause of suspicion or element of tutoring or false implication of the appellant can be detected therein.

A perusal of the statement of ASI-Krishan Kumar (P-9) as well as Lady Constable Usha Rani (PW-3) proves that investigation of the matter was done in a proper manner. Argument regarding delay in lodging of the FIR being indicative of false implication of the appellant is also untenable, hence rejected. This is so for the reason that the incident in question took place on the intervening night of 06/07.02.2012. It is the specific case of the prosecution that a number of neighbours had gathered at the spot. Accused managed to flee from the spot of occurrence. Panchayats were held to resolve the matter, but no decision took place in the Panchayat. Thereafter the prosecutrix moved the complaint for taking action against the appellant on 08.02.2012 itself. Therefore, so called delay in lodging of the FIR is duly explained and is not fatal to the prosecution case in any manner.

Presence of the appellant on the spot at the time of the occurrence is duly proved. Even in the cross-examination of the prosecutrix, suggestion put to her is that the accused came to her house at her asking and with her consent and that she raised an alarm merely to save her honour. There is indeed no such evidence on record to indicate any consent on the part of the prosecutrix as urged. The prosecutrix in this case has steadfastly given a consistent version, which is credible and trustworthy. Therefore, the appellant has been rightly convicted by the learned trial Court for the offences punishable under Sections 452 376 IPC. Prosecution has indeed succeeded in proving its case beyond reasonable doubt against the appellant.

No other arguments has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction dated 16.11.2012 and order of sentence of even date, passed by the learned Sessions Judge, Fatehabad. The said judgment and order dated 16.11.2012, is accordingly upheld.

Consequently, this appeal is dismissed.

Appellant is on bail. His bail stands cancelled and bail bonds forfeited. Necessary steps be taken to secure custody of the appellant to serve rest of the sentence imposed upon him.

December 01, 2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.