

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

CRA-S-1011-SB-2004

Reserved on:- 10.05.2023

Pronounced on:- 02.06.2023

Yusuf

....Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. B.S. Saroha, Advocate
for the appellant.

Ms. Deepshikha Chauhan, Assistant A.G. Haryana.

Mr. Gautam Kalia, Advocate
for the complainant/respondent No. 2.

AMARJOT BHATTI, J.

1. The appellant – Yusuf has filed the present appeal against judgment of conviction dated 08.03.2004 and order of sentence dated 09.03.2004 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon in Session Case bearing No. 152 dated 07.03.2003, titled as “State Vs. Yusuf”, vide which Yusuf was held guilty and convicted under Section 376 and 506 of the Indian Penal Code, 1860 and was sentenced to undergo rigorous imprisonment for seven years with fine of Rs. 1,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months under Section 376 of the I.P.C. and to

undergo rigorous imprisonment for six months under Section 506 of the I.P.C.

2. The brief facts of the case are that the prosecutrix filed written complaint addressed to SHO, Police Station Nuh against Yusuf with the allegations of rape. The prosecutrix stated that she is resident of Village Kairaka, Tehsil Nuh and is a domestic lady. Her husband Mustafa was doing the job of Welding, who used to come home after 8-10 days. On the day of occurrence i.e. 18.01.2003, Saturday, at about 06:00 A.M., she had gone out to attend the call of nature. She had gone in the Mustard fields behind Farookh Dairy. She had just opened the string of her Salwar, when Yusuf suddenly came there and he pointed a knife on her neck and threatened to kill her in case she raised alarm. He committed forcible rape with her. She tried to rescue herself and also raised an alarm. On this, Issa and Sattar reached there as they were passing through the said area. On hearing her alarm, they came and on seeing them Yusuf ran away from there. Issa and Sattar tried to apprehend him but he threatened them with knife and managed to escape from there. Her husband was called from his work place and thereafter, she went to the police station alongwith her husband to lodge the report. On the basis of this complaint, FIR was registered. The Investigating Officer started the investigation. The prosecutrix was medico legally examined. ASI Abhey Singh inspected the place of occurrence and prepared the site plan. He had collected broken pieces of bangles from the spot which were sealed in a parcel and were taken into police possession. The accused was arrested on 24.01.2003. He was medically examined. A knife was recovered on the basis of his disclosure statement. The report of Forensic Science Laboratory was

received. After completion of all the formalities, the challan was prepared by SI Ram Niwas and it was presented in the Court.

3. The accused was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 376 of the I.P.C. is exclusively triable by the Court of Sessions, therefore, the learned Sub Divisional Judicial Magistrate, Nuh committed the case to the Court of learned Sessions Judge, Gurgaon for trial vide commitment order dated 21.02.2003.

4. The learned Additional Sessions Judge, Gurgaon after hearing the arguments framed charge-sheet against the accused Yusuf under Section 376 and 506 of the I.P.C., which was read over and explained to them in simple language to which he pleaded not guilty and claimed trial.

5. In order to prove the facts of the case, the learned Public Prosecutor for the State examined Dr. Neelam Thapar PW1, Dr. Tirath Raj PW2, SI Ram Niwas PW3, Contable Ram Richhpal Singh PW4, ASI Gopal Singh PW5, HC Vijay Pal PW6, Constable Jagdish Singh PW7, Prosecutrix PW8, Issa PW9, Satyapal Patwari PW10 and ASI Abhey Singh PW11 and closed the prosecution evidence.

6. The statement of accused was recorded under Section 313 Cr.P.C. to which he pleaded innocence and false implication.

7. The accused did not examine any witness in defence and closed his evidence on 03.03.2004.

8. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused, the accused was convicted and sentenced under Section 376 and 506 of I.P.C. as referred above and feeling aggrieved of this judgment of conviction

dated 08.03.2004 and order of sentence dated 09.03.2004, the present

appeal has been filed.

9. I have heard the arguments advanced by learned counsel for the appellant/convict and learned counsel representing the State as well as learned counsel for the complainant and have gone through the record carefully.

10. The learned counsel for the appellant argued that the learned trial Court has failed to appreciate the evidence on record. The material facts have not been taken into consideration. The appellant was about 28-29 years old at the time of said occurrence, whereas, the prosecutrix was about 30 years old having three children. The prosecution version is unbelievable. The prosecution witness Issa PW9 is interested witness. He is close associate of the prosecutrix and her husband. Therefore, his testimony cannot be safely relied upon. Even otherwise, the presence of prosecution witnesses Issa and Sattar at the place of alleged occurrence is highly improbable. The cross-examination of the witnesses has not been appreciated by the learned trial Court. There is delay in lodging the FIR which has remained unexplained. As per the medical record proved on file, the appellant/convict did not suffered any mark of injury on his body. Therefore, there were no marks of struggle caused by the prosecutrix to rescue herself. At the most, there is a probability of consensual relationship.

The points raised by the learned counsel for appellant/convict were not considered by the learned Additional Sessions Judge, Gurgaon while deciding the impugned judgment. The version of the prosecutrix that he was armed with a knife is false and baseless. Nobody has suffered any injury with a knife. A false recovery of knife from his possession was

planted on the appellant/convict. The Investigating Officer has further planted fake recovery of broken pieces of bangles from the alleged place of occurrence. No proper investigation was carried out by the police.

Lastly, the learned counsel for the appellant argued that the matter has been compromised between the appellant and the prosecutrix. Copy of said compromise is also placed on record as Annexure A-1. The matter was mutually resolved between the parties. They have no grievance towards each other. This compromise will enable them to live in peace and harmony and they would be able to maintain future good relations between them. It is argued that as per the custody certificate, he has already undergone custody for a period of 01 Year 10 Months and 27 Days. In case the judgment of conviction is upheld then the sentence may be reduced for the period already undergone. To support his argument, the learned counsel for the appellant has also relied upon the authority cited in **2015(2) R.C.R.(Criminal) 124, case titled Ravindra Versus State of Madhya Pradesh**, *where in a similar case under Section 376(2)(g), the accused in that case was convicted and sentenced for 10 years of rigorous imprisonment. The said incident took place 20 years ago and the parties had entered into a compromise. They were settled in their respective lives. It was held that there were adequate special reasons for awarding lessor sentence and in that case the conviction was upheld and the sentence was reduced to already undergone.* It is prayed that the appellant/convict has undergone the agony of trial since long. Therefore, the order of sentence may be modified, as prayed for.

11. The learned counsel for the complainant has not opposed the aforesaid arguments regarding compromise. On the other hand, the learned

counsel representing the State argued that the facts of the case were duly proved on record from the testimony of prosecutrix as PW8. She was forcibly raped on 18.01.2003 at 06:00 A.M. when she had gone in the fields to attend the call of nature. The prosecutrix was rescued by respectables of their village namely Issa and Sattar. Out of them, Issa has been examined as PW9 who has fully supported the version of prosecutrix. The medical record of the prosecutrix is proved by Dr. Neelam Thapar PW1 and the medical report of appellant/convict is proved by Dr. Tirath Raj Prashar PW2. The entire investigation carried out by the police is proved on file by ASI Abhey Singh PW11. The registration of FIR is proved by ASI Gopal Singh PW5. The Special Report sent to the Magistrate is proved by Constable Ram Rachhpal Singh PW4. The link evidence is proved by ASI Vijay Kumar PW6 and Constable Jagdish Singh PW7 and the report of Forensic Science Laboratory is Ex.PA. After completion of entire investigation, the challan was prepared by SI Ram Niwas who is examined as PW3. The scaled site plan of the place of occurrence was also prepared by Satyapal Patwari PW10.

It is argued that from the evidence led by the prosecution, the learned Additional Sessions Judge, Fast Track Court, Gurgaon rightly convicted Yusuf under Section 376 and 506 of I.P.C. He has committed serious offence which is non-compoundable. Therefore, he does not deserve a lenient view. The appellant/convict was rightly convicted and sentenced under Section 376 and 506 of I.P.C. The appeal preferred by the appellant may be dismissed.

12. I have considered the arguments advanced before me and have gone through the evidence on record carefully. The FIR was registered on

the written complaint of prosecutrix. As per her version, the occurrence took place on 18.01.2003 at about 06:00 A.M. when she had gone behind Farookh Dairy near the mustard fields to attend the call of nature, where the appellant/convict/accused suddenly came and caught hold of her. He threatened her with a knife by saying that she would be killed in case she raised the alarm. He committed forcible rape with her. In the meantime, Issa and Sattar reached there on hearing the alarm raised by her. They tried to catch hold Yusuf but he managed to escape from there by pointing a knife. Thereafter, she was brought back in the house. Her husband was informed and called from his workplace. She alongwith her husband got prepared a written complaint Ex.PG, on the basis of which present FIR was registered which is Ex.PD/1. The victim was medically examined on 20.01.2003 at 12:05 P.M. The investigation was completed and thereafter, the challan was presented. In this case, the accused was charge-sheeted for the offence under Section 376 and 506 of I.P.C. The aforesaid facts of the case are proved on record from the testimony of prosecutrix examined as PW8 and her version is also supported by one of the eye witness Issa who is examined as PW9. Both the aforesaid witnesses fully corroborated the prosecution version. The learned counsel for the appellant/convict/accused failed to point out any discrepancy on any of the material point to discredit their credibility.

The learned counsel for the applicant/convict in the grounds of appeal took a stand that in case the story spelt out by the prosecutrix is admitted as correct with a pinch of salt then it is apparent that in all probabilities, the prosecutrix was a consenting party to the act of sexual intercourse. I have considered the aforesaid stand taken in the grounds of

appeal and I have also gone through the entire cross-examination of the prosecutrix as PW8 in which there is not even a single suggestion that the prosecutrix was having any kind of relationship with the appellant/convict or there was consensual relationship between them. Therefore, the aforesaid stand taken in the grounds of appeal is without merits and afterthought.

The learned counsel for the appellant/convict also raised a point that there is delay in lodging the FIR. The facts of the case indicate that the alleged occurrence took place on 18.01.2003 at about 06:00 A.M. The prosecutrix was brought back in the house by Issa and Sattar. The elder brother-in-law of the prosecutrix called the husband who reached on the next day and thereafter, the application was prepared and filed before the SHO, Police Station Nuh. It has come in the facts of the case that husband of the prosecutrix was doing the work of welding outside the village who used to return home after 7-10 days. Therefore, at the time of said occurrence, the husband of the prosecutrix was not at home. She waited for his arrival and then the matter was reported to the police. Therefore, there is no inordinate delay on the part of prosecutrix in lodging the report with the police.

The learned counsel for the appellant/convict further raised the issue that Issa and Sattar are interested witnesses. They are known to the prosecutrix as well as her husband. Therefore, their version cannot be relied upon. In the case in hand, the prosecution has examined Issa as PW9 who supported the version of prosecutrix PW8. I have also gone through the cross-examination of Issa PW9 who stated that their fields are situated on the other side of the village and usually they go to ease themselves to

their own fields. Even if this fact is considered, it cannot be said that on the date of alleged occurrence, Issa PW9 could have not gone to the area where the alleged occurrence took place. In such like cases, the sole testimony of prosecutrix supported by medical record is sufficient to prove the occurrence. There is bleak probability of presence of any private witness at the time of such occurrence. But in the case in hand occurrence took place in open. As per the version of Issa PW9, he alongwith Sattar had gone near the Farookh Dairy where they heard a noise and when they reached there, they saw Yusuf committing rape with the prosecutrix. He also confirmed that they had tried to catch hold of the accused but he showed them a knife and managed to escape from there. There is no reason to disbelieve the testimony of Issa PW9. The appellant/convict has not examined any witness in defence. There is nothing on record to show that either the prosecutrix or her husband or the aforesaid witness Issa PW9 was having any grudge or enmity with the present appellant/convict to falsely implicate him in this case. The testimony of prosecutrix as PW8 as well as the testimony of Issa as PW9 is consistent and there is no reason to disbelieve the same.

In order to prove the medical record, the prosecution has examined Dr. Neelam Thapar PW1 who medico legally examined the prosecutrix on 20.01.2003 and found the following injuries on her person:-

1. Small abrasion of 1 X 0.5 cm was present on the right forearm two on the ventral and one on the dorsal aspect. Brown in colour – simple blunt.
2. Three abrasions of 1-1.5 cm X 0.3 to 0.5 cm present on the left forearm two on the dorsal and one on the ventral aspect.
3. Bruise of 10 cm X 5 cm present on the posterolateral aspect of right thigh. Bluish discoloration was present. Simple blunt

within 48 hours.

The duration of these injuries was within 48 hours. The copy of detailed MLR is Ex.PB. The samples were drawn and sealed in a parcel by the doctor and the same were handed over to the police. The report of Forensic Science Laboratory is Ex.PA. On police request Ex.PB/1, the doctor gave her opinion that the possibility of sexual intercourse cannot be ruled out in this case. The clothes which were handed over by the doctor to the police were also produced in this case as Ex.P1 and Ex.P2 and the doctor confirmed that the said clothes were the same which were taken into police possession. Similarly, Dr. Tirath Raj Prashar, Medical Officer as PW2 medically examined Yusuf on 24.01.2003 and proved the MLR Ex.PC. He gave his opinion that there was nothing to suggest that the accused was incapable of having any intercourse under normal circumstances. The medical record proved on file clearly indicates that the prosecutrix was raped as stated by her as PW8. The MLR indicates marks of struggle on her body which further corroborates her version. The appellant/convict was mentioned as a well developed well nourished and well built male with well developed primary and secondary sexual characters and was in a position to overpower her. It has also come on record that at that time he was carrying a knife.

The entire investigation carried out by the police is proved on record by examining ASI Abhey Singh, Investigating Officer as PW11. The investigation was carried out by him. He prepared the rough site plan of the place of occurrence as Ex.PJ/1 and from there he had collected broken pieces of bangles which were converted into parcel and sealed with seal impression RN and were taken into police possession vide recovery

memo Ex.PJ/2. The said parcel was also produced in the Court as Ex.P5. The accused was arrested on 24.01.2003 and during interrogation he also suffered a disclosure statement Ex.PJ/4 and on the basis of said disclosure statement he himself recovered a knife concealed in the fields of Sahuni in village Kairaka. The outer sketch of the knife was prepared which is Ex.PJ/5 and it was taken into police possession vide recovery memo Ex.PJ/6. The knife was produced in the Court as Ex.P6. Therefore, the weapon of offence used for threatening the prosecutrix as well as Issa and Sattar was also recovered in this case. The Investigating Officer or any member of the police party had no enmity with the present appellant/convict to plant false recovery of knife on him. Therefore, the investigation carried out by the police further confirm the prosecution version as referred above. Considering the testimony of aforesaid witnesses, the learned Additional Sessions Judge, Fast Track Court, Gurgaon while deciding this case rightly came to the conclusion that the guilt of appellant/convict under Section 376, 506 of I.P.C. is duly proved on record. Therefore, the judgment of conviction dated 08.03.2004 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon does not require any interference and the same is accordingly, upheld.

13. The learned counsel for the appellant/convict has further taken the stand that the matter has been compromised between the parties. Regarding this fact, he filed one application and placed on record the copy of compromise dated 11.06.2012 Annexure A-1. It is mentioned in the said document that with the intervention of friends, relatives, well-wishers and respectables of the society, the parties had entered into a compromise. It was mentioned that all disputes and differences have already been

resolved. They have decided to bring an end to all their disputes and differences so that they could live peacefully in future and ensure good relations between them. Further, as per the custody certificate, the appellant/convict has already undergone custody for a period of 01 Year 10 Months and 27 Days. In support of this argument, the learned counsel for the appellant/convict has relied upon the authority cited in **2015(2) R.C.R.(Criminal) 124 (supra)**. On the basis of this authority, it is prayed that the sentence imposed upon the appellant/convict may be reduced for the period already undergone.

I have considered this aspect of the present case. The said occurrence took place on 18.01.2003 when the prosecutrix was 30 years of age, a married lady being mother of three children and was raped by the appellant/convict, who himself was 28 years of age. Section 376 of I.P.C., before substitution by Act 13 of 2013 was as under :-

“376. Punishment of rape.- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or which fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years...”

The offence under Section 376 of I.P.C. is a serious offence and is non-compoundable. The compromise Annexure A-1 referred by learned counsel for the appellant/convict cannot be looked into, considering the gravity of offence and the manner in which it has been committed. To support this argument, there is judgment of the Hon’ble Supreme Court of India laid down by three-Judge Bench cited in **2014**

CriLJ 308 titled “Shimbhu and another Versus State of Haryana”,

where it was held in para No. 21 and 22 of the judgment as under: -

“21. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

22. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of Indian Penal Code.”

There is another authority of the Hon’ble Supreme Court of India cited in **(2015) 7 Supreme Court Cases 681 titled “State of Madhya Pradesh Versus Madan Lal”**, where again by relying upon the Principles laid down by three-Judge Bench in *Shimbhu* case as referred above, the case was remanded back for fresh decision. Therefore, the judgment cited in **2015(2) R.C.R.(Criminal) 124 (supra)** by learned counsel for the appellant/convict cannot be relied upon. The alleged

compromise Annexure A-1 does not convince the mind of this Court for reducing the period of sentence for the period already undergone. The quantum of sentence awarded by the trial Court is justified, considering the gravity of offence. Therefore, the order of sentence dated 09.03.2004 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon does not require any interference.

14. Resultantly, the judgment of conviction dated 08.03.2004 and order of sentence dated 09.03.2004 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon is accordingly, upheld and the appeal preferred by the appellant/convict Yusuf is accordingly, dismissed. The appellant Yusuf is directed to surrender before learned Chief Judicial Magistrate, Gurgaon within one month from today, failing which learned Chief Judicial Magistrate, Gurgaon would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court for information and compliance. The original record received from the trial Court be sent back to the concerned quarter.

The appeal is accordingly, declined.

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

02.06.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No