

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

...

**Crl. A. No. D-291-DB of 2013
Date of Decision: 17.05.2022**

Ramesh Kumar

...Appellant

VS.

State of Punjab

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Charanpuneet Singh, Amicus Curiae, for the appellant

Mr. H.S. Grewal, Addl.A.G, Punjab

Ritu Bahri, J.

Appellant-Ramesh Kumar, was put on trial for the offence punishable under Section 376 of the Indian Penal Code (for short 'the Code') for committing rape upon prosecutrix. He was convicted and sentenced by the Additional Sessions Judge, Ludhiana on 19.02.2013 to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-. In default of payment of fine, the accused shall further undergo rigorous imprisonment for a period of six months. The accused-appellant was further directed to deposit compensation of Rs.50,000/- to be paid to the prosecutrix. Hence the present appeal.

As per the case of the prosecution, on 28.5.2012 SI Jagjit Singh alongwith other police officials was present at Canal Bridge, BRS Nagar on private vehicle in connection with patrolling duty where prosecutrix (name withheld) alongwith Mahesh Kumar came present and prosecutrix got recorded her statement before SI Jagjit Singh to the effect

that she is resident of village Lohari, P.S. Gauri Ganj, District Sultanpur, U.P. at present 140H, Sarabha Nagar, Ludhiana. They are two sisters and one brother. Her brother Ramesh Kumar is residing in one room in plot No.140H, Sarabha Nagar alongwith his wife and children. He is doing gardening in the kothies. She had come to visit her brother Ramesh Kumar (resident of St. No.6.1/2 Chet Singh Nagar, Ludhiana), 15 days ago. Her sister-in-law (Bhabi) alongwith her children had gone to visit her brother-in-law Mahesh Kumar on 27.5.2012. She further got recorded in her statement that in a room in plot No.140-H, Sarabha Nagar, she was present alongwith her brother Ramesh Kumar, at about 11 PM her brother Ramesh Kumar threw her on a single bed. He told her to press his head as he was having headache. While she was pressing his head, appellant Ramesh Kumar took off her clothes and started caressing her private parts. She told him to stop but appellant forcibly put his organ in her private part. She raised hue and cry. Thereafter, she went outside and rang the bell of nearby kothi No.141-H. The owner of the said kothi namely Gurinderpal Singh came out. The other neighbourers also came out. She disclosed about the whole occurrence to them. They went inside the room where occurrence took place, however, appellant sped away from the said room. She disclosed the matter to her sister-in-law (Bhabi) Pushpa and her brother-in-law (Jija) Mahesh Kumar and went to inform the police alongwith Mahesh Kumar. Police met her on the way where she got recorded the above said statement (Ex PA). Statement was read over to her by the police, she signed the same after admitting the same as correct. Her statement was attested by SI Jagjit Singh. Ruqa was sent for registration of the case u/s 376 IPC. Initial investigation was conducted by SI Jagjit Singh who reached the spot and

after inspecting the spot prepared the site plan. Statements of the witnesses were recorded u/s 161 Cr.P.C. Medical examination of prosecutrix was conducted from Civil Hospital, Ludhiana. Statement of prosecutrix was recorded u/s 164 Cr.P.C. (Ex PB) by the learned Magistrate. Raids were conducted to apprehend the appellant. As a result, appellant was apprehended. On 29.5.2012, appellant was produced in the Court. Ultrasound examination of prosecutrix was also got conducted. After completion of necessary formalities challan was prepared and presented u/s 376 IPC.

On presentation of the challan before the learned Illaqa Magistrate, copies of the challan as well as other relevant documents were supplied to the appellant free of costs as envisaged u/s 207 Cr.P.C. and his statement was recorded to this effect.

After hearing learned A.P.P. for the State as well as learned defence counsel and scrutinizing the documents produced alongwith the report u/s 173 Cr.P.C., learned Illaqa Magistrate committed the case to the learned Sessions Judge, Ludhiana u/s 376 the Code .

Accused Ramesh Kumar was charge sheeted u/s 376 of the Code to which the appellant pleaded not guilty and claimed trial which necessitated the prosecution to examine witnesses. In all, the prosecution examined 09 witnesses.

Statement of appellant was recorded under Section 313 Cr.P.C. wherein all the incriminating circumstances appearing against the appellant were put to him. Appellant took up the defence that he is innocent and has committed no offence and has been falsely implicated in this case. However, appellant did not lead any evidence in his defence.

The Court below after going through the entire evidence led by the parties came to a conclusion that the following questions fall for determination in the present case:-

1. *Whether rape was committed upon the prosecutrix?*
2. *If so, whether it was accused who committed rape upon prosecutrix?*

To answer the questions, reference was made to three main witnesses i.e P.W.1-Prosecutrix, P.W.3 Dr. Milli Markan and P.W.9 Gurinder Pal Singh, neighbor of the appellant .

Firstly, reference was made to deposition of P.W.3 Milli Markan, who she conducted the medical examination of the prosecutrix on the next morning i.e 28.05.2012. She proved on record MLR as Ex.PW3/A, police request as Ex.PW3/B, letter to P.S. Sarabha Nagar as Ex.PW3/C, report of chemical examiner as Ex. PX. P.W.3 found hymen was absent and slight bleeding was present. Three vaginal swabs were taken for chemical examination. The report of chemical examiner EX.PX shows that spermatozoa were detected in the vaginal swabs. PW-3 has deposed in her examination in chief that possibility of rape cannot be ruled out. The above said findings of PW-3 Dr. Mili to the effect that hymen was absent and slight bleeding was still present and spermatozoa were detected on the vaginal swab lead to the inference that prosecutrix was subjected to sexual intercourse immediately prior to her examination as slight bleeding was present.

Thus it was proved on record that the rape was committed upon the prosecutrix. Now with respect to second question that whether it was appellant who committed rape upon upon prosecutrix, the prosecution has referred to testimony of examination of P.W.1-prosecutrix, who deposed

that while she was present in the room of her brother, she was asked by her brother i.e accused/appellant to press his head. He removed her clothes and then he removed his clothes and started caressing her lower part with his hand and committed rape upon her. She told him that he is her brother so he should not do such an act. She came out of the room and narrated the whole incident to nearby owner of the kothi. She got recorded her statement to the police (Ex PA) and the police took her to hospital for getting her medical examination done. Her statement (Ex PB) was also recorded by Magistrate the very next date. The prosecutrix was cross examined at length. She has replied in the cross examination as follows:-

“Accused did not do any wrong act with me. I do not know Punjabi language. I gave my statement to the police on 27.05.2012. I was accompanied by brother-in-law (Jija of my bhabhi). I narrated the incident to the police at Police Station. The statement recorded by the Police was not read over to me. Mahesh is my brother-in-law. He accompanied me to the police station. My bhabhi Pushpa did not accompany me to the Police Station. Police went along with me to the hospital for my examination. I was taken to the Civil Hospital for my medical examination. I used to come and stay with my brother on earlier occasion as well.”

With respect of the contention of the defence counsel that since prosecutrix has stated in the first line of the cross-examination that "accused did not do any wrong act with me, it cannot be said that appellant committed rape upon prosecutrix, it has been observed that the Court cannot loose sight of the fact that the appellant is none else but her real brother. It

is extremely unlikely that she would make false allegations of rape against her real brother. She would be the last person to falsely implicate her real brother in such a heinous crime. This is particularly so when there was no enmity between her and appellant who is her real brother. There was no reason for prosecutrix to rope appellant falsely in a case where she herself has to suffer mental agony throughout her life. Moreover, the testimony of prosecutrix is to be read as a whole. Merely on the basis of one stray-line in the examination that no wrong act has been done with her, no inference can be drawn that appellant has not committed rape upon her. This is particularly so when even the evidence suggests that prosecutrix was being raped. The only defence set up by appellant is that he has been falsely implicated in this case but not even a single suggestion has been put to prosecutrix regarding his false implication. There is no material in her cross examination to show or suggest that she has got any animosity or ill-will towards accused. Therefore, in the circumstances, it is not at all probable that she will try to falsely implicate his brother without any foundation or reasonable cause. No suggestion has been put to prosecutrix that she has been deposing falsely. Although the above said discrepancy has crept in the statement of prosecutrix but on other material aspects, her statement is consistent with her examination in chief. The prosecutrix being a rustic minor girl, such discrepancies are natural to occur in her statement for appellant.

Reference was then made to statement of PW-9 Gurinderpal Singh who is an independent witness and resides in the neighbouring house of appellant. He has categorically deposed that on 27.5.2012 at about 11 PM, he heard the door bell and on opening the main gate of his house he

saw prosecutrix standing there. She was looking perturbed. On asking, she disclosed that her sister-in-law had gone to her parental house. She was alone with her brother Ramesh Kumar. She narrated the incident that her brother Ramkesh Kumar committed rape upon her. On this, he called other neighbourers and went inside the room of appellant, however appellant ran away from the spot. This witness was cross-examined by learned defence counsel but learned defence counsel has failed to shake the veracity of this witness. He has corroborated the version of prosecutrix wherein she has stated that immediately after the occurrence, she went to his neighbourer and disclosed about the whole occurrence to him. The testimony corroborates the credibility of of PW-9 prosecutrix.

After going through the entire evidence on record, the Court below came to conclusion that it is not in dispute that the prosecutrix was real sister of the accused/appellant and it is unlikely that she will level false allegations of rape against her brother. There was no enmity between the prosecutrix and her real brother. No question was put to her that whether she was having any enmity with her brother. Further no question was put to her whether she was deposing falsely. Some minor discrepancies in her statement were bound to happen as she was minor girl. The prosecutrix was unable to correlate the word 'wrong act' with rape. The prosecutrix was never cross examined on the statement given by her before the Magistrate under Section 164 Cr.P.C. (Ex PB).

Learned counsel for the appellant has argued that there is no DNA report and reference was made to judgment of Hon'ble the Supreme Court in a case of *Hem Raj vs. State of Haryana* 2014 (2) SCC 395 wherein also the appellant was convicted under Section 376/450 IPC and

his appeal was allowed on the ground that the prosecution has failed to examine Dr. Anjali Shah, who had examined the prosecutrix. The MLR was produced in the Court by P.W.6 Jai Bhardwaj. The prosecution has failed to prove that the prosecutrix was raped by the appellant.

Reference has further been made to judgment of Hon'ble the Supreme Court of India in a case of ***Krishan Kumar Malik vs. State of Haryana***, 2011 (7) SCC 130 wherein accused were prosecuted for offences punishable under Sections 366/376(2)(g) of the Indian Penal Code. The appeal was allowed and the accused was acquitted of the charges framed against him, as the case of the prosecution was found to be highly doubtful. Further in the undergarments of the prosecutrix, male semen were found but these were not sent for analysis in the forensic laboratories which could have proved with regard to commission of offence by the appellant. This lacuna on the part of the prosecution proved to be fatal and goes in favour of the appellant.

Learned counsel for the appellant has further referred to case of ***Narender Kumar vs. State of (NCT of Delhi)***, 2012 (7) SCC 171 wherein the appellant filed an appeal as he was convicted under Section 376 IPC. The appeal was allowed by giving benefit of doubt and it was held that conviction cannot be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. Further it has been noticed that D.W.1 Chandan Singh who was examined by the appellant in defence has deposed that he knew prosecutrix and her husband being their neighbour. The prosecutrix was having intimacy with the appellant for the last 03 years.

The judgments cited by learned counsel for the appellant will not be applicable to the facts of the present case as in the facts of the present

case, PW-3 Dr. Mili was examined who stated that hymen was absent and slight bleeding was still present and spermatozoa were detected on the vaginal swab lead to the inference that prosecutrix was subjected to sexual intercourse immediately prior to her examination as slight bleeding was present. Thus, the appellant cannot be acquitted merely on the basis that there is no DNA report. The prosecutrix in the present case has consistently stated in her statement under Sections 161 and 164 Cr.P.C that the appellant had raped her. Further P.W.9-Gurinder Pal Singh (neighbor of the accused) also deposed that he was present in the house on the date of occurrence. At about 11 P.M, the door bell of his house rang. He opened the main gate and saw prosecutrix standing there. She was looking perturbed and on asking, she disclosed that her sister in law had gone to her parental house along with her children. She was alone in the house with her brother. Her brother committed rape upon her. On hearing this, he called other mohalla people and went inside the house of the prosecutrix. Accused ran away from the spot.

The statement of the prosecutrix as well as statement of P.W.9 makes it abundantly clear that it was the accused who committed rape upon her sister.

Learned counsel for the appellant, during the course of arguments, does not challenge the conviction on merits and restricts his prayer to reduce the sentence of the appellant to the period already undergone by him.

Learned counsel for the appellant, however, further contends that the occurrence in this case pertains to the year 2012 and a period of almost 10 years have already gone by. Appellant has already suffered the

agony of protracted trial, spinning over a period of time. The appellant is a first time offender and sole bread earner of the family.

As per custody certificate dated 15.03.2022, the appellant has already undergone total sentence of 11 year 04 months and 16 days including remissions. No other case is pending against him

Having examined the impugned judgment, no illegality, much less irregularity, has been found therein warranting interference by this Court. Accordingly, the judgment of conviction is upheld. However, a lenient view can be taken on the quantum of sentence of the appellant.

Accordingly, keeping in view the submissions made by the learned counsel for the appellant, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the appellant. Hence, the conviction of the appellant under Section 376 IPC is maintained. The appeal is dismissed on merits but the sentence qua the imprisonment of the appellant is reduced to the period already undergone by him.

With the above modification, the appeal stand disposed of.

(RITU BAHRI)
JUDGE

17.05.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No