

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

216

(PROCEEDINGS THROUGH V.C.)

CRM-A-527-2019

Date of Decision: March 8th, 2022

AMANJOT KAUR

...APPELLANT

Versus

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Ashok Paul Batra, Advocate
for the appellant.**

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred challenging the judgment dated 15.11.2018 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib acquitting respondent No. 2, an accused in FIR No. 71 dated 30.05.2017 under Sections 376, 354-A, 354-B, 354-C, 323, 506 read with Section 34 IPC, Police Station Kabarwala, District Sri Muktsar Sahib.

2. Prosecutrix got recorded her statement to a Lady Constable Jindo Rani on 29.05.2017 stating therein that 5-6 months ago, she had a talk with respondent No. 2-Rajvinder Singh on telephone. They became friends and he promised to marry her. On 28/29.05.2017, on the pretext of marrying her, he took her in a car to Chandigarh for solemnizing the marriage. During the journey, he made an effort to have physical relations with her without her consent. She opposed the same and thereafter,

Rajvinder Singh pushed her out of the car and refused to marry her. Prosecutrix had come back her home in a bus where she narrated this incident to her father who accompanied her for making the above statement.

3. FIR under Section 354-A, 354-B and 354-C IPC was registered against Rajvinder Singh-respondent No. 2. After the medical examination of the prosecutrix, offence under Section 376 IPC was added. A supplementary statement was recorded of the prosecutrix where she alleged that she came to know Rajvinder Singh-respondent No. 2 through Facebook. Thereafter, they started talking to each other after exchange of their phone numbers leading to the promise of marriage by respondent No. 2.

4. In the night of 28.05.2017, respondent No. 2 along with his brother and his sister-in-law came to her house and took her in an Alto car to Village Bodiwala where his brother and sister-in-law got down from the car. Respondent No. 2 took her near the village and raped her against her wishes. At 9 A.M., he left her near the house of one Sukhchain Singh and refused to marry her. Sukhchain Singh threatened her not to disclose the incident to anyone. From there, her parents and police got her recovered and admitted her to Primary Health Centre, Alamwala. This led to the addition of Sections 323/506/34 IPC. Statement of the prosecutrix was also recorded under Section 164 Cr. P.C. Respondent No. 2 was arrested and his medical examination was got conducted. On completion of the investigation, challan against respondent No. 2 alone was presented.

Respondent No. 2 was charge-sheeted for the commission of offence punishable under Sections 376, 354-A, 354-B, and 506 IPC, to which he pleaded not guilty and claimed trial.

Prosecution, to prove the charge against respondent No. 2,

examined as many as 11 witnesses including the prosecutrix and the doctors who medico-legally examined the prosecutrix and the accused-respondent No. 2.

While recording the statement of accused-respondent No. 2, he denied all the allegations in toto, rather claimed that the prosecutrix, in connivance with some other male person, tried to implicate him falsely. He, however, led no evidence in his defence.

5. Learned trial Court, after hearing both sides and appreciating the evidence led by the prosecution and records of the case, found the case of the prosecution to be false and giving benefit of doubt acquitted the accused-respondent No. 2 from the charges levelled against him, vide judgment dated 15.11.2018.

6. The complainant and the prosecutrix has filed the present proceedings against acquittal of respondent No. 2.

7. Learned counsel for the appellant has submitted that the learned trial Court has failed to appreciate the evidence in the right perspective especially the direct evidence produced against respondent No. 2. His submission is that the statement of the prosecutrix, when supported by the medical evidence, should have been relied upon to hold respondent No. 2 guilty. The statement, which was recorded under Section 164 Cr.P.C. before the Magistrate, was soon after the incident and, therefore, the same should have been relied upon instead of finding fault in the said statement by saying that it has not been stated therein that the police authorities had taken her signatures on blank papers on 29.05.2017 when the said fact was not required to be so recorded. The Court below has laid great emphasis upon the DNA report without taking into consideration the fact that the

human semen was found on the clothes of the prosecutrix.

8. It is the further submission of the counsel for the appellant that the statement of a prosecutrix of a sex offence cannot be put at a par with an accomplice. She, in fact, being a victim has to be accepted as a competent witness and should carry same weight as an injured witness in a case of physical violence. When the prosecutrix has supported the case of the prosecution, which is corroborated by medical evidence, there was no question of giving benefit of doubt to respondent No. 2. It is asserted by the counsel for the applicant-appellant that minor discrepancies, benefit of which has been given to respondent No. 2 by the trial Court, were not of such a nature which would cast doubt upon the veracity of the statement of the prosecutrix. It needs to be taken note of that over a period of time, with the memory fading, there is every possibility of minor omission(s) occurring in the statement of the witnesses and, therefore, the prosecutrix cannot be an exception thereto. He, on this basis, submits that the leave to appeal may be granted and respondent No. 2 be summoned.

9. We have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the judgment passed by the trial Court but are not able to accept the said assertions as the trial Court has properly appreciated the evidence, which has been led by the prosecution, as also the other aspects which are relevant for consideration with regard to the appreciation of the statements of the witnesses as also the medical evidence including the statement of the prosecutrix.

10. One of the aspects, which has been taken into consideration by the trial Court, is that there are three versions which have been put forth by

the prosecutrix from time to time, which point towards not only the inconsistency but an effort being made to materially making improvement in the case, obviously, on consideration and deliberation.

The first statement recorded of the prosecutrix is of dated 29.05.2017 (Ex.PW3/A), which was recorded by the Lady Constable Jindo Rani. Although the prosecutrix has disowned her own statement, which was got recorded by her to the police at the first instance which led to the registration of the FIR, on the ground that the police authorities had taken her signatures on blank papers but the said aspect, when seen in the context of the statement of Lady Constable Jindo Rani, PW-3, as also the statement of Investigating Officer ASI Gurmeet Singh, PW-11, it points to the contrary. She has, in her cross-examination, admitted that she has not signed on blank documents in her life and also admitted that she had not made any complaint to the SSP stating that her signatures have been taken on blank papers by the police officials. She even did not move any application/complaint to any authority that her signatures were obtained on blank papers by the police.

11. The offence of rape was added only after the medical examination of the prosecutrix and then a supplementary statement was recorded where the allegation of rape was made against respondent No. 2. This supplementary statement Ex. PW8/A, where first time reference of Facebook and his promise to marry the prosecutrix and she accompanied respondent No. 2 along with his brother and sister-in-law who took her to Village Bodiwala where the other two had alighted and respondent No. 2 had committed rape on her seems to be afterthought.

12. As regards connecting respondent No. 2 with the commission

of offence is concerned, it is alleged by the prosecutrix that they came to know each other through Facebook and thereafter, became friends and exchanged their telephone numbers but there is no evidence brought on record by the prosecution indicating any connection or any chats on the Facebook of the prosecutrix and respondent No. 2. Even there are no call details which would indicate any interaction or talks between the prosecutrix and respondent No. 2. This creates a doubt in connecting the very basis of prosecutrix knowing and being intimate with respondent No. 2.

13. It would not be out of way to mention here that she had reached her home in the afternoon whereas her first statement i.e. Ex.PW3/A had been recorded on 29.05.2017 at 11.50 P.M. i.e. after about 24 hours of alleged occurrence as the date of occurrence is said to have taken place during the night of 28/29.05.2017.

14. The case of the prosecution is that the prosecutrix was taken in a black colour car by the accused accompanied by his brother and sister-in-law. Neither any such car has been recovered nor have any papers of ownership of such car produced by the prosecution, what to say of showing any connection of respondent No. 2 or anyone else with any car which is alleged to have been used in the commission of the offence, which was a material evidence. The prosecutrix was also, admittedly, not recovered from the accused.

15. That apart, the factum that the prosecutrix had left her house on her own wish is not disputed and the Investigating Officer ASI Gurmeet Singh, PW-11, had, in his cross-examination, deposed that Neela Singh, who was a Chowkidar in the Main Chowk, Panniwala, had got recorded his

statement before him that he had seen the prosecutrix in the night of 28.05.2017 at 11 P.M. alone going towards Sri Muktsar Sahib road. All this belies the version of the prosecutrix that she was taken from outside her house in a car by respondent No. 2 accompanied by his brother and sister-in-law.

16. Now looking at the medical evidence, which has come on record, where the doctor says that there were no external injuries found on the person of the prosecutrix although the hymen was torn. There is no connection which is forthcoming on the file which would show that the accused had an occasion to come close to the prosecutrix or that they had any link between them. The incriminating evidence, if any, would have been the samples of the semen found on the clothes of the prosecutrix and the swabs which have been taken by the doctor.

It is an admitted position that the DNA examination of both the prosecutrix and the accused was conducted and the report is Ex. PW6/G is proved on file. According to the said report, the human semen was detected in Exhibits 'A-6', 'A-7' and 'C-1' i.e. Swabs from stain on salwar, smeared slide from stain on salwar and salwar. It has been concluded that DNA profile of male fraction from 'A-6', 'A-7' and 'C-1' does not belong to respondent No. 2-Rajvinder Singh whereas human semen and male DNA was not detected in vaginal swabs, kameez and dupatta. This rules out commission of rape upon the prosecutrix by accused respondent No. 2. This we state, despite the fact that the hymen of the prosecutrix has been found to have been ruptured in the light of the fact that the human semen found in Exhibits 'A-6', 'A-7' and 'C-1' does not belong to respondent No. 2.

It requires to be noted here that in the evidence of Dr. Sanjna

Saholi, PW-6, she has mentioned that the prosecutrix had stated that after the incident, the prosecutrix had neither changed her clothes nor had taken bath. In the cross-examination as well, this witness has stated that the name of the person, who is alleged to have committed rape on her, was not disclosed by the prosecutrix.

17. We, therefore, do not find any ground to interfere with the findings recorded in the judgment dated 15.11.2018 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib and it is held that the prosecution has miserably failed to prove its case against respondent No. 2 and he was rightly acquitted of the charges framed against him giving benefit of doubt by the trial Court.

18. In view of the above detailed discussion, the present application is dismissed declining the leave to appeal.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 8th, 2022
pj

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No