

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
221 **CRA-AS-23-2021 (O&M)**
Date of decision: 31.08.2023

Geeta Devi

...Appellant(s)

Vs.

State of Punjab & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Judgepreet Singh Warring, Advocate
for the appellant.

Mr. Kunwarbir Singh, AAG Punjab.

NIDHI GUPTA, J.

Present appeal has been filed by the complainant/mother of the prosecutrix against order of acquittal dated 09.03.2021 passed by learned Additional Sessions Judge, Bathinda whereby the accused/respondent No.2 herein was acquitted of the offences under Sections 354, 506 and 34 IPC and Section 8 of the POCSO Act, 2012.

2. FIR in the present case was registered on the basis of statement of the appellant/mother of the prosecutrix. Brief facts of the case are that on 12.09.2019 in the evening, the prosecutrix (aged about 14 years), who was a student of 8th class, told her mother/complainant/appellant herein that at about 3-4 PM, accused Mangal had called her out of the house, and at the gate of the house he started kissing her; and respondent No.2/Raimbo @ Ramesh Saini s/o Majnu Sahni, indulged in obscene acts with her, touched her breast and threatened her not to tell anyone about it otherwise she would be

kidnapped. Both the accused are residents of same *mohalla* of the complainant. At first out of fear, they did not tell anyone about this but on 13.09.2019, the complainant/appellant informed her husband thinking that if the matter was not reported to the police, the accused may commit rape on the prosecutrix.

3. Accordingly, on 13.09.2019 when L/SI Amandeep Kaur along with other police officials were present at Milk Booth situated in Phase-III, Model Town, opposite Daddi Poti Park, for patrolling and checking duty, the appellant got recorded her statement with regard to the above said incident. Upon finding commission of offences punishable under Sections 354, 506 and 34 IPC and Section 8 of POCSO Act, memo of intimation was sent through PHG Narinder Kumar to the police station for registration of the FIR. L/SI Amandeep Kaur went to the place of occurrence, inspected the same and prepared rough site plan. On 14.06.2019, statement of the prosecutrix under Section 161 Cr.P.C. was recorded. Prosecutrix was medically examined. On 15.09.2019, respondent No.2 was arrested. On 16.09.2019, juvenile/child in conflict with law namely Mangal @ Naresh Kumar was produced by his mother Sukhmari w/o Majnu Sahni, whose personal search was carried out. Scabs were found on his body on account of injuries suffered a few days earlier. Memo was accordingly prepared. He was produced before the Juvenile Court and after obtaining orders from the Court, he was sent to Observation Home, Faridkot, after getting him medically examined. Since he was a juvenile, his final report was submitted to Juvenile Court. After completion of

investigation and other formalities, challan was presented against respondent No.2. Thereafter, Investigating Agency conducted further investigation and report under Section 173(8) Cr.P.C. was presented before the learned trial Court. Charges were framed against respondent No.2 for commission of offences punishable under Sections 354, 506 IPC and Section 8 of POCSO Act, to which he pleaded not guilty and claimed trial.

4. Learned counsel for the appellant inter alia contends that during trial, the prosecution has examined PW1 to PW5 who by way of their oral testimony, as also documentary evidence led by the prosecution fully proved the case against the accused. However, the learned trial Court has failed to properly and correctly appreciate the evidence on record. It is submitted that even the prosecutrix as PW3, and in her statement under section 164 Cr.PC, had consistently and categorically reiterated the specific allegations made in the FIR against the accused and therefore, the impugned judgment is patently incorrect and unsustainable. It is submitted that even if there were minor contradictions in the story put forth by the victim and the complainant, the same cannot be taken into consideration at the time of final decision of the case.

5. Per contra, learned State Counsel refers to findings of the learned trial Court recorded in para 11 onwards of the impugned judgment. Relevant findings of the learned trial Court are as follows:-

“11....As per report U/s 173 Cr.P.C., when the juvenile Mangal @ Naresh Kumar was produced before the police on 16.9.2019, on his physical examination, scabs were observed on injuries as to which memo was prepared. As per PW5 SI Amandeep Kaur investigating

officer, when Mangal @ Naresh Kumar was produced he was injured. Also the accused examined DW5 Jatinder Kumar, who had taken the juvenile Naresh Kumar and his mother Sukhmari to the hospital and as per DW1 Jagpal Singh from the Civil Hospital, it was Jatinder Kumar, who had brought the injured to the hospital. DW6 Shiv Lal and DW5 Jatinder Kumar also deposed about the occurrence at the hands of the complainant side. DW6 Shiv Lal claimed himself to be witness of the occurrence, while DW5 Jatinder Kumar deposed as to having seen the accused side lying injured on the roadside and that he came to know that complainant side had beaten them. DW2 ASI Jasvir Singh deposed as to application made by mother of the accused, at which enquiry was conducted by DSP (City-II), Bathinda, but perusal of the same will reveal that enquiry was not completed and papers were filed on the ground that in the present FIR, challan has been prepared and was yet to be presented. Statement of victim had been recorded U/s 164 Cr.P.C. and therefore, there was no need to proceed on the application and it was ordered to be filed. Clearly as per their depositions, from 11.9.2019 at 11.55 p.m., to 13.9.2019 at 3.35 p.m., Naresh Kumar, child in conflict with law and Sukhmari, mother of Naresh Kumar and accused Rambo were in the hospital and therefore, possibility of presence of Naresh Kumar, child in conflict with law, at the time of occurrence at the place of occurrence became suspicious, which casts cloud upon entire version given by the prosecution. Further, in this very regard, accused examined DW3 MHC Paramjit Singh about DDR entries as to statements of juvenile Naresh Kumar and Sukhmari, as to injuries suffered by them at the hands of present complainant side. Perusal of these entries Ex. D8 and Ex. D9 will reveal that statement of Naresh Kumar, juvenile was completed at about 5.05 p.m., and of Sukhmari at about 6.00 p.m., at civil hospital itself and the entries were made at 6.30 p.m., in the DDR register on 13.9.2019. Present case was filed on 13.9.2019 at 10.07p.m. and information was received at 9.36 p.m., as per the FIR

Ex.PW5/B. PW5 SI Amandeep Kaur stated that complainant came to her on 13.9.2019 at about 8.55 p.m. to record her statement, which means that after the matter had already been reported to the police by the accused side. It is clear from the statement of prosecution witnesses that it was a case of counter blast to this reporting of the matter to the police by accused side because the very first version put forward by the complainant through her statement U/s 154Cr.P.C. Ex. P1 is that the occurrence was of 12.9.2019 at about 3.00- 4.00 p.m. Further, she stated that earlier out of fear they did not tell anyone. Afterwards, they reported the matter to police on 13.9.2019, thinking that the accused can even commit rape with the prosecutrix, if the matter is not reported to the police. As per police proceedings Ex. PW5/A, statement of complainant was recorded and police proceedings completed at about 9.30 p.m. When the complainant took the witness box as PW4, she stated that occurrence took place at 3.00-4.00 p.m. may be on 12" of last year and month may be prior to Hindu festivals. The prosecutrix out of fear did not disclose about the occurrence, but, next day she disclosed it to the complainant and complainant informed her husband and on next day, she got recorded statement with the police. In cross examination, she stated that she had told the police officials that her neighbourers Geeta and 5-6 others had told her about the incident, which fact not only was strange that the prosecutrix did not tell about the incident to her mother/complainant, but, she came to know about the same from neighbourers. How the neighbourers came to know about the incident, has not been explained. Rather this fact is improvement upon previous version as well as discrepant from that. PW2 Kali Paswan stated that he was told by his wife on 12.9.2019 about the occurrence, which took place at about 3.00-4.00 p.m. His daughter had told his wife and his wife told him. Then they thought of informing the police and on next day, the complainant got recorded her statement to the police. In cross examination he states that his

wife told him about the occurrence in the morning of 13.9.2019 and their statements were recorded on the same day i.e. 13.9.2019. The prosecutrix deposing as PW3 stated that occurrence took place on 12.9.2019 in the evening. She told her mother about the occurrence. In her statement recorded U/s 164 Cr.P.C., she stated about the occurrence at 3.00/4.00 p.m., on 12.9.2019, keeping silent as to when she reported the matter to her parents. Similar is the case with her statement U/s 161 Cr.P.C. Ex. D1. These statements made by the witnesses clearly show that they filed this case only after matter had already been reported to police by the accused side and clearly therefore, as a counter blast to DDR entered at the behest of accused. Clearly therefore, the possibility of present case being counter blast, cannot be ruled out particularly, when the accused had been able to establish his plea of alibi being in hospital at that time vis-a-vis the juvenile and his mother, making the entire version of the prosecution to be suspicious and also because they have been able to prove their own injuries.

12. The falsity of the case was evident from the other factor also. Firstly, major discrepancies appeared in prosecution version and the statements of witnesses. Coming first to the original version put forward by the complainant before the police U/s 154 Cr.P.C Ex. P1, she was informed by the prosecutrix that Mangal called the prosecutrix out of the house and on the gate of the house, started kissing her. Rambo committed obscenities and touched her breast. He also threatened not to disclose about this to anyone, otherwise she will be kidnapped. She nowhere stated about tearing of clothes of prosecutrix. The prosecutrix herself in statement U/s 161 Cr.P.C. stated that Mangal and Rambo called her outside and when she reached near the gate of the house and asked as to why they had called her outside, Mangal told her that he wanted to marry her, at which she refused and Mangal kissed her and Rambo caught hold of her and touched her breast. In the meantime, she called her mother and both

the offenders fled from the spot. In her statement U/s 164 Cr.P.C. Ex. PW3/A, she simply stated that on 12.9.2019 at about 3.00/4.00 p.m., Rambo and Mangal came to her house. Rambo called her. When she came out of house Mangal asked for marriage, but, she refused, at which Mangal attempted to kiss her and tore away her clothes. Rambo was present at the spot. As PW1 she stated that on 12.9.2019, she was alone at the house. Mangal called her and she went out of the house and saw Mangal and Rambo were there. Mangal asked for marriage, but she refused. He forcibly kissed her and Rambo forcibly touched her breast. The prosecutrix herself therefore has given three different versions of the occurrence, as to who had called her outside, whether she was kissed or attempt was made, whether Rambo committed any act or not, whether her clothes were torn or not. Even on this aspect, whether she was alone at the house or not, major discrepancy has appeared. In her statement Ex. D1 she states that she called her mother at which both the accused fled from the spot, but she is silent in Ex. PW3/A on this aspect and as PW3 stated that she was alone at the house and told her mother about the occurrence, when she returned in evening. In cross examination also, she stated that her parents were not at home.

Other major discrepancies are about as to whom the matter was disclosed and by whom, whether clothes of the prosecutrix were torn or not, whether neighbours gathered at the spot or not, whether any threats have been issued or not. In first statement Ex. P1, the complainant did not make any mention about torn clothes. Even deposing as PW4, she did not state anything in examination-in-chief, but, during cross examination stated clothes of her daughter were torn, which were shown to the police officials. Prosecutrix herself did not state anything about the tearing of the clothes in statement Ex. D1, but, stated in Ex. PW3/A that Mangal attempted to kiss her and tore away her clothes. As PW3 in the court, she again did not state

anything about the tearing of the clothes in examination-in-chief, but in cross examination stated that torn clothes, she mentioned in statement U/s 164 Cr.P.C. were shown to the police. Her father Kali Paswan while appearing as PW2, did not state anything in examination-in-chief, but, in cross examination stated that clothes of his daughter were torn, which were produced before the police officials. The alleged torn clothes were never taken into police possession, nor produced in the court.

Even there was different version given by each of them as to whom the matter was disclosed and when, as has been discussed above. Next as to presence of neighbourers, in previous statement, none of the prosecutrix witnesses stated anything that neighbourers had gathered at the spot, but, during cross examination, they stated that neighbourers gathered at the spot and strangely, none of them was examined in the court to lead any independent evidence.

Further, discrepancy arose as to threats issued to the prosecutrix. In Ex. P1, complainant stated that accused had threatened not to disclose about the occurrence to any one and otherwise the prosecutrix will be kidnapped. The prosecutrix herself in Ex. PW3/A and Ex. D1 did not state anything about any threat, but when she took the witness box as PW3, she stated that on 25th when she came out of the house, Rambo and Mangal who were present near her house, threatened not to reveal any family member and otherwise, she will be kidnapped. She did not state anything about any threat issued on the day of occurrence, rather introduced a new fact of threats having been issued on 25th while no other witness stated anything about threat on 25th. Although, both her parents stated about the threats on the day of occurrence. PW2 Kali Paswan stated that accused Rambo and Mangal child in conflict with law called her daughter outside the house, did wrong acts with her and even threatened her to marry. PW4 Geeta Devi, mother of the

prosecutrix stated that both of them had threatened her daughter that if she will disclose the occurrence to anyone, they will kidnap her...".

(Emphasis supplied).

6. From the above findings what emerges is that the complainant side had first beaten up the accused side on account of which the accused party had filed a complaint against the present complainant side. Because of the beatings received by the accused from the present complainant side, as per the uncontroverted deposition of DW5-Jatinder Kumar and DW6-Shiv Lal, from 11.09.2019 at 11:55 pm to 13.09.2019 at 3:35 pm, the minor accused and his mother were in hospital at the time of occurrence i.e. on 12.09.2019 at about 3-4 pm. Therefore, the very presence of the accused at the place of occurrence/i.e. house of the prosecutrix, becomes suspicious and casts a doubt upon the entire version given by the prosecution.

7. It has further been found by the learned trial court that there are major discrepancies, contradictions, and progressive improvements made by the prosecutrix in her statements under Section 161 and 164 Cr.P.C., and then in her testimony as PW3. Learned trial Court has found that the prosecution side has given different versions of the event. In fact, the prosecutrix herself has narrated three different versions of the occurrence in her above three statements.

8. Even now learned counsel for the appellant is unable to show anything to this Court as to why the above said findings are erroneous. Accordingly, in view of the above uncontroverted findings of the

learned Trial Court, I find no ground is made out to interfere in the impugned judgment. Present appeal, therefore, stands **dismissed**.

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

31.08.2023
Sunena

(Nidhi Gupta)
Judge

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