

2023:PHHC:126926-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-671-2022 (O&M)
Date of Decision: September 28, 2023

A Appellant

VERSUS

Goverdhan Dass and others Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Arun Takhi, Advocate for the appellant.

LISA GILL, J.

1. Applicant/complainant seeks leave to appeal against judgment dated 16.03.2022 passed by learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur whereby respondents have been acquitted of charge for the offences punishable under sections 376, 323, 506, 452, 379, 148, 149, 120B IPC.

2. Brief facts necessary for adjudication of the matter are that complaint dated 22.04.2014 was filed by the applicant-complainant with the averments that her marriage with her husband (PW2) was solemnised against the wishes of accused, who are closely related to her husband. All the accused wanted to wrest possession of complainant's land, which was transferred in her favour by her husband. It is stated that on 21.04.2014 at about 6.30 p.m. complainant was present at her house having tea while her

husband had gone to the fields to answer the call of nature. Two sons of the complainant, one aged thirteen (13) years and the other two (2) years were at home. All the accused with common intention, common object and in criminal conspiracy with each other, duly armed with dandas (sticks) are stated to have entered the complainant's house forcibly. It is alleged that they used filthy language while abusing the complainant and her husband. They exhorted that complainant and her husband should be killed while teaching them a lesson for becoming landlords. Complainant is stated to have locked her children in one of the rooms and come out into the courtyard to talk peacefully. It is to be noted, at this stage, that accused/respondents are the real brothers, sister-in-law and real sister respectively of the complainant's husband. Goverdhan Dass aged 72 years, Paramjit Singh aged 69 years, Ashok Kumar aged 65 years, all sons of Harbans Lal are the real brothers of complainant's husband. Sham Kumari aged 80 years daughter of Harbans Lal is the real sister of complainant husband while Sudesh Kumari aged 65 years is the wife of Paramjit Singh son of Harbans Lal.

3. It is alleged by the complainant that Sudesh Kumari attacked her with danda and as she bent down, Danda hit respondent – Ashok Kumar. Thereafter, Goverdhan Dass is alleged to have given a danda blow and fist blow on her face with Sham Kumari catching hold of her from her hair tightly and accused Sudesh Kumari giving 3/4 blows of danda upon her. Thereafter, respondents - Goverdhan Dass, Paramjit Singh and Ashok Kumar caught hold of her, dragged her on the floor of the house. Goverdhan Dass is alleged to have torn off her clothes and respondent - Ashok Kumar

statedly committed rape upon her. When she screamed for help, respondent – Paramjit Singh is stated to have put his hands upon her mouth. However, on hearing her screams, complainant's husband – Ashwani Kumar came to the spot and rescued her from clutches of the accused while thrashing them. Respondent – Sudesh Kumari is stated to have inflicted danda blows upon complainant's husband and Sham Kumari gave danda blows on his legs. Furthermore, respondent – Paramjit Singh snatched complainant's earrings weighing about two tolas and Sham Kumari snatched her chain weighing about two tolas. When the complainant and her husband raised hue and cry, accused statedly fled from spot while threatening that in case, complainant ever entered her fields, she would be gang-raped in the open fields.

4. Complainant and her husband proceeded to Civil Hospital, Sham Chaurassi, where they were medico legally examined. MLR No. BDS/15/14 of complainant and MLR No. BDS/16/14 of her husband were sent to Police Station for necessary action. Another MLR bearing No. 6/RR/2014 of the complainant was also prepared at Civil Hospital, Hoshiarpur. FIR No. 43 dated 22.04.2014 under Sections 376, 323, 506, 452, 379, 148, 149, 120B IPC was registered against all the accused. However, no action was taken by the police as the respondents are allegedly rich and influential people having links with local leaders. Proper inquiry was not conducted in the matter. It is stated that complainant got published news item dated 31.07.2014 in the local newspaper with regard to partial behaviour of the police authorities. Cancellation report in respect to FIR No. 43 dated 22.04.2014 was ultimately filed with the police finding no truth in allegations raised therein. Complainant in such circumstances filed present

complaint against the accused while also alleging that various litigations were pending between parties with the respondents being in illegal possession of the complainant's property. FIR No. 45 dated 08.04.2013 under Sections 447, 506, 120B IPC also stood lodged at Police Station Bulowal against the respondents.

5. All the accused - respondents were summoned to face trial for the offences punishable under Sections 452, 323, 506, 379, 148, 149, 376, 511, 120B IPC on the basis of preliminary evidence led by the complainant. The case was committed to Court of Sessions vide order dated 30.09.2019. Charge was framed under Sections 376D, 323, 450, 379, 506, 148, 149, 120B IPC with amended charge being framed on 17.02.2022 under Sections 120B, 148, 450, 376D, 109, 379, 506, 323 read with Section 149 IPC. All the accused pleaded not guilty and claimed trial. Post charge, complainant deposed as PW1 and her husband deposed as PW2. Dr. Baldev Singh, Medical Officer, CHC, Sham Chaurassi, Hoshiarpur was examined as PW3 and Dr. Rajinder Raj, Principal Medical Officer, BBMB Hospital, Talwara, District Hoshiarpur was examined as PW4. Statements of accused were recorded under Section 313 Cr.P.C. wherein all the incriminating evidence was put to them, which was denied by them while pleading innocence and false implication.

6. It was stated in defence that there is a property dispute between the accused and complainant, who has filed numerous frivolous civil and criminal cases against them. It is stated that on 21.04.2014 at about 6/6.30 a.m., respondent – Ashok Kumar was coming from their Haveli carrying milk. Complainant intercepted him in front of her home and quarrelled with

him and attacked him with danda. When Ashok Kumar raised hue and cry, respondents – Goverdhan Dass and Paramjit Singh came to the spot to rescue him. Number of people gathered at the spot. Police was also called by the complainant. However, complainant alongwith her husband inflicted injuries upon themselves and got registered false FIR No. 43 dated 22.04.2014 against all the respondents. Complainant's version was found to be false on investigation by the police. False complaint was thereafter filed by the complainant with ulterior motives. Dr. Parminder Kumar, Civil Surgeon, Civil Hospital, Ropar was examined as DW1 to prove injuries inflicted on respondent – Ashok Kumar. Various documents, as are detailed in para 12 of the judgment, were tendered in evidence by the defence. Learned trial Court culled out the following points for determination:-

1. Whether on 21.4.2014 in the area of village Mehima, all the accused hatched criminal conspiracy to do an illegal act and thereafter in furtherance of that criminal conspiracy, all the accused committed house trespass of complainant, inflicted injuries to her and her husband and committed rape upon the complainant and thus all the accused committed an offence punishable under Section 120B IPC, 1860.
2. Whether on 21.4.2014 at about 6.30 am, in the area of village Mehima, all the accused were members of unlawful assembly and armed with deadly weapons and committed the offence of rioting and committed an offence punishable under Section 148 IPC, 1860.
3. Whether on the same date, time and place, all the accused in pursuance of criminal conspiracy, committed house trespass by entering into the house of complainant, which is a building used as human dwelling in order to commit offence punishable with

imprisonment for life and thus all the accused committed an offence punishable under Section 450 IPC, 1860.

4. Whether on the said date, time and place, accused Ashok Kumar in pursuance of criminal conspiracy of his co-accused Paramjit Singh and Goverdhan Dass, committed rape upon complainant and thus committed an offence punishable under Section 376D IPC, 1860.

5. Whether on the same date, time and place, accused Ashok Kumar committed rape upon complainant and accused Sudesh Kumari and Sham Kumari abetted for the same and thus committed an offence punishable under Section 109 IPC, 1860.

6. Whether on the same date, time and place, all the accused committed theft of ear rings of complainant made of gold and committed an offence punishable under Section 379 IPC, 1860.

7. Whether on the same date, time and place, accused Goverdhan Dass in pursuance of criminal conspiracy of his co-accused voluntarily caused hurt to complainant and committed an offence punishable under Section 323 IPC, 1860, whereas accused Paramjit Singh, Ashok Kumar, Sudesh Kumari and Sham Kumari committed an offence punishable under Section 323 read with Section 149 IPC, 1860.

8. Whether on the same date, time and place, accused Sudesh Kumari in pursuance of criminal conspiracy of her co-accused voluntarily caused hurt to complainant and committed an offence punishable under Section 323 IPC, 1860, whereas accused Paramjit Singh, Ashok Kumar, Goverdhan Dass and Sham Kumari committed an offence punishable under Section 323 read with Section 149 IPC, 1860.

9. Whether on the same date, time and place, accused Sudesh Kumari in pursuance of criminal conspiracy of her co-accused voluntarily caused hurt to Ashwani Kumar and committed an offence punishable under Section 323 IPC, 1860, whereas accused Paramjit Singh, Ashok Kumar, Goverdhan Dass and

Sham Kumari committed an offence punishable under Section 323 read with Section 149 IPC, 1860.

10. Whether on the same date, time and place, accused Sham Kumari in pursuance of criminal conspiracy of her co-accused voluntarily caused hurt to Ashwani Kumar and committed an offence punishable under Section 323 IPC, 1860, whereas accused Paramjit Singh, Ashok Kumar, Sudesh Kumari and Goverdhan Dass committed an offence punishable under Section 323 read with Section 149 IPC, 1860.

11. Whether on the same date, time and place, all the accused committed offence of criminal intimidation by giving threats to complainant and her husband for their life and liberty and committed an offence punishable under Section 506 IPC, 1860.

7. Learned trial Court on considering the evidence on record, facts and circumstances, concluded that prosecution failed to prove its case against the respondents beyond reasonable doubt. Accordingly, all accused were acquitted of the charges framed against them while affording them benefit of doubt. Reference, inter alia, was made to the discrepancy/ies in the statement of complainant herself. Learned trial Court concluded that commission of offence/es by the accused was not proved beyond reasonable doubt on the basis of evidence on record. Aggrieved therefrom, complainant seeks leave to appeal.

8. Learned counsel for the applicant-appellant vehemently argued that learned trial Court has grossly erred on fact and in law while acquitting respondents of the charges framed against them. There is succinct, clear cut evidence on record, which proves commission of offences as alleged. It was submitted that medical evidence on record in the shape of MLRs as well as

evidence of doctors duly examined by the complainant, have been incorrectly ignored. It was vehemently argued that sole testimony of the prosecutrix herself is sufficient for convicting all accused persons and it is not necessary for the Court to look for any corroboration. Learned counsel for the applicant referred to Ex.CW3/B i.e. report of Chemical Examiner wherein presence of spermatozoa has been recorded to submit that no further proof of commission of offence of rape is required. Motive on the part of respondents for commission of offences, it was stated, was duly proved inasmuch as complainant's husband had transferred his share to the complainant, which was not to the liking of respondents. Paramjit Singh had forged an agreement to sell qua land of the complainant. Civil suit in this respect was filed by Paramjit Singh on 03.10.2012 i.e. prior to the incident in question, which was decided against him on 26.02.2018. Second suit was filed by the complainant on 13.10.2012 and was decided in her favour on 10.02.2021. Prosecutrix/complainant has given graphic details of the commission of offence by the respondents, therefore, learned trial Court, it is reiterated, has erred while acquitting all the respondents – accused, thus, leave to appeal should be afforded to the applicant/complainant and her appeal should be allowed, thereby holding all the accused guilty of offences as charged and sentenced accordingly.

9. We heard learned counsel for the applicant and perused the record with his able assistance.

10. It is a matter of record that FIR No. 43 was registered at the statement of complainant/prosecutrix in respect to the incident which took place on 21.04.2014 at about 6.30 a.m. Police on investigation did not find

any truth in the allegations and filed cancellation report. Pursuant thereto, present complaint had been filed. Prosecutrix claimed that she got married to PW2 Ashwani Kumar in the year 2011 against the wishes of accused persons as she belonged to Adharmi caste whereas they are Brahmins.

11. Allegations raised by the complainant inter-alia are of rape having been committed upon her by the accused. Complainant alleged that Paramjit Singh, Ashok Kumar and Goverdhan Dass caught hold of her, dragged her on the floor with Goverdhan Dass tearing of her clothes and Ashok Kumar committing rape upon her. While it is a settled position of law that sole testimony of the prosecutrix may be sufficient to convict an accused but the caveat is that such testimony of the prosecutrix should be of 'sterling quality' and completely trustworthy. Gainful reference in this respect can be made to the judgment of Hon'ble the Supreme Court in **State of Himanchal Pradesh Vs. Asha Ram, 2006 Cri.L.J. 139**, wherein it is held that conviction can doubtlessly be founded on the sole testimony of the prosecutrix unless there are compelling reasons for seeking corroboration. Evidence of the prosecutrix is put on a higher pedestal than that of an injured witness and minor contradictions and insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Sine qua non for conviction on the sole testimony of the victim is that it should be consistent, reliable, probable and of sterling quality inspiring the confidence of the Court. However, in case, testimony of the victim does not inspire confidence, it is open to the Court to seek corroboration thereof.

12. Hon'ble the Supreme Court in **Santosh Prasad @ Santosh Kumar Vs. The State of Bihar, (2020) 3 SCC 443**, has held that testimony of the victim should be of sterling quality. Reference has been made to para 22 of its earlier decision in **Rai Sandeep alias Deepu Vs. State (NCT of Delhi), (2012) 8 SCC 21**, which is reproduced as here under:-

“5.4.2 In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a “sterling witness”. In paragraph 22, it is observed and held as under:

“22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said

witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

5.4.3 In the case of **Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130**, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?”

13. In the present case, there are various discrepancies in the evidence on record, which compel the Court to seek corroboration of the version set forth by the complainant. History of litigation between the parties is a matter of record. Complainant herself admitted that she filed more than 50 complaints and applications against the accused. It is to be noted that allegations of rape by Ashok Kumar and tearing of clothes by Goverdhan Dass is alleged in the presence of other family members including the women. It is highly improbable that such an act would have been committed in the presence of all family members including the women. Similarly, it has been alleged by the complainant that both her children were present in the house when the accused trespassed therein and committed the offences as alleged. Apart from improbability of the version, there is no explanation as to why in such a situation, atleast one of the sons who were allegedly locked up by her on arrival of accused, was not examined. Age of both sons of the complainant is admitted to be two (2) and thirteen (13) years.

14. Another relevant fact to be noticed is that evidence on record reveals that at the first instance, complainant gave history of alleged fighting/scuffle and allegation of rape was added at a later stage. Dr. Baldev Singh (PW3) in his Medico Legal Report stated that patient gave history of alleged fighting at village Pandori Mehtma, Hoshiarpur and it is subsequently that history of alleged attempt of rape was given. It is to be noted that even at this stage, it is an attempt of rape, which is alleged. Complainant was thereafter (after raising allegation of attempted rape) referred to the Gynaecologist at Civil Hospital, Hoshiarpur for medico legal examination. PW3, Dr. Baldev Singh, categorically states in his testimony that complainant initially gave history of fighting and after completion of her medico legal examination she alleged attempt of rape, though she did not disclose the name of any person. Torn clothes were not produced by the complainant.

15. Argument raised by learned counsel for the appellant that presence of spermatozoa is enough to prove the allegations, is devoid of any merit, hence rejected. This is so for the reason that complainant is admittedly a married lady and in the given factual matrix mere presence of spermatozoa, in the absence of any DNA matching cannot be indicative of rape by itself. PW1, complainant admitted that she has good and cordial relations with her husband and they were living together since the date of marriage while maintaining normal physical/marital relations. Furthermore, complainant on earlier occasion is also proved to have lodged complaints with allegations of rape against some of the accused. In order to determine the credibility of complainant/prosecutrix, reference can also be made to

judgment dated 18.03.2019 (Ex.D7) passed by learned Judicial Magistrate First Class, Hoshiarpur, wherein accused were acquitted of the charges framed against them in a complaint filed by the complainant's husband. It has been observed by learned JMIC, Hoshiarpur that present complainant/prosecutrix, who had testified as CW2 in the said case was not a trustworthy witness. She also admitted filing of other cases against accused persons including the case for commission of rape by Paramjit Singh. Said complaint was withdrawn. Thus, in the factual matrix, conviction cannot be on the basis of sole testimony of the prosecutrix. Necessary corroboration thereof is not forthcoming from the evidence on record. Commission of offence punishable under Section 375 IPC is not proved beyond reasonable doubt.

16. Furthermore, evidence on record does not prove the complainant and her husband to be in exclusive possession of the land in question. Judgment dated 07.08.2018 (Ex.D5) passed by the learned JMIC, Hoshiarpur indicates admission of the complainant that she had handed over possession of land belonging to her to Harpal Singh. Land in question is reflected to be joint between the complainant and Paramjit Singh, Goverdhan Dass and Ashok Kumar. Same is not demarcated by metes and bounds.

17. Allegations of house trespass, in our considered opinion, are not proved on the basis of evidence on record. Admittedly, no independent witness has been examined neither any site plan placed on record. It is to be noted that as per report (Ex.D9) by the SHO, Police Station Bulowal, allegations raised by the complainant were found to be false and it was

found that quarrel had taken place between both the parties in the street. Case of defence is that Ashok Kumar was coming from their Haveli with milk after milking the cattle. He was intercepted by the complainant in front of her house. Quarrel ensued and he was attacked by the complainant with danda. When he raised hue and cry, Goverdhan Dass and Paramjit Singh came to the spot. Number of people gathered there. Police was called by the complainant and that complainant and her husband themselves inflicted injuries upon themselves with a false FIR No. 43 dated 22.04.2014 being lodged. Said FIR was admittedly found to be without any truth therein and cancellation thereof was recommended.

18. PW2 husband of the complainant has admitted in his testimony that Sarpanch of the village and one member Panch namely Kulwinder Kaur came at the spot at the time of arrival of police. Both these witnesses have not been examined by the complainant for reasons best known to her. It is reiterated that two sons of the complainant, who were alleged to be present in the house at the time of occurrence, were not examined. At least one of the sons aged thirteen was clearly grown up enough with sufficient awareness. Therefore, in the given factual matrix, it has been rightly held by learned trial Court that version of the complainant about accused party being an aggressor is not believable and is not proved beyond reasonable doubt on the basis of evidence on record.

19. There are material discrepancies in the statement of the complainant which cause a fatal blow to her version. Insofar as question of injuries inflicted upon the complainant and her husband, it is to be noted that initially complainant as per her complaint alleged that Sudesh Kumari

attacked her with danda and when she bent down, danda hit the accused Ashok Kumar. While testifying before the learned trial Court, complainant stated that after she had locked her children in room, Paramjit Singh gave a danda blow on which she bent down and danda hit Ashok Kumar. Complainant has levelled the same allegation qua two different people at different points of time. Moreover, PW3 Dr. Baldev Singh has specifically held that possibility of injuries on both the complainant and her husband by a fall on hard surface, cannot be ruled out.

20. Keeping in view the factual matrix as above, it is clear that prosecution/complainant has failed to prove the case against accused beyond reasonable doubt on the basis of evidence on record. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in **Arulvelu v. State represented by the Public Prosecutor 2009 (10) SCC 206** held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. 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's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept

in view while dealing with the judgments of acquittal passed by the trial court.”

21. Reference in this regard can also be made to judgment of Hon’ble Supreme Court in **State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324**, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse.

22. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in judgment dated 16.03.2022 passed by learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur for setting aside acquittal of respondents.

23. No other arguments were raised.

24. Leave to appeal is, accordingly, declined.

25. As the matter has been decided on merits, delay of 69 days in filing the appeal is rendered academic.

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

(LISA GILL)
JUDGE

September 28, 2023
Rts

(RITU TAGORE)
JUDGE

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