

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1619-DB-2014
Date of decision: 6.3.2020

Kamaljit Singh
...Appellant

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Monita Mehta, Advocate for the appellant
Mr.Amar Ashok Pathak, Addl.AG, Punjab

JITENDRA CHAUHAN, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 27.8.2014 passed by learned Additional Sessions Judge, Hoshiarpur, whereby the appellant has been convicted and sentenced as under:-

U/ss	Sentence
376 IPC	To undergo rigorous imprisonment for a period of twelve years and to pay fine of Rs.Four lakh. In default of payment of fine he shall further undergo rigorous imprisonment for two years
506 IPC	To undergo rigorous imprisonment for a period of one year
4 of Protection of Children from Sexual Offence Act	To undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.One lakh. In default of payment of fine he shall further undergo rigorous imprisonment for one year

All the sentences were ordered to run concurrently.

The facts necessary for adjudication of the matter as narrated in paras 2 & 3 of the impugned judgment are as under:-

“..on 12.08.2013, ASI Inderjit Singh (Investigating Officer) was present at police station Sadar, Hoshiarpur. He received a telephone message from Civil Hospital, Hoshiarpur that prosecutrix (name of prosecutrix not disclosed in order to conceal her identity) daughter of Kamaljit Singh is admitted in Civil Hospital, Hoshiarpur in a rape case. The Investigating Officer along with other police officials reached at Civil Hospital, Hoshiarpur where doctor declared the prosecutrix fit to make statement. The prosecutrix got recorded her statement before ASI Inderjit Singh to the effect that she is resident of Street No.6, Bains Colony, Una Road Bajwara Kalan, PS Sadar Hoshiarpur. She is a student of 7th Class in Government School at Salempur, District Hoshiarpur. She is residing with her maternal-grand parents. Her mother had died on 13.02.2012. She along with her younger brother namely Jasmeet Singh aged 11 years used to reside with her father Kamaljit Singh. During life time of her mother, her father Kamaljit Singh used to take her in his lap and used to tease with bad intention. Her father committed rape with her without her consent. She disclosed to her mother regarding this act of accused. Her father started giving threats that in case they told about it to anybody then they will be eliminated. Her father continuously committed rape with her in the absence of mother. After the death of her mother, he used to give a tablet and also threatened her with dire consequences. The prosecutrix told to her

maternal grandmother that she does not want to live with her father and wants to live with her maternal grandmother. On 01.12.2012, her maternal-grandmother took her to village Salempur where her grandmother got her admitted in a school in 6th standard. On severe pain in her abdomen, she told the entire episode to her maternal grandmother and she got her admitted in civil hospital for treatment. Action be taken against Kamaljit Singh.

3. The statement of prosecutrix was read over to her and she signed the same. The Investigating Officer made endorsement Ex.PW7/B on the said statement and was sent to police station through PHG Davinder Singh for registration of the case, on the basis of which FIR Ex.PW7/C was recorded by SI Gurmail Singh, who also made endorsement Ex.PW7D underneath his endorsement.”

After investigation, challan was presented against the present appellant. He was chargesheeted under Section 376, 506 IPC and Section 9 of POCSO Act, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as eight witnesses, namely, PW1 Dr.Sona Aadia, PW2 Dr.Hardeep Singh, PW3 Dr.RP Saroa, PW4 the prosecutrix, PW5 Nathu Ram, Superintendent, PW6 Kanta Rani, PW7 ASI Inderjit Singh and PW8 Ms. Lakhwinder Kaur, ACJM, Hoshiarpur.

When the accused was examined under Section 313 Cr.P.C., he denied all the incriminating circumstances appearing in the prosecution evidence against him, and pleaded false implication. In defence, he

examined DW1 Sunil Kumar Gupta, DW2 Piara Ram and DW3 Jasmeet Singh.

After hearing learned counsel for both the parties and on perusal of evidence, learned trial Court convicted and sentenced accused-appellant as indicated at the outset.

Learned counsel for the appellant contends that the prosecution story is highly doubtful. The prosecutrix had been living with her maternal grandmother for about eight months prior to registration of FIR. When she was admitted in hospital on 12.8.2013, there was no allegation of rape and even at the time of ultrasound was got conducted she had stated nothing regarding rape on her. He further contends that there is no date, time or place of the occurrence, whereas as per the medical evidence, the sexual intercourse could have been committed 1 to 6 months prior to the examination, but the prosecutrix had left the house of the accused about one year prior to the alleged occurrence, and during that period, she was living with her maternal grand-mother and had never met with the accused. He further contends that a father will not rape her child and otherwise also, there was a huge delay in getting the FIR lodged. DW 3 Jasmeet Singh, brother of the prosecutrix, stated that no such occurrence had taken place during stay of her sister with his father.

On the other hand, learned State counsel submits that the prosecution case is fully established and is based on evidence. The prosecutrix has made specific allegations against her father regarding committing rape upon her. He prays for the dismissal of the appeal.

Heard.

In her cross-examination, PW1 Dr. Sona Aadia, Medical Officer, Mini PHC Bullowal, who conducted the medico-legal examination of the prosecutrix, deposed in her cross-examination as under:

“It is correct that prosecutrix came to hospital on 12.08.13 at 3.30 p.m. and she was medico-legally examined on 13.8.13 at 12.30 pm as per record brought by me. As she was admitted in the hospital on 12.8.13 at 3.30 p.m with history of excessive bleeding and pain in lower abdomen so she was not examined medico legally in this regard. When she appeared before me on 12.8.13 at 3.30 pm she had not given the history of rape or subjecting her to sexual intercourse. On 13.8.13, she had given the history of subjecting her to sexual intercourse and then she was medico-legally examined. It is correct that on 12.8.13, the prosecutrix was also examined for ultrasound on account of reference from gynecologist due to the above said complaint. It is correct that even at that time, she had not disclosed about subjecting her to sexual intercourse or rape when she was examined through ultrasound.

It is correct that by physical examination of prosecutrix, it could not be ascertained as to when for the last time she was subjected to sexual intercourse nor it could have been ascertained as to when she was for the first time subjected to sexual intercourse. It is correct that due to tender age if a girl is subjected to sexual intercourse the tearing of hymen becomes granular in shape with a passage of time. It turned into granular shape within 1 month to 6 months. I have not found any such situation on the physical examination of prosecutrix. As the vagina admits one finger

with ease this was the reason of my opinion that prosecutrix was subject to sexual intercourse. As per record the maternal family of the prosecutrix accompanied her and as per the history she was living with her maternal parents. The history given by the prosecutrix was given by her but I cannot see whether the same was of her own or she was tutored. However, the relation accompany her namely Mandeep Kaur has not given any history in this regard to me as per my record.”

The present case has its own peculiarity of facts wherein on the one hand, serious allegations of rape were levelled by a minor daughter of 14 years of age, against her father supported by deposition of her maternal grand-mother, and on the other hand, as per the accused father, the entire case is false one; on account of his refusal to transfer the property in the name of prosecutrix.

The point for determination is whether the appellant is innocent and has been falsely implicated with such a serious charge of rape by his own daughter at the behest of her maternal grand-mother for transferring his land in favour of the prosecutrix or the father is such an evil person, who would not even spare his minor daughter in satisfying his lust for sex.

The prosecutrix here is none else but own daughter of the appellant. The appellant got married to Gurpreet Kaur in the year 1999. Out of the said wedlock, two children, including the prosecutrix, were born. The elder one who is the prosecutrix, was 14-year-old then, while the male child was 11-year-old. Gurpreet Kaur, mother of the prosecutrix, died in February, 2012. Thereafter, the accused solemnized second marriage with

one Manju, who was divorcee and having a child of six years of age from her earlier husband, in July, 2012.

As per the case set up by the prosecution, on 12.8.2013, the prosecutrix was got admitted in Civil Hospital due to severe pain in abdomen. After she was declared fit to make statement, her statement was recorded by the police. She has stated that she has been residing with her maternal grandparents. Her mother had died on 13.2.2012. She alongwith her younger brother, namely, Jasmeet Singh aged 11 years used to reside with her father Kamaljit Singh. During life time of her mother, her father Kamaljit Singh used to take her in his lap and used to tease with bad intention. Her father committed rape with her without her consent. She disclosed to her mother regarding this act of accused. Her father started giving threats that in case they told about it to anybody then they would be eliminated. Her father continuously committed rape upon her in the absence of her mother. After the death of her mother, he continued to do said act and after doing intercourse with her, he would give a tablet and would also threaten her with dire consequences. The prosecutrix told her maternal grandmother that she did not want to live with her father and wants to live with her maternal grandmother. On 1.12.2012, her maternal grandmother took her to village Salempur where her grandmother got her admitted in the village school in 6th standard. On the basis of the said statement, FIR was registered against the appellant under Section 376, 506 IPC and Section 8 POCSO Act. In the MLR of the prosecutrix, proved on record as Ex. PA, PW1 Dr. Sona Adia, Medical Officer, Mini PHC, Bullowal, it was opined

that on medical examination of the prosecutrix, she had been subjected to sexual intercourse. The appellant was also examined by PW3 Dr.RP Saroa, Medical Officer, Civil Hospital, Hoshiarpur and as per his MLR Ex.PG proved on record, the opinion given was that there was nothing to suggest that the accused was not capable of doing sexual intercourse. Believing the testimony of the prosecutrix duly corroborated by the evidence of her maternal grandmother and to a limited extent by the evidence of PW1 Dr.Sona Aadia & PW3 Dr.RP Saroa supported by the medical evidence, the learned Trial Court reached at the conclusion that the appellant did commit rape upon the prosecutrix.

First of all we will deal with the legal position with regard to child witness.

The legal position relating to evidence of child witness has been dealt with by Hon'ble the apex Court in a catena of judgments while interpreting Section 118 of the Indian Evidence Act. All persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender age, extreme old age, disease, whether of body or mind, or any other cause of the same nature. No particular age has been specified in Section 118 of the Indian Evidence Act as to at what age a person would be considered of a tender age, as a whole test is whether the witness has sufficient intelligence to depose and in a position to give rational answers to the questions asked.

In **Suryanarayan Raina v. State of Karnataka** reported in **2001 (9) SCC 129**, Hon'ble the apex Court took a view that evidence of a child witness is not to be rejected per se, but the Court as a rule of prudence resolved to consider such evidence with close scrutiny and only on being convinced about the quality thereof and its reliability may record conviction based thereon.

In **State of Karnataka vs. Shantappa Madivalappa Galapuji and ors.**, **JT 2009 (5) SC 660**, it was held as under:-

"This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

The prosecutrix in the present case was of 14 years of age and was in the 6th standard. If we just look at various statements given by the prosecutrix, she has been consistent in saying that she was raped by her father when she was staying with him. Her statement also gets support from the corroborative deposition of her maternal grand-mother (PW 6) to a large extent, but if we look at the surrounding circumstances in which this case was registered, one gets suspicious and doubtful over the truthfulness and veracity of various statements made by the prosecutrix i.e. the statement (rukka) before the police on the basis of which the FIR was registered, her

statement under Section 164 of Cr.P.C. before the Magistrate and the statement made by her in the Court. We cannot shut our eyes from the fact that the prosecutrix is a child and more often the children can be easily swayed away and are prone to tutoring, therefore the statement of the child witness should always be scrutinized with great care and caution, more particularly in a case where there is a serious hostility between the parties and there are fair chances for the child to act at the behest of one such party in his/her pursuit of settling scores against the other party. In such cases, not only the Court has to search for reliable corroborative evidence either oral or documentary, as a matter of prudence, but must also feel satisfied that such a child is not playing in the hands and dictation of any family member or other person who may be in a better position to have a command and dominance over the child and who has some sinister agenda of settling scores with the other party named as accused in the commission of any crime. This precaution is necessary because child witness is amenable to tutoring and often lives in the world of make-believe. The instances of false implication in rape cases are not uncommon and in some cases parents do persuade gullible or obedient daughter to make false charge of rape either to take revenge or for wreaking vengeance on the accused. We are not here suggesting that in every case the testimony of child witness should be looked upon with suspicion, but before the same is believed as a reliable and truthful statement, due care and caution should be taken looking into all the facts and circumstances of the case especially where the accused happens to be a member of the family and there is another member in a

commanding and dominating position to influence and tutor the child in getting the case registered against the other for settling his own scores and vendetta.

There cannot be more serious crime than a rape of a minor child and such an offence assumes a degree of severity when committed by none else but by the father of the prosecutrix. The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes unpardonable act. This is a grievous sin which could be committed by any such parent, who in the lust of satisfying momentarily sexual desire, shamelessly pollutes his pious and sanctimonious relationship with his own daughter.

To this position as stated above, there can hardly be any other opinion but the converse position is also equally sinful and unpardonable where a father or any member of family is falsely implicated with such a serious allegation of rape when nothing of the same has happened and the prosecutrix becomes a tool in the hands of her own maternal grandmother and other family members inimical to the accused. Moral values in the society have abysmally gone down where even the most unacceptable thing can also happen.

Adverting back to the facts of the present case, what we find is that not only the prosecutrix was under the total influence of her maternal grandmother but there are various material contradictions, discrepancies

and improvements in the testimonies of the prosecutrix as well as her maternal grandmother.

First and foremost circumstance which goes in favour of the appellant is that PW1 Dr.Sona Aadia, who conducted the medico legal examination of the prosecutrix in his cross examination deposed that when the prosecutrix appeared before her on 12.8.2013 at 3.30 pm she had not given the history of rape or subjecting her to sexual intercourse. She further admitted that even at that time she had not disclosed about subjecting her to sexual intercourse or rape when she was examined through ultrasound. It was further admitted by her that by physical examination of the prosecutrix, it could not be ascertained as to when for the last time she was subjected to sexual intercourse nor it could be ascertained as to when she was for the first time subjected to sexual intercourse.

The prosecutrix made the following deposition under Section 164 Cr.P.C.:-

“Before the death of my mother, my father Kamaljit Singh used to do wrong acts with me. First of all he used to make me sit in his lap. He was doing bad actions with me. After doing wrong acts he used to give me 3 tablets to take. I disclosed it to my mother, when it came to knowledge of my father then he gave threats to both of us and used to say that I would kill both of you. My father had also killed my mother. My father had also tried to kill me. My mother had died on 12.2.2012. Thereafter he used to commit more wrong acts with me. My father asked me that if I like this thing then I said

that this is wrong act. My father has solemnized second marriage which was solemnized after 2 months of the death of my mother. My second mother has asked me that you are blackmailing your father. My father did not commit any wrong act with me after the second marriage. My second mother turned me from the house after giving pushing on 1.12.2012. My father has committed very wrong act with me. My father should be given severe punishment.”

Further when the prosecutrix appeared as PW4, she made the following statement:

“I am residing with my maternal grand parents at village Salempur. My mother received injuries on her legs and she died in the year 2012. I have got my younger brother namely Jasmeet Singh. During the lifetime of my mother my father used to make me sit in his lap and used to do bad things with me. After the death of my mother, my father used to do bad things with me. My father used to threaten me that as he has killed my mother, he will also kill me. During the lifetime of my mother I had narrated the entire things to her also. Then my mother stated to my father that she is going to disclose this fact to her brothers upon which my father threatened me and my mother. He used to put off my whole clothes and he also used to put off his clothes and he used to lie upon me and he used to commit rape upon me. My father contracted the second marriage and I was not comfortable in the house of my father and then I came to the house of my maternal grandmother. Then I told my maternal grandmother to take me with her as I was not

comfortable in the house of my father. On 1.12.2012 I came to the house of my maternal grandmother. When I was having severe pain in my stomach my maternal grandmother was not knowing the fact which I stated above, then she took me to village doctor and gave me medicine. Then I used to have severe pain in my stomach in August, 2012 in the school. Then my school teacher ranged up to my maternal grandmother and she came and took me to Modi Hospital where I was given injection. After that my pain never subsided and I was got admitted in civil hospital by maternal uncle and aunt and maternal grandmother on 12.8.2012. I identified my signatures on Ex.PH. I also identified my signatures on MLR Ex.PA. My statement was recorded in the hospital only.”

PW6 Kanta Rani, maternal grandmother of the prosecutrix appeared in the witness box and deposed that she used to visit the house of her daughter off and on and also used to stay there for months together. When her daughter received injury, she stayed there for three months in one spell and after that she used to come back to her village and then she stayed there for two months. During her stay at her daughter's house her grand daughter was also there and she used to go to school. During that period neither her daughter nor grand-daughter had disclosed regarding the incident. She further testified that her grand daughter expressed her desire not to study in the village of her father, so she got her admitted in the school of her village. She admitted that the prosecutrix used to go to school with her class fellows on a cycle. She further admitted in her cross-examination

that the appellant never came to meet the prosecutrix from the day she came to her house nor the prosecutrix went to meet her brother and father.

It is very intriguing that as per the statement of the prosecutrix, she was got admitted in civil hospital by her maternal aunt, uncle and maternal grandmother on 12.8.2012, which is also proved on record as per Ex.PH, statement of the prosecutrix recorded under Section 164 Cr.P.C. and Ex.PA MLR. During admission in the hospital, there was not even a mention of any rape having been committed upon the prosecutrix. Even PW1 Dr.Sona Aadia, who conducted the medico legal examination on the prosecutrix had also deposed that she had not given the history of rape, when the prosecutrix appeared before her on 12.8.2013 and also even at the time she had not disclosed about subjecting her to sexual intercourse or rape when she was examined through ultrasound, whereas, she had allegedly narrated her tale of woes of being sexually abused by her father to her maternal grandmother before her admission in the hospital. It is most unnatural conduct of the prosecution witness i.e. her maternal grandmother. Thus, it is evident that the false story of rape was introduced later on to implicate the appellant and settle scores by the maternal grandmother of the prosecutrix.

The prosecutrix in her examination stated that during life time of her mother, she had narrated about the misdeeds of her father, whereas in the cross-examination, she deposed that the appellant started doing bad things with her only after the death of her mother and for the first time he took off her clothes after the death of her mother. Moreso, the grandmother

of the prosecutrix was living with them in appellant's house for about three months before the death of the mother of the prosecutrix. During that period, no such incident was narrated to her nor any kind of complaint was made to the police. The Court feels that these are the material contradictions which go a long way to prove the falsity of the prosecution case and demolish its entire edifice.

DW3 Jasmeet Singh, brother of the prosecutrix, in his deposition stated that he and his sister used to reside in the same room in the house and used to study and have their food together. His father used to go for work in the morning and used to return at about 2/3 pm and thereafter, he used to remain in the house. During this period his sister never raised alarm or even complained that their father ever misbehaved with her at any time. Further in his cross-examination he deposed that it is incorrect to suggest that his father used to rape his sister.

In the MLR (Ex.PA) of the prosecutrix, there are no external signs of injuries. However, PW1 Dr.Sonia Aadia in her cross-examination stated that due to tender age if a girl is subjected to sexual intercourse, the tearing of hymen becomes granular in shape with passage of time. It turned into granular shape within 1 month to 6 months. He has not found any such situation on the physical examination of the prosecutrix.

Routinely, there is a lot of attention given to the status of hymen. The hymen can be torn due to several reasons. An intact hymen does not rule out sexual assault, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of

the genitals while documenting examination findings in cases of sexual assault. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, oedema etc.) are to be documented.

At this juncture, it will be relevant to quote page Nos.503 and 504 of the Modi's Medical Jurisprudence, 11th Edition, Chapter XVII, which reads as under:

Page 503:

"In nubile virgins, the hymen, as a result of complete sexual intercourse, is usually ruptured, having one or more radiate tears. Frequent sexual intercourse and parturition completely destroy the hymen, which is represented by several small tags of tissue, which are called carunculae hymenealis or myrtiformes.

Page 504:

"In small children, the hymen is not usually ruptured, but may become red and congested with the inflammation and bruising of the labia. If considerable force is used, there is often laceration of fourchette and perinaeum."

In the present case, no injury either healed or having any old scar marks etc. was present either on fourchette or on perinaeum of the prosecutrix. The prosecutrix has alleged that she was repeatedly raped by her father when she had been staying with him prior to 1.12.2012, whereas, a complaint to this effect was lodged with the police on 12.8.2013 after a gap of 8 months. With such a wide gap, there could not have been any fresh evidence of the commission of rape through medical examination of both the prosecutrix and the accused as well. Therefore, the only evidence

available is the MLR (Ex.PA) of the prosecutrix and MLR of the appellant (Ex.PG). In the MLR (Ex.PA), no injuries on the private part or any kind of inflammation were found. As per the Modi's jurisprudence, frequent intercourse and parturition completely destroy the hymen, which is represented by several small tags of tissues, which are called carunculae hymenealis or myrtiformes. However no such small tags were detected even on a gynaecological examination of the prosecutrix.

We are completely at a loss and rather anguished to find that the prosecutrix who has alleged repeated sexual intercourse by her father at no stage had complained about her suffering any injury on her private part, any kind of bleeding, or any vaginal discharge or suffering any kind of pain, which could have called for urgent medical attention or in upsetting her regular schooling. Nothing of this sort has surfaced and this creates doubt in our mind to suspect the prosecution case set up at the instance of prosecutrix backed by her maternal grandmother. We cannot lose our attention from the fact that father of the prosecutrix is after all a grown up and physically able bodied man and if such a man commits sexual intercourse with a small child of 14 years, then there is every likelihood that the prosecutrix will suffer some injury on her private part or there may occur some kind of tear in the vaginal canal which is usually quite narrow in the case of minor child or at least suffering of a severe pain by such a minor child, but nothing of this kind had happened to the prosecutrix. If we look at the entire set of circumstances discussed above, possibility cannot be ruled out that the hymen of the prosecutrix may have been torn on

account of activities like cycling and playing etc. and not because of the alleged sexual assault by her father.

In the light of the above discussion, we are not persuaded to agree with the finding of the learned trial court that the appellant had raped his own daughter when she stayed with him before leaving the house prior to 1.12.2012.

DW3 Jasmeet Singh in his deposition stated that his maternal grandmother did not like the bringing up of Gurinder, who is the son of his step mother Manju, by his father, coupled with the fact that in his statement under Section 313 Cr.P.C. the accused has also stated that he has been falsely implicated because he had refused to transfer the property in the name of the prosecutrix. Moreover, the prosecution has not examined the maternal aunt and uncle of the prosecutrix, who had admitted the prosecutrix in the hospital. There was no complaint made by the prosecutrix when her maternal grandmother was staying with them before the death of her mother.

It is true that in a case of rape, the evidence of the prosecutrix must be given pre-dominant consideration and in certain cases even without any corroboration, testimony of the prosecutrix should be given due credence and weightage as in all the rape cases the prosecutrix suffer a great stress, trauma, humiliation and due to this factor alone many cases of rape are not even reported by the victims. However, at the same time, it cannot be denied that false allegation of rape can cause equal damage,

humiliation, embarrassment, harassment, disgrace and agony to the accused as well.

Although such cases of false implication in offences especially like rape are rare but they are not uncommon.

In Radhu vs. State of Madhya Pradesh 2007 CrI. L.J 4704,

Hon^{ble} the Supreme Court has observed as under:-

"The Courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

In Tameezuddin @ Tammu vs. State of (NCT) of Delhi

(2009) 15 SCC 566 Hon'ble the Supreme Court held as under:

"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable."

In the present case, the appellant had contracted second marriage and the maternal grandmother of the victim had an axe to grind against the appellant, as he had refused to transfer the property in the name of the prosecutrix. The statement of the prosecutrix does not inspire

confidence. She had left the house of her father on 1.12.2012 and reported the matter to her maternal grandmother in August, 2013, when she suffered severe abdominal pain. Had she been abused by her father, there was no occasion for her to remain mum for 8 months, when the victim had come to her maternal grandmother's house and there was no so-called pressure upon her. DW3 Jaspreet Singh, brother of the victim in his deposition stated that the victim had never complained of committing rape or any type of misconduct by the appellant. Rather he deposed that her maternal grandmother did not like the bringing up of Gurinder by his father (appellant) alongwith Manju.

The facts and the circumstances of the case make it amply clear that the maternal grandmother of the prosecutrix was nursing a grudge against the appellant as after remarriage, he had refused to transfer the property in the name of the prosecutrix. The trauma of a man being falsely accused of raping his own flesh and blood is unspeakable and unfathomable. In overall perspective, cases like these are diluting the authenticity of genuine cases obligating the Courts to view every testimony of rape survivor with suspicion rather than a gospel truth and nevertheless it is nothing but a monumental blow to the larger movement of society against the offence of rape.

Taking an overall view of the aforesaid facts of the present case, the judicial conscience of the Court impels us to disbelieve and disagree with the finding of the learned trial Court holding the appellant guilty of committing rape upon his daughter. The evidence produced by the

prosecution and even the medical evidence do not lead us to believe that the appellant had committed rape upon his daughter.

In view of the above discussion, the present appeal is allowed. The impugned judgment/order of conviction and sentence are set aside and the accused-appellant is hereby acquitted of the charge framed against him. His bail bonds stand discharged.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

6.3.2020
gsv

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No