

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA-S-1603-SB-2003

Reserved on: August 23, 2022

Date of Decision: September 01, 2022

Devender

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Shaveta Sanghi, Advocate,
for the appellant.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

Vivek Puri, J.

The appeal has been preferred against the judgment of conviction dated 06.08.2003 vide which the appellant has been convicted under Section 376 of the Indian Penal Code (for short 'IPC') and order of sentence dated 09.08.2003 vide which he has been sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 3000/- in default thereof, to further undergo rigorous imprisonment for a period of 2 years. It has been further directed that the period of detention, if any undergone by the appellant, shall be set off according to law.

The prosecution has put-forth a case to the effect that on 27.10.2000, the prosecutrix has lodged a report with

the police to the effect that her marriage was solemnized about 11/12 years ago and is having three children. She is aged about 30 years and her husband had died about three years ago. On 24.10.2000, Murti co-accused came to her house in the morning hours and asked her to accompany to the fields of Chatru for plucking ladyfingers. The prosecutrix accompanied Murti co-accused to the fields for the purpose of doing the labour work. The prosecutrix along with Murti co-accused, Devender appellant and wife of one Gabdu, had plucked the ladyfingers. The wife of Gabdhu went back. In the afternoon at about 5.30 p.m., the prosecutrix told Murti co-accused that it was getting late and she expressed her desire to go back to her house. However, Murti co-accused asked her to accompany as a bundle of Maize crop was to be cut. Meanwhile, the appellant also arrived there. Murti co-accused asked the prosecutrix to bring the leaves of sugarcane for the purpose of tying the bundle. While the prosecutrix was picking the leaves, the appellant caught hold her by neck from behind and took her to the Maize crop field of Sanjay. The prosecutrix cried and asked Murti co-accused to save her, but she signalled to the appellant and sat on the 'DOL'. The prosecutrix kept on crying and the appellant threw her on the ground, removed her salwar and underwear and committed rape upon her. The appellant

slipped away after leaving the prosecutrix at the spot. Murti co-accused lifted her, advised her to go to her home and not to mind the act. No other person was present in the fields when the occurrence took place. When the prosecutrix returned back to her house, she suffered from fever. On the following day, she narrated the incident to Sunita. Thereafter, the prosecutrix came to inform her mother with regard to the occurrence and subsequently, the prosecutrix along with her mother and uncle in-law came to the police station and lodged the report with regard to the commission of crime.

On completion of the investigation, the challan was presented against the appellant and Murti co-accused. After complying with the provisions of Section 207 of the Code of Criminal Procedure (for short `Cr.P.C.`), the case was committed to the Court of Sessions by the learned Sub Divisional Judicial Magistrate, Gohana, in terms of order dated 05.02.2001.

A prima facie case under Section 376 IPC was made out against the appellant and he along with co-accused Murti were also charged under Section 120-B IPC.

In support of its allegations, the prosecution has examined 11 witnesses. The statement of the appellant as well as Murti co-accused under Section 313 Cr.P.C. has

been recorded. The appellant has examined three witnesses in defence evidence.

The learned trial Court had acquitted Murti co-accused. However, the appellant has been convicted and sentenced as aforesaid.

Aggrieved by the judgment of conviction and order of sentence, the appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the record.

Precisely, the allegations against the appellant are to the effect that on 24.10.2000 at about 6 p.m. he had committed rape upon the prosecutrix. The prosecutrix has stepped into witness box as PW-9. As per her version, on 25.10.2000, she had visited the house of Sunita PW-6 and narrated the occurrence to her. Thereafter, the prosecutrix came to her mother Bedo PW-10, narrated the incident to her and along with the mother and uncle in-law reported the matter to the police. Satbir Singh PW-1 is working as halqa patwari and he had prepared the site plan Ex.PA. Constable Karambir Singh, PW-2, had accompanied ASI Narain Singh to the Civil Hospital for medico legal examination of the prosecutrix. After the medico legal examination, the doctor had handed over the sealed parcel containing underwear, sample seal and one sealed envelope to ASI Narain Singh, in

his presence, which were taken into possession vide memo Ex.PB. Thereafter, on 30.10.2000, MHC Sukhbir Singh, PW-5 had handed over two separate parcels containing underwear of the prosecutrix and the appellant and the same were deposited with the Forensic Science Laboratory, Madhuban. The arrest of the appellant was effected in the presence of Head Constable Azad Singh, PW-3 and he was taken to the Civil Hospital, Gohana for medico legal examination. Thereafter, the sealed parcel containing the underwear of the appellant was taken into possession vide recovery memo Ex.PC in his presence. ASI Ram Parkash, PW-4 had conducted the part investigation of the case. Head Constable Sukhbir Singh, PW-5, was working as MHC and he had retained the property in the Malkhana. Dr. S.S. Gupta, PW-7, had medico legally examined the appellant on 28.10.2000 and as per his opinion, there was nothing to suggest that the appellant was not capable of performing an act of sexual coitus. Dr. Purnima Ahuja, PW8 had medico legally examined the prosecutrix and Ex.PG is the copy of the MLR. ASI Narain Singh, PW11 is the Investigating Officer.

In his statement recorded under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him. The defence

version put forth by the appellant is to the effect that he had given a sum of Rs. 1,00,000/- to Chatru on 23.05.2000 and on 08.08.2000, he had given another sum of Rs.50,000/- to him. The amount was withdrawn from the Bank account maintained in Punjab National Bank, Farmana. When, the appellant demanded the money back from Chatru, he falsely involved the appellant in the instant case through the prosecutrix who is her neighbour. The appellant is a married person having a wife and three minor children. He has pleaded false implication.

Murti co-accused also pleaded false implication and the defence version raised by her is to the effect that the prosecutrix was having illicit relations with Chatru. At one point of time, she had seen her with Chatru in a compromising situation. She had snubbed both of them and they felt annoyed on that score. Consequently, she has been falsely involved in this case along with the appellant.

The appellant has examined Man Singh, DW-1, who is working as Clerk-cum-Cashier in Punjab National Bank, Farmana, and he has proved the copy of the statement of account Ex.DA. Parkash DW-2, has testified with regard to the entry Ex.DB in the diary maintained by the appellant. Ishwar, DW-3, is an Ex-Sarpanch of the Village Jasrana. He has testified with regard to the illicit

relationship of the prosecutrix with Chatru and had also supported the defence version to the effect that Chatru had borrowed money from the appellant. On that score, there was a dispute and the appellant has been falsely implicated at the instance of Chatru as the prosecutrix had been working in his fields.

While assailing the judgment of the learned trial Court, the learned counsel for the appellant has argued that the occurrence took place on 24.10.2000 at about 6 p.m. However, the FIR has been lodged after a delay of 3 days on 27.10.2000. The solitary statement of the prosecutrix is not supported with any reliable material. There was no injury on the person of the prosecutrix and furthermore, no spermatozoa were detected as per the report of the FSL, Ex.PK. However, human semen has been detected on the underwear of the appellant, but the same cannot be termed to be circumstance to connect the appellant with the commission of crime. The arrest of the appellant was effected on 28.10.2000 and his underwear was taken at the time of his medical examination after 4 days of occurrence. It sounds improbable that the appellant would be wearing the same underwear which he was wearing at the time of occurrence after a lapse of 4 days. Sunita, PW-6, with whom the prosecutrix has allegedly deliberated after the

occurrence, has not supported the prosecution version. The uncle in-law of the prosecutrix has not been examined by the prosecution having been won over. The case of the prosecution cannot be termed to be free from reasonable doubt.

On the contrary, while supporting the judgment of the learned trial Court, the learned State counsel has argued that there is a categoric statement of the prosecutrix while appearing in the witness box attributing allegations of commission of rape against the appellant. There cannot be any bar to base the conviction on the solitary statement of the prosecutrix. The prosecutrix was medico legally examined by Dr. Purnima, PW-8. She has deposed to the effect that there was no mark of external injury seen on the body except few scabbed abrasions over the right wrist (breast as per MLR) and supra pubic region. It has also been opined that the duration of such injury was within 48 to 96 hours and as such, it co-relates with the point of time when occurrence took place. The delay in the instant case cannot be termed to be fatal in any manner. The prosecutrix is a rustic villager and remained in trauma and was running fever after the occurrence. After deliberating with her mother, the matter was reported to the police. The report of FSL was negative qua the prosecutrix as her medico legal

examination has been conducted after a period of three days. The defence version put forth by the appellant does not sound to be probable, particularly because, the entries in the bank record only indicate withdrawal of the amount. Although the appellant has sought to rely upon the entries in the diary depicting the receipt of the amount by Chatru, but there is nothing to suggest that the appellant made any effort or sought legal recourse for recovery of the same. It is unnatural that the prosecutrix would have falsely implicated the appellant at the instance of Chatru, who is not related to her in any manner. Even there is nothing to suggest with regard to the illicit relationship of the prosecutrix with Chatru. There is no material to indicate that the prosecutrix was having any affinity with Chatru, which might have prompted her to falsely implicate the appellant.

The occurrence took place on 24.10.2000 and the FIR has been lodged on 27.10.2000 after a delay of three days. Generally, the FIR is expected to be lodged with due promptitude. However, mere delay in lodging the FIR cannot be the sole circumstance to discard the version of the prosecution, in the event, the material on record indicates satisfactory explanation for the delay.

In the instant case, the prosecutrix is a rustic villager. She is a widow and her husband had died three

years ago. The prosecutrix has sought to put forth a case to the effect that the occurrence took place at about 6 p.m on 24.10.2000 and she returned back to the house. She was running fever and on 25.10.2000, she narrated the incident to Sunita PW-6 and thereafter went to her parental house to narrate the incident to mother. Significantly, Sunita PW-6 has not supported the prosecution version. It has been categorically stated by her that she does not know anything about the case and the prosecutrix never came in contact with her in connection with the instant case. It has been further deposed that the prosecutrix never stated anything to her. Although, the mother of the prosecutrix, who has stepped into the witness box as PW-10 has deposed to the effect that on 25.10.2000, the prosecutrix came to her village and narrated the incident, but it may be mentioned here that even thereafter, no action was initiated on 26.10.2000 and the matter was reported to 27.10.2000. The prosecutrix has also sought to built up a case to the effect that on the day of occurrence, when she returned back to her house, she was running fever. Even no medical record in this regard has been placed on record. It is significant to note that on account of delay of three days in reporting the matter to the police, there was consequential delay in her medical examination. Even the medical examination of the

prosecutrix was conducted on 27.10.2000 i.e. three days after the occurrence. The report of FSL (Ex.PK) indicates that no semen was found on the undergarment of the prosecutrix and the vaginal swabs.

The requirement of prompt FIR is not only to get the correct and true version with regard to the occurrence without any distortion, fabrication, improvement, embellishment etc. but also to ensure that vital evidence is not lost in the intervening period.

In the instant case, no semen has been found on the undergarment and vaginal swabs, which also tend to raise doubt with regard to the genuineness of the prosecution. Although, the some minor injuries have been found on the person of the prosecutrix, but significantly the prosecutrix has deposed nothing with regard to the injuries having been suffered in the occurrence. Consequently, the injuries on the person of the prosecutrix as observed at the time of her medical examination cannot be concluded to be co-related and having been suffered at the time of occurrence.

The arrest of the appellant has been effected on 28.10.2000 i.e. after four days of occurrence. On that very day, he was medico legally examined and his underwear was taken into possession. The report of the FSL indicates that

the semen was found on the underwear of the appellant. It sounds improbable and unnatural that the appellant would be wearing the same underwear, which he was wearing at the time of occurrence even after a lapse of four days. Consequently, the detection of semen on the underwear of the appellant cannot be termed to be significant factor to connect him with the commission of crime as per the story put forth by the prosecution.

Although, the prosecutrix while appearing in the witness box has deposed with regard to the allegations against the appellant, but it has to be seen as to whether her statement inspires confidence in the facts and circumstances of the instant case. There is no rule of law that the testimony of the prosecutrix cannot be acted upon unless the same is corroborated in the material particulars. Even the conviction can be based upon the sole testimony of the prosecutrix, if it is implicitly reliable and there is ring of truth in it.

The evaluation of the statement of the prosecutrix is indicative of the fact that the appellant was not seen or identified by her at the time of occurrence on account of darkness. During the course of cross-examination of the prosecutrix, it is emerging that the appellant was not known to her prior to the incident. Although it has been stated that

she saw the appellant for the first time on the date of incident, but it is also emerging in her statement that she could not recognize him when he was committing rape upon her. The co-accused Murti, who was present at the spot had informed the prosecutrix about the identity of the appellant as Devender. In such circumstances, a doubt is also raised with regard to the involvement of the appellant in the commission of crime, as the prosecutrix could not identify him at the time of occurrence and the information with regard to the identity has been derived from Murti co-accused.

The appellant has sought to built up a defence version to the effect that Chatru had borrowed some amount from him and at his instance, the prosecutrix has falsely implicated the appellant. Although, the bank record indicates the withdrawal of amount in cash by the appellant. Even on the assumption that Chatru has raised some loan and borrowed the amount from the appellant, there is nothing to suggest that appellant made any attempt to enforce the recovery against him at any point of time. There is lack of material to indicate that the prosecutrix was having any affinity with Chatru and at his instance, she could have falsely implicated the appellant. At the same time, it has to be borne in mind that the improbability or

weakness of the defence version, will not relieve the prosecution of its onerous duty to prove and establish the allegations against the appellant beyond the shadow of reasonable doubt.

On evaluating the entire material on record, it appears that there is a delay of 3 days in lodging the FIR. Consequently, the vital evidence appears to have been lost. The prosecutrix has sought to put-forth a case to the effect that initially deliberated the matter with Sunita PW6 and thereafter with her mother. Sunita, PW-6, has not supported the prosecution version. Even the information with regard to the occurrence was shared with her mother by the prosecutrix on the following day of occurrence, but there is nothing to suggest that as to what prevented them in reporting the matter for another 48 hours. In the circumstances of the case, the possibility cannot be ruled out that the intervening period might have been utilized for concocting a false version against the appellant. Even no semen has been detected from the undergarments of the prosecutrix and the vaginal swabs, which also tends to raise doubt with respect to the genuineness of the prosecution version. The superficial injuries as observed at the time of medical examination are not co-related with the occurrence as the prosecution has neither set up any such case nor the

prosecutrix has stated that she has suffered any injuries in the occurrence. Even the appellant could not be identified by the prosecutrix at the time of occurrence and has derived the information with regard to the identity of the appellant from the co-accused Murti, who has since been acquitted. In such circumstances, the sole testimony of the prosecutrix cannot be acted upon and termed to be reliable to base the conviction of the appellant.

On evaluating the entire material on record, the case of the prosecution cannot be termed to be free from reasonable doubt and the appellant is held entitled to the benefit of doubt.

For the aforesaid reasons, the judgment of conviction and order of sentence of the appellant are unsustainable and are set aside. The appellant stands acquitted.

Instant appeal is, accordingly, allowed.

Spetember 01, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes