

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

CRM-A-737-MA-2018
Date of decision: 05.08.2022

Nimmo Bai

....Appellant(s)

Versus

Gurdass @ Gattu and another

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Narveen Kaur, Advocate,
for Mr. Hakam Singh, Advocate,
for the appellant.

Ms. Divya Narula, Advocate,
for Mr. Ajay Kumar, Advocate,
for respondent No.1.

Ms. Palika Monga, DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present application has been filed under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 27.11.2017 passed by the Additional Sessions Judge, Sirsa wherein the benefit of doubt was given to the accused-respondent No.1 namely Gurdass @ Gattu for the charges which had been framed under Section 354-D, 451 and 376(1) IPC in FIR No. 317 dated 31.08.2016, P.S. Rania.

The Trial Court has noticed the manner in which the alleged incident took place which is stated to be on the 8th of August, 2016 whereas, the complaint was lodged on 31.08.2016 (Ex.P13) and, therefore, one has to keep in mind the delay which has taken place in lodging of the FIR which has resulted in the medical evidence as such not being readily available on account of the delay. Thus, the principles which have to be kept in mind are whether on the sole statement of the victim, the conviction

can be recorded and whether the statement as such is of sterling quality since it is settled principle that in rape cases, even the sole statement can be relied upon provided it has not as such varied or has major contradictions and faith can be reposed on the statement of the prosecutrix-victim. However, as noticed, the trial Court has also come to the conclusion that the benefit of doubt is to be awarded on account of the various contradictions.

The allegations are that the accused had jumped over the wall of the house of the victim and entered the home at 12.00 noon when she was alone. Her parents had gone out for their work and her brother had gone to the school. The father Beera Ram then had arrived at the spot and knocked the door. The accused opened the door and had run away when he was sought to be caught. It was in such circumstances that the matter came to light and the Panchayat was convened.

A perusal of the judgment as such would go on to show that PW7-Beera Ram, the father had stated that the door of the room was bolted from inside and he had seen that the accused was committing rape on his daughter and when he had knocked the door, the accused opened the door, pushed him and fled away. The delay is sought to be covered up on account of the fact that the matter had been sent to the Panchayat. However, no dates and time of requesting the convening of the Panchayat have been given in the complaint (Ex.P13). The Sarpanch as such PW-13 Paramjit Singh had also been declared hostile and only had stated that there was a dispute *inter se* the father of the victim and the accused and they had gone to the police station and he tried to pacify both the parties but no compromise could be effected. The initial application dated 24.08.2016 (Ex.D1) was also put to the victim wherein the allegations were that the

accused had attempted to commit rape upon her and tore her clothes. When she shouted her father came back to the house and the accused had started quarreling with her father and he had succeeded in escaping from there. A similar variation also was found in the statement of the father Beera Ram wherein in Mark-D2, he had stated that on 08.08.2016 when he had come to the house, he had seen the accused standing in the bathroom of his house. When he was asked what he was doing there, her daughter had come out of the bathroom and had gone inside. It is in variation to what he stated as such regarding seeing the incident of rape. The trial Court has also noticed that the mother Chhindo, who is stated to have given an application in the police station, had also not been examined by the prosecution or the complainant. It is in such circumstances, the benefit of doubt has been granted regarding house trespass, allegations of rape and stalking etc.

The factum of the ages of both the victim-appellant and of the accused have also to be kept in mind as the victim was not a minor as such and was around 19 years of age whereas, the accused was 21 years of age. Apparently, they belong to the same village and there was no such averment or allegation proved regarding the fact that there was an earlier occasion as such where the accused was stalking the victim. Apparently, it seems to be a case of consent which was discovered when the father came back and thereafter in order to save the honour of the family, the FIR was lodged and criminal prosecution initiated.

The delay as such would also lead to the benefit of doubt to flow in favour of the accused as it is settled principle that delay has to be suitably explained and in the present case, as noticed, there is 23 days delay in lodging of the FIR, which has led to the absence of medical

evidence that would have come on record if the medical examination had been conducted there and then, which would have shown whether there were any signs of violence upon the victim and whether any force was used upon her body which would have showed up in the medical.

In such circumstances, we are of the considered opinion that it would be very unsafe as such to record a conviction on the basis of the sole statement of the victim. Even in the FSL report, nothing has come that there was semen as such present on the clothes of the complainant and, therefore, the trial Court was well justified to come to the conclusion that the story of the prosecution was not supported by medical evidence or scientific evidence and, therefore, has given the benefit of doubt. The judgment as such does not seem to be suffering from any vice of perversity, which would give any reason to reopen the double presumption of innocence which has now come in favour of the respondent after acquittal, as per the settled principle of law. The trial Court has examined the statement of the witnesses in detail and there is no perversity which could be pointed out from the judgment that would warrant interference by this Court.

Accordingly, keeping in view the above, we are of the considered opinion that no case is made out for grant of leave to appeal in the present facts and circumstances and the present application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

05.08.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No