

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-76-2022(O&M)
Date of Decision:06.01.2023

AB

.....Appellant

Vs.

State of Punjab and another.

....Respondents

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

Present: Mr.Ravi Malhotra, Advocate for the appellant.

Mr.Navneet Singh, Sr.D.A.G., Punjab..

HARPREET KAUR JEEWAN,J.

Appellant(victim) has filed the present appeal under Section 372 Cr.P.C. against the judgment of acquittal dated 10.08.2021 passed by Additional Sessions Judge (Fast Track Court), Ludhiana.

Vide the impugned judgment, the trial Court has acquitted the respondent-accused of the charge which has been framed against him under Section 376 and 506 IPC in a FIR bearing No.182 dated 05.08.2019 lodged at Police Station Kotwali, Ludhiana.

2. The brief facts of the prosecution case are:

2.1 That the appellant (named withheld) got married in the year 2007 and she was living with her husband and two children in village Fatehgarh, Gujran. She was working as maid/servant in various houses at Ludhiana. Respondent Kewal Singh was a co-villager of the appellant and he had helped the appellant for settlement of a quarrel between the appellant and her husband which took place long time ago and much prior to the registration of the FIR. Thereafter, he started visiting the house of the appellant. On 29.10.2017, at about 6:00 P.M., he enquired from the appellant about her timing of going to her work. On the next day, at about 6.00 A.M., when the appellant got down from an auto-rickshaw at Jalandhar By-pass, the respondent met her there and took her to Mata Rani Chowk, Jalandhar by auto-rickshaw and after getting down from the said auto rickshaw, the respondent asked her to follow him. The appellant followed the respondent and then she was taken to Sahara Hotel opposite to the lane of Mata Rani Temple. The respondent took her to room No.203 after making entry at the reception and then committed rape against her consent and further threatened to kill her family members in case she would disclose it to anyone. Thereafter, the respondent had been repeatedly committing rape against the wishes of the appellant.

2.2 On 03.08.2018, accused again committed rape against the wishes of the appellant in her house and after that she used to remain tense. When her husband enquired about the same, she disclosed to him about the occurrence. On 05.08.2018, the matter was reported by the appellant and her husband to the police and formal FIR was registered after conducting the investigation, the challan was presented against the accused.

2.3 After supplying the copies of the challan and other documents

annexed with the challan, charge under Section 376 and 506 of the IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. The prosecution examined 11 witness. Appellant/prosecutrix appeared as PW1 and her husband Balbir Kumar appeared as PW2. Ravinder Kumar, Manager Hotel Sahara appeared as PW3, the Investigating Officer ASI Baljeet Singh appeared as PW4, Dr.Anu Priya, who conducted the medico-legal examination of the victim appeared as PW5, Dr.Davinder Kumar, who medically examined the respondent appeared as PW6 and the formal witnesses appeared as PW7 to PW11. The report of the chemical examiner Ex.PX was tendered into evidence and by making a statement the public prosecutor closed the evidence.

4. The respondent alleged false implication when his statement was recorded under Section 313 Cr.P.C. and he tendered into evidence photocopies of the documents Mark-A to Mark-D.

5. After hearing the Public Prosecutor and the learned defence counsel, the respondent was acquitted by giving benefit of doubt.

6. The learned trial Court recorded the following reasons while acquitting the accused:-

(a) *The appellant/prosecutrix being major and knowing that the accused is taking her to hotel and she never tried to rescue herself.*

(b) *There is delay of about one year in registration of the FIR from the first alleged occurrence.*

(c) *The allegations that the accused was threatening the prosecutrix were not proved on record.*

(d) *No DNA test of the accused was got conducted, therefore, there was no matching of the spermatozoa with the accused claimed to have been detected in the sample taken from the prosecutrix.*

7. The learned counsel for the appellant submitted that the trial Court has wrongly disbelieved the version of the appellant. The statement of the appellant is further corroborated by medical evidence. As per the report of the chemical examiner (Ex.PX), spermatozoa was detected in the contents of the sample sent to the laboratory, which clearly shows that the respondent/accused has committed the offence. It was further submitted that the statement of the prosecutrix is further corroborated by the entry made by the accused in the records of the hotel. Even otherwise, the solitary statement of the prosecutrix could not have been disbelieved by the trial Court. Reliance was placed on the decision of Hon'ble Supreme Court of India in ***Phool Singh Versus State of Madhya Pradesh, 2022(1) SCC(Cri) 346***, wherein a case under Section 376 of the IPC got registered, it has been held that conviction can be made on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found trustworthy, unblemished and credible.

8. The learned counsel for the appellant further submitted that trial Court has laid much stress upon the delay which cannot be made a ground for acquittal in view of the decision by the Hon'ble Supreme Court of India in ***State of Punjab Versus Gurmit Singh 1996(1) RCR Criminal 533***.

9. On the other hand, the learned counsel for the respondent opposed the contentions raised by the learned counsel for the appellant by referring to the reasons recorded by the Trial Court and submitted that the

acquittal has been rightly recorded.

10. We have considered the aforesaid submissions. Firstly, it is observed that the appeal filed by the victim is maintainable without seeking a leave to appeal in view of the recent decision by the Hon'ble Supreme Court of India in ***Joseph Stephen and others Versus Santhanasamy and others, 2022, Live Law (SC) 83***, wherein it was held that the right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. The victim is not to pray for grant of special leave to appeal. The victim has a statutory right to appeal under the proviso to Section 372 of Cr.P.C and the proviso to Section 372 of the Cr.P.C does not stipulate any condition of obtaining special leave to appeal like sub-section 4 of Section 378 Cr.P.C. in a case wherein an order of acquittal is passed in case instituted upon complaint.

11. We have also considered the contention raised by the learned counsel for the victim as well as the reasons recorded by the trial Court for disbelieving the prosecution evidence. The victim has alleged two occurrence; i.e. the occurrence dated 30.10.2017 and the occurrence dated 03.08.2018. The matter was reported to the police on 05.08.2018. No doubt, the delay in lodging the FIR in itself cannot be made as a ground to disbelieve the prosecution case but the delay and the explanation resulting to the delay has to be considered. The circumstances under which the delay has occurred also requires scrutiny on the basis of the facts and circumstances of each case. In the present case, the appellant-victim is major, married and having two children. She is staying with her husband and her family. There is no material evidence on record to suggest that the appellant was under the undue influence of the respondent which stopped

her to report the matter to the police authorities immediately after the first occurrence which allegedly took place on 30.10.2017.

12. As per the version of the appellant, she was working as a maid and she has been independently travelling from one place to other. Perusal of the statement of the appellant also indicate that the respondent has not used any force or coercion for taking her to a hotel. In such circumstances, the learned trial Court has rightly observed that there was hotel staff and officials present at the reception. The appellant has not raised any alarm at the reception of the hotel and even she has not raised any alarm when she stayed there for a period of two to three hours as testified by PW3 Ravinder Kumar, who brought the hotel record. From the testimony of PW3, it is also evident that no document of the identity of the prosecutrix is available in hotel record nor did she sign or thumb-marked any entry therein the hotel.

13. In the absence of a material to prove any coercion, threat or undue influence to a married female who was living with her husband, it becomes highly doubtful that a female would stay silent for about 10 months in reporting the matter of a sexual abuse to her husband or to the police. No doubt, such delay can occur in cases where the victim is prevented by any influence or by any other circumstance from approaching the police authorities, but in the present case, no such circumstance has been pointed out or proved on record.

14. The evidence of the victim and her husband are also contrary on the point as to whether the victim has reported the first incident dated 30.10.2017 to her husband. The victim (PW1) while stating about the first occurrence in her examination in chief stated that she disclosed the entire

occurrence to her husband. However, the husband of the victim, when appeared as PW2, has stated in the cross-examination that his wife disclosed her (about the occurrence) on 03.08.2018 in the evening. Prior to this, no talk regarding the occurrence took place between him and his wife.

15. The second occurrence dated 03.08.2018 allegedly took place in day time, that too, in the house of the victim itself. Victim has stated in the cross-examination that no alarm was raised by her on 03.08.2018; and that the accused came to her house and it was 11.00 A.M./12.00 noon at that time. She has admitted that at that time people used to go and come in the village. These circumstances also makes the prosecution story highly doubtful.

16. The respondent-accused was known to the victim about 10 years prior to the occurrence and they were on visiting terms and even the victim used to visit the family of the accused-respondent. Victim PW1 has stated in the cross-examination that she is known to the accused since 2007. She frequently used to visit the house of the accused and the accused also used to visit their house. When the wife of the accused was in family-way, she went to the house of the accused to work two three times.

17. Collectively evaluating the above circumstances, we are of the considered view that prosecution case is full of doubts. The prosecutrix and respondent were known to each other. The families of prosecutrix and respondent were also known to each other. They were on visiting terms with each other. There are no signs of force used on the person of the prosecutrix in her medical evidence. Both the alleged occurrence took place in day time. Prosecutrix herself accompanied the respondent to the hotel and she remained silent for 10 months. The first occurrence took

place in a busy place, but no alarm was raised by her. The second occurrence took place in the house of the prosecutrix. She was free to oppose the respondent at the time of first incident as well at second time, but no opposition was made. She has failed to put forth any plausible reason for such a long delay in reporting the matter to anyone. There is strong indication of the said acts being consensual acts. The offence of 'Rape' has been defined under Section 375 IPC. One of the essential ingredient to prove the said offence is that one of the act as mentioned therein should have been committed "*without the consent*" or "*against the will*" of the prosecutrix. Missing of the said ingredient is evident on record.

18. We have also considered the medical evidence led by PW-5, Dr. Anupriya and the report of Chemical Examiner. Presence of spermatozoa in the sample of prosecutrix has been rightly ignored by the trial Court since it did not match in the DNA examination of the sample of the accused; there was delay of 3 days in medical examination of the prosecutrix; and that the prosecutrix was married and living with her husband.

19. There is always presumption of innocence and in case of acquittal, there is double presumption. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned speaking judgment and we find no infirmity in it. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel us to form an opinion different from the opinion formed by the learned trial Court.

20. The decision relied upon by the learned counsel for appellant in ***Gurmit Singh's case(supra)*** is having different facts. In that case the

victim was minor girl of 16 years. She was forcibly taken in a car by three young boys by pushing her inside the car. She was taken to 'kotha' of a tubewell, there she was made to take liquor by misrepresenting it as juice. She was then gang raped. Matter was brought to the notice of the Gram Panchayat, who tried to effect compromise, and medical evidence supported the prosecution version. Her hymen was lacerated with fine radial tears, swollen and painful. The delay in reporting the matter to police was negligible. However, the facts of the present case are distinguishable, hence ratio of the said case is not applicable to the present case.

21. The decision relied upon in ***Phool Singh's case(supra)*** is also distinguishable on facts.

22. 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."

23. 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 surrounded 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.

24. 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. Accordingly, the present appeal is dismissed.

25. Keeping in view 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-76-2022. The title of the appeal shall henceforth be as under.

““AB” Versus State of Punjab and another”

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

6th January, 2023
Kanika/Shivani Kaushik

Whether Speaking

Yes/No

Whether Reportable

Yes/No