

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

CRA-D-1164-DB-2015
Reserved on: 27.01.2022
Date of decision: 03.02.2023

SUNITA

...Appellant

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Varun Sharma, Advocate for
Mr. Satbir Rathore, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the aggrieved against the verdict of acquittal, as made on 29.05.2015, by the learned Additional Sessions Judge, Gurgaon, upon Sessions Case No.206/2014.

FACTUAL BACKGROUND

2. The facts relevant for a decision being made, upon the instant appeal are that mother of the prosecutrix filed two complaints one to the Station House Officer, Police Station Farrukh Nagar, and, the other to Commissioner of Police, regarding kidnapping, rape and threatenings being meted to kill her daughter rather by the accused.

3. The crux of these complaints, is that, the daughter of the complainant was kidnapped by Sita Ram-accused, who was living in the Mandir of village Jat Shahpur P.S. Pataudi, District Gurgaon. On 10.08.2014, he had

taken away her daughter by inducement to Mathura, Vrindaban and Banke Bihari in UP without the consent of their family. On 25.08.2014, he had dropped her daughter at Sultanpur stand near the house. The accused had raped his daughter in the temple of village Jatshahpur in his own room constructed in the temple on the bed for twice from 10.08.2014 to 25.08.2014. His daughter was not known to the definite day of rape. She was raped on the point of gun. It was so got written by her under misconception but later on she had verified from his daughter that Sita Ram was not having any gun. A legal action be taken against accused Sita Ram.

4. As per the complaint addressed to the Commissioner of Police, Gurgaon on 19.09.2014, mother of the prosecutrix stated that her daughter had gone to the mandir on 10.08.2014. The Pujari Sita Ram had gone to someone's house. He took her daughter to Bhawani Enclave by bike where he went away by dropping her daughter with some relative. He called her daughter near Balaji Medical store in the morning and took her daughter to Mathura Vrindaban for prikarma and he had left her at Baldev Nagar from where he took her in Inchhaa Puri Mandir where he had raped her and dropped her at Baldev Nagar. Her daughter had informed the same to a lady namely Kiran who told her that she would keep mum because he was doing the same with her. If she disclosed to anybody, he would kill them. On 24.08.2014, the accused dropped her daughter at about 4.00 P.M., in the evening in a white coloured car and threatened her that she would not say anything to anybody. Thereafter, he took away her daughter and dropped her at Bus Stand by confining her for three days. He continued to rape her daughter on the point of gun and gave threatening that she would not disclose the incident to anybody and if she did so, he would kill her family. She went to Police Station Farrukh Nagar. Then the police of Farrukh Nagar did not

lodge the complaint rather she was turned away by them by threatening. The accused had taken his daughter and had been ravishing her on the point of gun and threatened that in case, the matter was disclosed to anybody, he would kill her daughter and her family.

INVESTIGATION

5. On the basis of this complaint, case First Information Report, to which Ex.PR is assigned, was lodged. Investigation was started. Sub Inspector Parmila Devi stated that she was called in the Police Station Farrukh Nagar on 19.09.2014 and upon the application written by Sunita Kumari, she lodged the First Information Report. She got the prosecutrix medico legally examined from the doctor. She also got recorded the statement of prosecutrix from the learned Judicial Magistrate Ist Class, Pataudi. On 20.09.2014, Assistant Sub Inspector Pawan Kumar arrested the accused from Jatshahpur Mandir in Pataudi area. Accused got the place of occurrence demarcated as per his disclosure statement and also got recovered one motorcycle and a bed sheet was also taken into police possession from the room in Mandir. He had got the accused medico legally examined from CHC, Farrukh Nagar. He prepared rough site plan. He took into possession school certificate of the prosecutrix. He also got prepared scaled site plan from HC Girish Kumar, Draftsman. Assistant Sub Inspector Hari Chand remained associated with Assistant Sub Inspector Pawan Kumar. On completion of investigation, the accused was challaned to face trial for the alleged crime and was charge-sheeted for the offences as aforesaid by the procedure of learned trial Court consequent upon committal of the case.

COMMITTAL PROCEEDINGS

6. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 27.11.2014, the learned Judicial

Magistrate Ist Class, Pataudi, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel for the appellant has contended before this Court, that the appreciation of evidence as made by the learned trial Judge concerned, is tainted with a vice of gross mis-appreciation, and non-appreciation of evidence, therefore, he has argued that the impugned verdict of acquittal be quashed, and, set aside.

9. He further submits since a perusal of the School Admission Register of the prosecutrix, as, carried in Ex.PD reveals that she was a minor, at the relevant time. Therefore, she was incapacitated to make any valid consent to the accused, to subject her to sexual intercourse. Thus, he submits that evidence, if any, of the prosecutrix being a consensual partner in the sexual intercourse, if any, which occurred amongst her, and, the accused, rather is completely inconsequential.

10. That even if report of the FSL, as embodied in Ex.PY, makes a conclusion, that there is no compatibility *inter-se* sent thereto semen hence for analyses thereof rather with the DNA profile of Sita Ram @ Nar Singh. However, yet since the accused in his signed disclosure statement carried in Ex.PJ, has confessed his committing the crime event, and, also thereafter did

cause the recovery of the incriminatory items/offending motorcycle, as become disclosed in Ex.PL, to Ex.PO, to the investigating officer concerned, through the drawings of the respectively made recovery memos. Thus, the above confession of guilt, when but led to the makings of recoveries, in pursuance thereof, thus they did make the charge(s) to become well rested thereons. Therefore, he contends that the verdict of acquittal is not well merited and is required to be interfered with.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

11. On the other hand, the learned State counsel has argued that the impugned verdict of acquittal, as has been challenged before this Court, is well merited, as it is based upon a sound appreciation of evidence as became adduced by the prosecution before the learned trial Judge concerned, thus, it does not require any interference being made by this Court.

REASONS FOR REJECTING THE ABOVE SUBMISSIONS

12. For the reasons to be assigned hereinafter this Court does not find any merit in the instant appeal and is constrained to dismiss it.

13. Though the complaint as made to the SHO concerned, and, to the Police Commissioner concerned, was made on the same day, but yet when in both the complaints, there are variant stands, inasmuch as, in one, there is a reference *qua* the daughter of the prosecutrix becoming subjected to forcible sexual intercourse by the accused through his pointing a gun at her, and/or, his through his not pointing a gun, but yet his subjecting her to forcible intercourse. Therefore, the above *inter-se* improvement(s) or variance(s) *inter-se*, the duo of complaints (*supra*), is not minimal but rather is blatant. Resultantly, the above blatant or rife *inter-se* contradictions *inter-se* the complaints (*supra*), does beget

an inference, that the prosecutrix, is openly prevaricating the version with respect to the penal event.

14. There is even an unexplained delay of about 25 days in respect of the lodging of the FIR, at the instance of the complainant. The reason for making the above inference, ensues from the factum, that despite the relevant penal occurrence purportedly happening between 10.08.2014 to 25.08.2014. However, much belatedly therefrom the complaint becoming addressed on 19.09.2014. The hiatus *inter-se* above period commencing from 25.08.2014 upto 19.09.2014, when the police report became filed, is immense, and, unless a valid explanation emanated from the prosecutrix, in respect of the above delay rather well happening, thereupon *prima-facie* on the premise of the above unexplained delay, the genesis of the prosecution case would but get stained rather with the vice of premeditation, and, concoction. A reading of the evidence, on record underscores, the factum that the relevant permissible premise, for supporting the above delay, though became comprised in the appellant's grievance despite becoming ventilated before the panchayat concerned, yet the said motion remaining unactioned, rather did not become either pleaded nor consequent thereto evidence become adduced before the learned trial Judge concerned. Therefore, the effect of above stark *inter-se* contradictions *inter-se* the duo of complaints addressed before the police agencies, when becomes combined with the above unexplained period of delay rather happening from 25.08.2014 to 19.09.2014, since the happening of the purported occurrence, and, upto its reporting to the police, is that, a conclusion becomes garnered *qua* the genesis of the prosecution case coming under a heavy cloud of doubt, and, the benefit of such doubt being accordable to the accused.

15. Even on a careful analysis of the testification of the prosecutrix, as became recorded before the learned trial Judge concerned, it emerges, that she has not rendered a truthful or a taint free testification. The reason for making the above inference becomes rested, upon the factum that though she speaks in her examination-in-chief, that the accused kidnapped her, but the above ill event of kidnapping of the prosecutrix occurred at a busy place, on 20.09.2014. A wholesome reading of her testification reveals, that she was accompanied by her friends one Jyoti and Sadhia, and, that she had raised an alarm rather upon the accused attempting to kidnap her, yet there is no speaking about the friends of the prosecutrix, who were available, at the crime event rather making the apt evacuatory attempt or the rescuatory attempt(s) hence for saving the prosecutrix. Therefore, it appears that the crime site, is doctored and prevaricated, and/or, that the crime event which is spoken by the prosecutrix, to occur at the crime site, rather never did occur there. What adds strength to the above inference, becomes bolstered, from the factum that none of the above friends of the prosecutrix, were either cited as prosecution witness nor became examined, whereas, upon theirs becoming cited as prosecution witnesses, and/or, upon theirs becoming examined, it would have emerged whether as a matter of fact the prosecutrix, was at the crime site hence accompanied by her friends, and/or, whether the prosecutrix, had raised a hue and cry, upon the accused kidnapping her besides whether for any well explained reasons, the friends of the prosecutrix, did not make any able rescuatory attempt. The absence of citing of the above friends of the prosecutrix, who were but available with her, at the crime site, does spark inference, that crime story is completely doctored or prevaricated.

DNA EVIDENCE

16. Ex.PY is the report of the DNA, and, therein the hereinafter extracted conclusion, was made by the DNA Expert, but only after its making the DNA profilings of the seminal stains hence respectively of the accused, and, of the prosecutrix, as became sent to him, in an untampered sealed cloth parcels.

“CONCLUSION

The Autosomal STR analysis indicates that DNA profile of seminal stains on source of item no.3 (Bed-Sheet) is not matching with the DNA profile of Narsingh (source of item No.2) and DNA profile of Preeti (source of item no.1) and conclusively proves that they are not of same biological origin.”

17. A reading of the hereinabove extracted conclusion, does disclose, that after the DNA expert making the apposite DNA profilings of the relevant semen stains, his making a conclusion about the dissimilarity of the biological origin of both the semen stains. Therefore, the effect of the above conclusion, is that, the items which became collected from the crime site, did never carry the semen of the accused, thus, the collections of the said items purportedly, at the instance of the accused, are rather but contrived or invented collections. Moreover, the leading(s) by the accused, of the investigating officer concerned, to the crime site, and, the thereafter prepared demarcation memo, as, comprised in Ex.PK, are also, to be concluded to be false, fictitious and sheer concoction (s), and, to which no reliance can be placed.

18. Since Section 293 Cr.P.C., provisions whereof become extracted hereinafter, assign a presumption of truth to the report of the DNA Expert, unless evidence to rebut the presumption becomes adduced by either the accused or by the prosecutrix, in case the DNA profiling(s) is unfavourable to the prosecutrix or to the prosecution. However, the Public Prosecutor concerned, permitted the tendering into evidence besides also permitted the making of

exhibit marks on the DNA report. Therefore, the tendering into evidence of the DNA report, and, also the makings thereon of Ex.PY, does but forestall, the prosecution to contend before this Court, that statutory presumption of truth, yet for want of adduction of any cogent rebuttable evidence thereto rather not enjoying any conclusivity. Reiteratedly in the face of tendering(s) thereof in Court, and, also in face of makings of exhibition marks thereon, leads to conclusion, that the prosecution never intended to rebut the said presumption of truth, as is statutorily assignable thereto. Thus, conclusivity is to be fastened to Ex.PY, exhibit whereof is the report of the DNA Expert, hence making exculpatory echoings *qua* the accused.

“293. Reports of certain Government scientific experts.-(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.”

19. The effect of this Court assigning conclusivity to the report of DNA Expert, and, which but is the best forensic scientific evidence, to prove the guilt of the accused, is that, it thus leads to a conclusion that the confession of guilt, as made by the accused in his signed disclosure statement, and, whereafter he caused the relevant recoveries, also being construable to be sheer concoction (s), and, invention(s). Resultantly, no credence is to be assigned thereto. The further reason for not assigning credence to the above drawn memos, becomes stemmed from the fact, that for the reasons assigned (supra), this Court has refrained from assigning credence to the testification(s) of the mother of the prosecutrix, and, also the testification of the prosecutrix.

SUMMARIZATION OF PRINCIPLES

I. In case where there is an unexplained delay in recording the statement of the complainant or in the reporting of the penal occurrence, to the authorities concerned, besides when there are *inter-se* variances *inter-se* the statements made by the complainant at various stages of the investigations, thereupon the prosecution version is rendered incredible, and/or, is to be deemed to be ingrained with pervasive vices of concoction, and, premeditation.

II. Even if there is a signed confessional statement or a disclosure statement made by an accused, which but leads to the relevant recoveries being made, yet the confession of guilt, as carried in the disclosure statement, hence though leading to the

relevant recoveries, does not yet make the accused to become amenable to receive a verdict of conviction, unless the DNA profilings of the collected semen stains' reveals, that there is similarity in the biological origin of the semen stains', thereupon the above is the best scientific forensic evidence, and, overrules any contra thereto evidence as may become relied upon by the prosecution.

FINAL ORDER

20. For the reasons assigned hereinabove, the instant appeal is dismissed, and the impugned verdict of acquittal is maintained and affirmed.
21. Bail bonds, if any, are ordered to be forthwith cancelled and discharged. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.
22. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

03.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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