

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-756-DB-2014 (O&M)

Date of Decision: 13.02.2023

AB

.....Appellant

Vs.

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. S.K. Yadav, Advocate,
for the appellant.

Mr. Ankur Mittal, Addl, A.G., Haryana, with
Mr. Saurabh Mago, A.A.G., Haryana.

Mr. Sauresh Kumar Kaushik, Advocate,
for respondent No. 2.

HARPREET KAUR JEEWAN, J.

1. Appellant-prosecutrix has filed the present criminal appeal against the judgment of acquittal, dated 15.02.2014, passed by Judge, Special Court, Hisar, acquitting respondent No. 2 (hereinafter referred to as “the respondent”) of the charges framed against him in FIR No. 123, dated 24.03.2013, under Sections 376 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC) and Sections 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (hereinafter referred to as the 'Act of 1989'), registered at Police Station Sadar Hansi, District Hisar.

2. The application under Section 378 (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'), seeking leave to

appeal filed by the appellant was taken on record, vide order dated 30.03.2016.

3. The prosecution story in brief is that on 24.03.2013, the prosecutrix (name withheld), gave a written complaint (Ex. P-23) to the SHO, Police Station Hansi, to the effect that she is a resident of Village Data and is labourer by profession. On that day at about 09:00 a.m., she had gone to the fields of Ramphal, resident of the same village to bring fodder for domestic animals. At about 11:00 a.m., when she had cut the grass and collected the same, respondent Sandeep, son of Hoshiar Singh, was seen coming on his bullock cart. She called the respondent to help her for loading a bundle of grass on her head. As such, the respondent Sandeep came to the field of Ramphal. When she bent down to pick up the bundle of grass, the respondent pushed her from her shoulders and threw her on the ground. She rescued herself and ran to some distance. However, the respondent again pushed her on the ground and forcibly committed rape with her after removing her lower ('*Salwar*'). Thereafter, the respondent went towards the village alongwith his bullock cart. She reached home and disclosed about the said occurrence to her husband. The respondent had committed the said wrong act with her as he knew that she belongs to "Dhanak" caste, which is a low caste.

3.1 Formal FIR was registered on the basis of the complaint Ex. P-23. Initially, investigation was conducted by Inspector Sajjan Singh, SHO, Police Station Sadar, Hansi. The statement of the prosecutrix was recorded by a Legal Aid Counsel who was called by the investigating officer. The further investigation was conducted by DSP Surjeet Singh Chahal. The medico-legal examination of the prosecutrix was got

conducted. On 25.03.2013, the statement of the prosecutrix was got recorded under the provisions of Section 164 of the Cr.P.C. Respondent Sandeep was arrested. His medico-legal examination was got conducted from the General Hospital, Hansi and after completion of the investigation '*challan*' was presented in the Court.

3.2. After presentation of the '*challan*', copies of the documents under the provisions of Section 207 Cr.P.C were supplied to the accused and charge under the provisions of Section 376 of the IPC and Section 3 (1) (xi) of the Act of 1989 was framed against him, to which he pleaded not guilty and claimed trial.

3.3 PW-1, Dr. Meenu Dhingra proved the copy of MLR (Ex. P-4), regarding medico-legal examination of the prosecutrix. She gave the opinion that possibility of sexual intercourse on the person of the victim cannot be ruled out. She also testified that the clothes of the prosecutrix (Exs. P-5 to P-7), vaginal swab (Ex. P-8) and Pubic hair (Ex. P-9) were sent for FSL examination through police.

PW-2, Dharam Singh, Revenue Patwari Halqua Data, proved the rough site plan of the place of recovery.

PW-3, Dr. Vivek, Medical Officer, CHC, Sorkhi, Hisar, testified about conducting the medico-legal examination of the respondent and proved the copy of the MLR (P-13).

PW-4 Surjeet Singh Chahal, DSP Bilaspur, was the investigating officer. He stated about the proceedings conducted during the investigation of this case.

PW-5 Constable Amit Kumar, proved his affidavit (Ex. 22) and testified about taking of the samples to the FSL for examination.

PW-6 Head Constable Rajbir Singh, is a formal witness.

PW-7 Ms. Vinita, Legal Aid Counsel, Hansi, testified about recording the statement of the prosecutrix.

PW-8 Head Constable Dinesh Kumar, testified that he was posted at MHC and also tendered into evidence his formal affidavit.

PW-9 ASI Ram Chander is also a formal witness.

PW-10 Lady Constable Suman, has assisted the prosecutrix for conducting her medical examination.

PW-11 Inspector Sajjan Singh, recorded the FIR and conducted the initial investigation and finally presented the '*challan*' against respondent No. 2.

P-12 Shri Amit Sharma, Sub-Divisional Judicial Magistrate, Dabawali, proved the statement of the prosecutrix recorded by him under the provisions of Section 164 of the Cr.P.C.

Prosecutrix has appeared as PW-13 and corroborated her version as is stated in her complaint (Ex. P-23) which was given to the police. She also proved her statement recorded under the provisions of Section 164 of the Cr.P.C. and the fact that she was medico-legally examined.

Rakhu (P-14) is the husband of the prosecutrix. He has also testified that her wife disclosed about the occurrence to him and he went to the police station along with his wife to report the matter to the police.

3.4 The statement of the accused was recorded under the provisions of Section 313 of the Cr.P.C. wherein he alleged false implication and stated that a false case has been registered against him due to party friction in the village as civil and criminal cases are pending

between the Jat community and Harijan community of the village for encroachment of the '*shamlat*' land of the village. On 24.03.2023, Ramphal, son of Bhajni had deputed him to look after his standing crops because some villagers used to steal his "Barseem" crops. The prosecutrix was cutting the said crop in the fields of Ramphal and he informed Ramphal about this fact. Ramphal came to his fields and stopped the prosecutrix from cutting the Barseem crops from his fields due to which the prosecutrix had an altercation with both of them and she left the accused in the field of Ramphal threatening him of dire consequences and she lodged the present false case against him.

In his defence, the respondent examined his neighbour Ramphal DW-1, who corroborated the version of the accused as given by him in his statement recorded under Section 313 of the Cr.P.C.

DW-2 Head Constable Rajbir Singh, brought the record pertaining to '*Calandra*' bearing DDE No. 33, dated 24.08.2012, under Sections 107/151 of the Cr.P.C. Police Station Sadar, Hansi, against Jaideep, Suresh and Kaaja, all residents of Village Data and proved the copy of the '*Calandra*' (Ex. D-2) and copy of the DDR (Ex. D-3).

DW-3 Naresh Kumar produced the summoned record pertaining to the case titled as Gyani Ram vs. Dalipa and others (Ex. D-4) and Suresh vs. Kheta Ram, (Ex. D-5).

DW-4 Harish Kumar brought the record of the case titled Jugti and others vs. Bija (Ex. D-6).

3.5 After hearing the Public Prosecutor, the learned defence counsel and on perusal of the record, the trial Court acquitted the accused-respondent by observing that as per the testimony of Rakhu (PW-14) who

is the husband of the prosecutrix, the crop was damaged at the place where the rape was committed by the accused-respondent upon his wife and the photographs of the damaged crop were taken by the police officials. However, Surjeet Singh, DSP (PW-4) has denied having taken any such photographs of the place of occurrence. It was further observed by the trial Court that as per the statement of PW-14, the husband of the prosecutrix, had taken the permission of Ramphal for cutting the fodder from his fields, whereas, Ramphal when appeared in defence as DW-1 has categorically denied having given such permission. Rather he has stated that on the day of occurrence at about 7-8 a.m. when he reached the fields he reprimanded the prosecutrix for cutting 'Barseem' crop from his field. He has further alleged that someone had earlier committed theft of his 'Barseem' crop in his absence, therefore, he had deputed the accused to look after his field as well as to inform him if anyone commits theft of his crop. The learned trial Court disbelieved the version of the prosecutrix and acquitted the respondent while granting him benefit of doubt.

4. The learned counsel for the appellant submitted that the trial Court has not considered the evidence of the prosecutrix (PW-13). Her testimony further corroborated by the medical evidence which has been proved by Dr. Meenu Dhingra (PW-1) in her affidavit (Ex. P-3) as well as in the MLR (Ex. 13), it has been stated that possibility of intercourse could not be ruled out. Besides this, the FSL report (Annexure P-1) clearly indicates that human semen was detected on Ex. 1a ('*Salwar*'), and Ex. 4 (underwear). The said evidence clearly proves the charge against the respondent. Despite that the learned trial Court has acquitted the respondent. The said findings are contrary to the evidence on record.

5. It is further submitted that the evidence of the prosecutrix cannot be disbelieved on technicality in such type of cases where the allegations are of sexual abuse. Moreover, the prosecutrix belongs to poor strata of the society and to the Scheduled Caste Community. Raising the aforesaid submissions, learned counsel for the appellant submitted that the appeal is liable to be accepted and order of conviction and sentence should be recorded against the respondent.

6. On the other hand, learned counsel for respondent No. 2 submitted that the trial Court has passed a well reasoned order while granting the benefit of doubt to the respondent. Referring to the evidence of the defence witness, as well as the cross-examination of the prosecutrix, it was submitted that the accused has been falsely implicated in the case. The prosecutrix is married, as such, the medical evidence cannot be made a basis for conviction of respondent No. 2, especially when the DNA examination was not conducted.

7. We have considered the aforesaid submissions and perused the record.

8. No doubt, in such cases, hyper-technical view should not be taken. However, at the same time, the personal liberty of an individual cannot be curtailed where there is doubt on the credibility of the prosecution evidence. The prosecutrix (PW-13) has corroborated her version with her testimony, which has been further corroborated by her husband, who appeared as PW-14.

9. We have also considered the medical evidence of the prosecutrix. She has stated in her cross-examination that she got married about 19-20 years ago and since then she is living in the same Village Data.

She is having three children. As per the report of the Forensic Science Laboratory (Ex. P-1), though human semen was detected on Ex.1a (‘*Salwar*’) and Ex. 4 (underwear), there is a reference in the said report that for comparison/DNA profiling, if required, the case may be sent to DNA Division, FSL, Madhuban. There is nothing on record to show that the investigating officer had sent the samples of the prosecutrix as well as of the respondent-accused for DNA profiling and matching. The DNA report (Ex. P-1), as well as the testimony of Dr. Vivek (PW-3) clearly indicate that the underwear of the accused and a small strain of the pubic hair of the accused were also sent in sealed cover for examination. Since the prosecutrix was married for such a long period and the DNA profile matching of the human sample found on the clothes of the prosecutrix was not done with the DNA profiling of the accused, therefore, in such circumstances, the report of the Forensic Science Laboratory (Ex. P-1), as well as the medical examination of the prosecutrix cannot be treated as a conclusive proof of the sexual intercourse having been committed by the respondent-accused.

10. The respondent has taken a specific plea in his statement recorded under the provisions of Section 313 of the Cr.P.C. that he has been falsely implicated in this case due to a party friction in the village and also civil and criminal cases are pending between two communities for encroachment of the ‘*Shamlat*’ land of the village. He has also taken a specific plea that he was deputed by Ramphal, who was the owner of that field to supervise the crop as some of the villagers were stealing his crop. He has stopped the prosecutrix from cutting the crop from the fields of Ramphal due to which an altercation took place between him and the

prosecutrix and therefore she threatened him of dire consequences.

When confronted in the cross-examination, the prosecutrix (PW-13) has stated that Jaideep is the brother of the accused Sandeep. But she denied the fact regarding whether Jaideep had filed a civil suit for dispossession against Harijan community of Village Data. She also denied having knowledge regarding the cases registered under the provisions of Sections 107/151 of the Cr.P.C. as well as about the fact that police official and SDM had gone to the village for removing the encroachment on ‘*Shamlat*’ land. The presence of the media and police in the village when the encroachment was removed on 31.08.2012 was also denied by her.

11. However, the defence witness Head Constable Rajbir Singh (DW-2) had proved the Calandra (Ex. D-2) and the copy of the DDR (Ex. D-3) regarding registration of the proceedings under the provisions of Sections 107/151 of the Cr.P.C. against Jaideep, son of Hoshiar Singh and others. Prosecutrix has admitted that Jaideep is the brother of the accused. A perusal of the said documents Ex. D-2 and D-3 indicate that there was a fight between *inter se* residents of the said village with regard to the illegal encroachment and the demarcation was also conducted prior to the said dispute.

DW-3 Naresh Kumar, ‘*Ahlmad*’ has produced the copies of the judicial record as Exs. D-4 to D-6. The same are the certified copies of civil suit filed by some of the residents of the Village Hansi against the Gram Panchayat of the Village Data, as well as against some private respondents. These documents revealed the pendency of the litigation with regard to possession of the land *inter se*, the residents of the village and the Gram Panchayat.

12. The place of alleged occurrence is the fields of Ramphal of the same village where the prosecutrix is residing. Admittedly, the place of occurrence is at a distance of 1½ kilometers from the village. This fact has been admitted by the husband of the prosecutrix (PW-14). He has stated in the cross-examination that the field of Ramphal is at a distance of 1½ kilometers from the village. The accused has taken defence that he was deputed by Ramphal to look after his fields as some villagers used to steal his crops. Contrary to that, husband of the prosecutrix (PW-14) has stated that they had taken permission for cutting 'Barseen' (fodder crop) from the fields of Ramphal and he had allowed them to take 'Barseen' from his fields. The prosecution has stated in her cross-examination that she had one buffalo at the time of the incident and that they do not possess any agricultural land in the village where they are residing or anywhere else. She has also stated that they have not taken any land on lease for growing fodder for their cattle. She used to collect fodder/grass from any field. Ramphal and his family are known to him. She had already informed Ramphal 4-5 days earlier before cutting grass from his fields. She has also admitted that Ramphal had sown Barseen crop in ½ acre of the land and in the remaining land he had sown wheat. She had cut one bundle of green fodder which weighed approximately 40 kg and at that time Ramphal was not present there. She has also admitted that the green fodder that she had cut from the fields of Ramphal was about 200 feet and that she had kept the said fodder in a plastic sack.

13. The testimony of the prosecutrix clearly indicates that she had cut the fodder from the fields of Ramphal. Though she has taken a plea that she had taken the permission from Ramphal for cutting the said fodder and

even her husband had taken the similar plea but their testimony on this account is totally falsified as Ramphal has himself appeared as a defence witness (DW-1). He has stated that he is the owner of about 10-12 acre of agricultural land. The fields of Sandeep accused are adjoining his fields. This fact is admitted by the prosecutix that fields of Sandeep are adjoining the fields of Ramphal. DW-1 has further stated that about 7 months ago, some persons had committed theft of his 'Barseen' crop early in the morning in his absence. Therefore, he deputed the respondent to look after his crop and inform him if anyone cuts Barseen crop from his fields. He has categorically stated that on 24.03.2013 at about 7-8 a.m., he came at the spot near the fields of 'Barseen' and reprimanded the prosecutrix for cutting 'Barseen' crop from his fields. She left the bundle of the Barseem crop there and threatened the accused of dire consequences, if he informed about the theft of the said crop.

14. The testimony of DW-1 corroborates the version of the accused taken in his statement recorded under the provisions of Section 313 of the Cr.P.C. Moreover, the plea is found highly probably as admittedly the fields of the accused are adjoining the fields of Ramphal. The site plan (Ex. P-16) also corroborates this fact. The version is highly probable that Ramphal had deputed Sandeep to inform him if someone cuts Barseen fodder. Prosecutrix had admitted that she had cut the fodder from the fields of Ramphal and that they are not in possession of any land nor they had taken any such land on lease to cultivate fodder for the buffalo which the prosecutrix had kept in her house. The prosecutrix had not alleged that she had paid any money to Ramphal for cutting the said fodder. It is admitted that she had cut the fodder without making any payment to

the owner. The plea taken by her that she had taken the permission from Ramphal is falsified by the testimony of Ramphal (DW-1) as such the plea raised by the accused is found probable and causes a serious doubt in the testimony of the prosecutrix.

15. In view of the aforesaid reasons, we are of the considered opinion that the prosecutrix has strong motive for false implication of the respondent. It is also observed that no injury was found on the person of the respondent in the medical examination. As per her version, the prosecutrix was thrown on the ground by pushing her but no scratches on her back are even noticed in the medical examination. It is further coupled with the fact that it is highly improbable that in day time a person would commit the rape in open fields where there is no place of hiding or concealment, especially, when the '*Katcha*' passages are situated on both sides of the place of occurrence. Collectively taken into consideration these facts and circumstances, the trial Court has taken the considered decision. It is well settled that prosecution has to prove its case beyond a shadow of doubt. In the present case, there are serious doubts in the prosecution story, which have been rightly appreciated by the trial Court.

16. The Hon'ble Supreme Court has repeatedly held that benefit of doubt ensues to accused. If two views are possible, the benefit of doubt must be granted to accused. It has been further held that if two views are possible, the order of acquittal should not be set aside by High Court because there is double presumption of innocence. The Hon'ble Supreme Court in para 39 in **Dhanapal v. State By Public Prosecutor, Madras,** (2009) 10 SCC 401 while dealing with scope of interference at appellate stage has held:-

“39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached— one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

17. It is a cardinal principle of criminal jurisprudence that the prosecution has to prove the case against the accused beyond all shadows of doubts. Having found the testimony of the victim shrouded with suspicion, we are of the considered opinion that trial Court has rightly disbelieved the version of the victim who cannot be treated as a person of sterling quality while acquitting the respondent. Keeping in view the above we are of the considered opinion that the view which has been taken is a probable view and in the absence of any perversity since all evidence has

necessarily been scanned and discussed, no case is made out for interference in the well reasoned order passed by the trial Court.

18. Accordingly, the present application for leave to appeal and resultantly the appeal is dismissed.

19. In the light of the judgment of the Hon’ble Supreme Court in *Nipun Saxena Versus Union of India (2019) 2 SCC 703*, it is ordered that the name of the prosecutrix be deleted from the website as well as the entire record of this Court and she be described as ‘AB’ in CRA-AD-756-DB-2014. The title of the appeal shall henceforth be as under:-

“AB” Versus State of Haryana and another”

Pending miscellaneous application(s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 13, 2023
nitin

Whether Speaking	Yes
Whether Reportable	No