

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**Date of decision : April 18, 2023**

1. CRA-D-774-DB-2015

NEETU

....APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

2. CRM-A-854-MA-2015

NEETU

....APPLICANT

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

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

Present : Mr. Ranjit Singh Ghuman, Advocate and
Mrs. Shashi Ghuman, Advocate for the applicant-
appellant in both the cases

Mr. Raman Sharma, Addl. Advocate General, Haryana

Mr. Deepender Singh, Advocate for respondents
No. 2 and 3 in both the cases.

KULDEEP TIWARI, J.

1. The applicant/appellant has filed the instant criminal appeal and application for seeking grant of leave to appeal against the judgment of acquittal passed by the learned trial court in case FIR No. 50 dated 7.2.2009, under Sections 323, 506 IPC, registered at Police Station Sadar Gurgaon and Criminal Complaint No. 60 of 2014, filed under Sections 376, 323, 506, 34 IPC, titled as 'Neetu vs Satish

etc.', vide which respondents-accused were acquitted of the charges framed against them.

FACTUAL MATRIX

2. The case of the prosecution unfolded on a statement made by the prosecutrix on 7.2.2009, (the identity of the prosecutrix has been withheld in view of the provisions of Section 228(A) of IPC hereinafter to refer as the prosecutrix) to the police that her father is living separately from them for the last 15 years and she has been living with her siblings and mother Ramwati and her mother Ramwati is working as a house maid. On that day, at around 2.00 PM, when she was alone at her home, Satish son of Khushi Ram, Tejpal son of Dil Khush entered in her house. Satish grappled her and gagged her mouth and then Tejpal had ravished her. She tried to raise alarm but Satish had gagged her mouth. After the incident, both the accused left the house. When her mother came, she apprised her of the incident and she went to the house of accused to lodge a protest in this regard. There they assaulted her mother and brother Rahul. On the basis of the said statement, the police had registered a case for the commission of offence punishable under Section 376 read with Section 34 IPC. Investigation was carried out. Prosecutrix was medico legally examined through Dr. Alka Singh, PW6. The sample were sent to FSL Madhuban. The investigation was subsequently transferred to Assistant Commissioner of Police, Gurgaon, who after examining the FSL report found that the offence under Section 376 IPC is not made out and found that the present case is only a case of

assault, therefore, offence under Section 376 IPC was deleted and offence punishable under Sections 323, 506 read with Section 34 IPC were added in this case. Both the accused Satish and Tejpal were arrested and upon completion of investigation, final report under Section 173 Cr.P.C. was filed against accused-respondents Satish and Tejpal only to face the trial for commission of offence under Sections 323, 506 read with Section 34 IPC.

PROCEEDINGS BEFORE THE TRIAL COURT

3. After filing of challan, the prosecutrix through the State submitted an application under Section 323 Cr.P.C. for committing the case to the Court of Sessions for trial as the offences alleged by the prosecutrix in her complaint are exclusively triable by the Court of Sessions. However, the learned ACJM, Gurgaon vide order dated 3.3.2012, dismissed the application. Feeling aggrieved by the order of dismissal (supra), she preferred criminal revision through State before the learned Additional Sessions Judge, Gurgaon. However, the same was also dismissed vide order dated 25.10.2012. The order for not committing the case to the court of trial has attained conclusivity and finality. Feeling aggrieved by the inaction of police and non committal of the case to the court of Sessions, the complainant-prosecutrix filed a private complaint before Illaqa Magistrate on 7.4.2009 alleging therein the same allegations which she reported to police on 7.2.2009 upon which the FIR (supra) was registered. For the sake of brevity, the allegations are not repeated herein again. After the preliminary evidence was recorded by the Illaqa Magistrate, Satish, Tejpal and

one Devender accused/respondents were ordered to be summoned for the commission of offence punishable under Sections 376, 323,506 read with Section 34 IPC vide order dated 3.12.2013 passed by the learned ACJM, Gurgaon. Thereafter, finding that the offence under Section 376 IPC was exclusively triable by the court of Sessions, the complaint case was committed to the court of Sessions vide commitment order dated 5.3.2014. Since FIR No. 50 dated 7.2.2009 was pending under trial before JMIC Gurgaon regarding the same incident, it was clubbed together with the complaint case vide order dated 20.9.2014 by the learned trial court.

4. The prosecution in order to prove its case examined as many as 9 witnesses. After recording statement of respondents-accused under Section 313 (1) (b) of the Cr.P.C., the accused were called upon to lead their evidence in defence. The respondents accused only tendered copy of order dated 3.3.2012 (Ex. DX) and order dated 25.10.2012 (Ex. DY) and closed their evidence. The learned trial court, after finding the statement of the prosecutrix unworthy to place reliance in order to bring home the guilt of the accused, recorded an order of acquittal, which is now under challenge.

SUBMISSIONS BY COUNSEL FOR THE APPLICANT

5. Learned counsel for the applicant/appellant has submitted that the learned trial court has not appreciated the statement of the prosecutrix in its right perspective rather has erringly given unnecessary importance to the minor contradictions, and, thus

wrongly acquitted the respondents-accused. He further submitted that in a case of rape, finding of guilt can be recorded on the uncorroborated evidence of the prosecutrix because the very nature of the offence makes it difficult to get direct corroborative evidence. While placing reliance upon **Mohd. Imran Khan vs State (Govt. of NCT of Delhi), 2011(10SCC 192I**, he further submitted that the prosecutrix stands at higher pedestal than an injured witness as the same suffers from emotional injuries, therefore, her evidence need not to be tested on the same amount of suspicion as that of an accomplice. He further submitted that the prosecutrix's evidence was duly corroborated by the statement of her mother and brother who were stepped into witness box as PW2 and PW5 and passed the test of cross-examination. The minor discrepancies and contradictions which were made the basis of acquittal by the learned trial court are totally immaterial, therefore order of acquittal needs to be interfered with.

ANALYSIS

6. We have threadbare examined the oral as well as documentary evidence led by the prosecution before the trial court and submissions made by the counsel for the applicant/appellant. Before we appreciate the statement of the prosecutrix who was examined as PW1, it is very important to mention that the incident is of 6.2.2009. On that day, the mother of the prosecutrix lodged a complaint to the police with the allegations that she is working as a house maid and is having four children one Seema, eldest of them is

married, then Rahul son aged 20 years, then the prosecutrix 17 years of age and youngest of them is Monu, a son 14 years of age. She further alleged that on 6.2.2009, her daughter was abused by Devender, Tejpal and Satish and when she went to lodge a protest in this regard, they assaulted her as well as her daughter prosecutrix and son Rahul and then they raised alarm upon which one Karan rescued them from the clutches of the accused. On her statement, daily diary report No. 28 dated 6.2.2009 was entered. The contents whereof are read as under:-

“At 9.10 PM, came to Police Station and gave statement that I am resident of aforementioned address and I earn livelihood for my children by working as maid in different houses. I have four children, i.e. two sons and two daughters. My eldest child is my daughter Seema, who is married, and younger to her is my son Rahul, aged about 19/20 years. Younger to Rahul is my daughter (name withheld) aged 17 years and my youngest child is Monu @ Kala, aged about 13/14 years. They were abusing my daughter (name withheld) I went to the house of Deshbhakt to complain about the same. Devender Kalu s/o Kanwar, Surender, Tej and Sattu gave me beatings. Devender gave beatings to me, my daughter (name withheld) and son Rahul, whereupon we raised hue and cry. Then Karan s/o Dohti, Sarit w/o Parmod rescued us otherwise they would have beaten us more. I have got recorded my statement and heard it, which is correct.”

7. The perusal of the above report clearly depicts that there was no allegation of rape whatsoever in the DDR lodged by the

mother of the prosecutrix which, in fact, was the very first statement made by them. In pursuance of the DDR lodged, the prosecutrix and her mother and bother were then taken to hospital by HC Prem Kumar who was examined as PW9. There, they were medico legally examined by PW7 Dr. Hazari Lal, SMO, Gurgaon, who conducted the MLR of all three injured persons. Dr. Hazari Lal, PW7 proved on record his affidavit Ex. PW7/A, which give details of injuries of the three injured (supra) which read as under:-

“Injured Ramwati

1. *Swelling with pain over left forearm, advised X-ray, ortho-opinion, nature of injury was blunt, time duration can't be said.*
2. *Swelling with pain bluish contusion over left thumb, advised x-ray, ortho-opinion, nature of injury was blunt, time duration 1 to 6 hrs.*
3. *1 x 0.5 cm lacerated wound over right side of forehead, advised x-ray, advised X-ray, ortho-opinion, nature of injury was blunt, time duration 1 to 6 hrs.*
4. *3 × 2 cm contusion over right side parietal region, advised x-ray, ortho-opinion, nature of injury was blunt, time duration 1 to 6 hrs.*

Injured Rahul

1. *Swelling with pain right hand with abrasions right thumb, advised x-ray, ortho-opinion, nature of injury was blunt, time duration 1 to 6 hrs.*
2. *Contusion pain over left upper arm, advised x-ray, ortho-opinion, nature of injury was blunt, time duration can't be said.*
3. *3 x 2 cm bruise left side of frontal region, advised*

x-ray, ortho-opinion, nature of injury was blunt, time duration 1 to 6 hrs.

4. Pain over left knee, KUO, nature of injury was blunt, time duration can't be said.

Injured Neetu

1. Bruise Pattern bruises over right thigh with reddishness advised X-Ray, nature of injury was blunt, time duration 1 to 6 hrs.

2. Complaining pain over left shoulder, advised X-Ray, nature of injury was blunt, time duration can't be said."

8. Two things which also transpire from the readings of the respective statement(s) of PW7 and from the MLR recorded by the doctor that injured and prosecutrix never disclosed to the doctor that she was subjected to any sexual assault. Rather, they informed the doctor that it was a case of simple assault. It is further revealed that on the next date i.e. on 7.2.2009, when the prosecutrix got recorded her another statement wherein she alleged rape, she was again medico legally examined by PW6 Dr. Alka Singh, Medical Officer, Gurgaon who after examining person the prosecutrix found the following injuries on her person :-

1. General condition was normal, no external marks of injury on her body.

2. Her DLMP was 2.2.09, unmarried, menarche - 3 years back.

3. Her secondary sexual characters - well developed.

4. P/A - Soft, L/E - Hymen Ruptured.

5. P/V - Vagina admits 1 finger, C downwards, AV -

normal size, Fornices free.

6. 2 Vaginal swabs taken and sent to FL, Madhuban, Karnal for additional examination.

7. Advised x-ray, ultrasound of uterus & adnexae & age verification.”

9. When she stepped into witness box and was examined as PW6, she proved on record her affidavit Ex. PW6/A which discloses, that she medico legally examined the prosecutrix and the apposite report was proven besides became assigned as Ex. PC/1. However, in cross-examination she categorically admitted that though she did not find any external or internal marks of injuries on the victim, but, her hymen was ruptured, yet there were no blood stains on her hymen. However, she again stated that she cannot state whether it was an old rupture or not. During the trial, the prosecutrix stepped into witness box and she reiterated the version of the complaint and stated that on 6.2.2009 when she was alone at home, Tejpal and Satish present in the Court, came to her house. Accused Satish caught her hands and accused Tejpal ravished her. She further stated that when her mother and brother came, she informed this incident and then she along with her mother and brother went to nearby plot where accused and others were sitting, to lodge a protest qua this incident. There, father of the prosecutrix namely Mahipal, accused Satish were present and they, instead of hearing them, assaulted her brother and mother. When they reached home, accused Tejpal, Satish, her father Mahipal, Rishi and several others came and assaulted all of them. Consequently, they sustained injuries. At about 9.30 PM, they all went

to the police station to lodge a complaint, but the police did not take any action and thereafter, they went to Government Hospital, Gurgaon and after informing the police, they were medico legally examined. However, the FIR was registered after 2/3 days. It is important that the prosecutrix has made a completely divergent testification in Court, from the statement which was initially made by her mother to the police, wherein there were only allegations of a simple assault, being made upon the prosecutrix. Even when they were first medico legally examined by Dr. Hazari Lal (PW7), they did not disclose to the doctor that the prosecutrix suffered injuries in a sexual assault. Rather, the history given to the doctor was of simple assault by the accused concerned. Even when the doctor stepped into witness box as PW7, no attempt was made by the counsel for the State or the prosecutrix to seek permission of the trial court to cross-examine the doctor to falsify the contents of the first MLR. During the cross-examination, she admitted that Tejpal, against whom she alleged the allegation of sexual assault, is her real uncle. She also admitted that Satish and Devender other co-accused are also related to her. However, this aspect was not disclosed by them during their initial statements made at different stages. Rather, an endeavour was made to give impression that the accused are strangers and committed sexual assault upon the prosecutrix. Interestingly enough, in the initial stage, prosecutrix, her mother and brother, did not level, any allegation of physical assault against Mahipal, who is none else but the real father of the prosecutrix. However, when she stepped into the witness box

as PW1, she stated that when all three went to the house of the accused to lodge a protest, there her father and Satish, instead of hearing them, assaulted her brother and mother and when they reached back home, then accused Tejpal, Satish and one Rishi and several others again assaulted them. However, these allegations of physical assault by a number of persons at their house were never mentioned in their earlier statement, which is nothing, but a material improvement, from the initially recorded statement. Nevertheless, when she was confronted with the statement made by her mother on 6.2.2009 at 10 PM upon which DDR No. 28 was recorded, yet then she simply denied the suggestion. She even denied her signatures over Ex. DA, though, the police machinery was galvanized on the making of Ex.DA.

10. We also examined the statement of mother and brother of the prosecutrix who were examined as PW2 and PW5 respectively. The mother in her examination-in-chief has supported the case of the prosecutrix. However, when she was subjected to the cross-examination, she admitted that she is living separately from her husband for the last 20 years and now her husband is living with Tejpal and his wife Krishna and she has filed a petition for maintenance against her husband. She simply denied the suggestion that she ever lodged a report of mere assault to the police but goes on to state that the police has not lodged any report so they had gone to the hospital themselves and she also rejected the suggestion that the police of Police Station Sadar Gurgaon had taken them to the

hospital. She also rejected the suggestion that they have not revealed about the incident of rape at the time of their medical examination. She was also confronted that she never made a statement that both the accused Tejpal and Satish had ravished her daughter. Rather, she in her initial statement, alleged that accused Satish had caught her daughter and accused Tejpal ravished her. She was also confronted with Ex. DC as well as her preliminary evidence Ex. DD wherein she has not mentioned that when they had returned back from the plot of Bhagatji, accused Satish, her husband Mahipal and several others came to their house and assaulted them. On a conjoint reading of all the three, PW1, PW2 and PW5, we find that there are material improvements from their respective initial versions, wherein, there are no allegation of any sexual assault being committed by the accused, on the person of the prosecutrix. More-so, the statement of Dr. Hazari Lal who stepped into witness box as PW7 also belied the allegations levelled by all the three. So far as the medical evidence brought on record by Dr. Alka Singh, PW6 is concerned, it clearly depicts that there were no injuries on the private parts of prosecutrix. Even the FSL report does not support the case of the prosecution at all. The Investigating Officer who has stepped into witness box as PW8 stated that during investigation which was conducted by ACP, Gurgaon, offence under Section 376 IPC was not found to be made out. During cross-examination he categorically admitted that on 6.2.2009, three persons namely prosecutrix, her brother Rahul and mother Ramwati had come to Police Station, Sadar Gurgaon and on their statement,

DDR No. 28 was recorded at about 9.10 PM and there was no allegation of rape. The relevant extract of the cross-examination of Investigating Officer is read as under:-

"It is correct that on 06.02.2009, three persons namely Neetu prosecutrix, her brother Rahul and mother Rambati had come to police station, Sadar GGN and on the statement made by Neetu, DDR no. 28 was recorded on that day at about 9:10 p.m. It is correct that in that DDR, there were no allegations of rape and only allegations of assault were there. I have knowledge of the fact that all the three injured were medico-legally examined on 06.02.2009 from 10:30 p.m. to 11:30 p.m. It is correct that in statement Ex. PG accused Devender was not named. It is correct that the places shown in site plans Ex. PI and Ex. PJ are within inhabited area and both these places are at a distance of 50 yards."

11. From the above discussion, we can safely conclude that the allegations levelled by the prosecutrix, her mother and brother, are totally unreliable, as a reading of their respective testifications, make graphic underscorings qua each of them making material improvements, and, or embellishments, from their respectively recorded previous statements in writing.

12. Moreover, not only material improvements (supra) are occurring in their respectively made testifications before the learned trial Judge, but it also appears that each of the PWs concerned have also actively concealed the material fact that the accused are their close relatives. Even in their respectively made testifications, they

took to make allegations of assault against the husband and father, despite such allegations against their respective closest relative(s) not occurring in the previously made statements to the Police Officer concerned. Thus, it appears, given there being previous litigation amongst the accused and the mother of the prosecutrix, that the said improvements in the testifications from the previous statement recorded in writing were inspired by animosity or were a result of vendetta. Consequently, no reliance can be placed on the above improved testifications in Court, which were inspired by the vendetta reared by the mother of the prosecutrix against one of the accused, who is her husband.

12. Therefore, there is no ground to interfere with the order of acquittal. In sequel, Criminal Appeal No. CRA-D-774-DB-2015 is dismissed, as well as relief in the application for leave to appeal No. CRM-A-854-MA-2015 is hereby declined, both being bereft of merit. Consequently, the impugned order of acquittal, as, passed by the learned trial court dated 19.12.2014, is hereby upheld.

15. The case property, if any, be dealt with in accordance with law. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 18, 2023

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>

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