

In the High Court of Punjab and Haryana at Chandigarh

CRA-AD-734-2019
Reserved on: 16.1.2023
Date of Decision: 27.1.2023

Manju

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ramandeep Singh, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. Kamal Deep Sehra, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 15.2.2019, upon case No. SC/557 of 2017, by the learned Additional District and Sessions Judge, Fast Track Court at Sonipat, Sonipat, wherethrough, a verdict of acquittal was made, upon, the accused in respect of charges drawn against him qua offences punishable under Section 376, and, under Section 511 of the IPC.

2. The complainant becomes aggrieved from the above drawn verdict, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case becomes embodied in the appeal FIR. The narrations carried in the appeal FIR are, that the prosecutrix moved an application, alleging therein, that her husband had expired about five years ago and she is having a son aged 12 years. As per prosecutrix, after the death of her husband, her in-laws harassed her, and, she made a complaint to the police, upon which her in-laws sold the house that came into the share of her husband. Prosecutrix alleged that the matter was compromised and in the compromise, it was settled that her father-in-law would get constructed a house for her and till then her dowry articles would be kept in the house of her father-in-law in a room. As per complainant, she kept her dowry articles in the room of her father-in-law and locked in and she started residing in the house of her father at Sector-23. Complainant alleged that on 23.08.2017 her brother-in-law Satender made a telephonic call at her father's mobile, and, he stated that they wanted to get the electric work done in the room and he asked her to open the lock of the room. As per complainant, on that day at about 10.30 AM, she reached at her matrimonial house in village Fajilpur, and, when she was cleaning her room, her brother- in-law suddenly caught hold her from behind and by way of putting his hand between her thighs, accused broke the string of her salwar and made her to fall down, and, when she raised noise, her father-in-law also came down and she told him that her brother-in-law Satender had tried to commit wrong act with her and then her father-in-law also started abusing her and slapped her and turned her out of the matrimonial home. The complainant alleged that they also criminally intimidated her.

Investigation proceedings

4. During investigation, the accused was arrested and the statement of the prosecutrix under Section 164 of the Cr.P.C. was recorded, and, thereafter an offence under Section 376 read with Section 511 IPC was added in the case. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

5. Since the offence under Section 376 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 8.11.2017, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. The learned trial Judge concerned, after receiving the case for trial, subsequent to its becoming committed to him, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused, for offences punishable under Section 376 read with Section 511 IPC, and, under Section 511 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined 12 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, and, led six defence witnesses into the witness box.

8. As above stated, the learned trial Judge concerned, proceeded to

make an order of acquittal, upon the accused concerned.

Submissions of the learned counsel for the appellant

9. The learned counsel for the aggrieved appellant/complainant has argued with much vigour before this Court, that the impugned verdict of acquittal, is ridden with a gross infirmity, and, absurdity of gross misappraisal, and, non-appreciation of evidence germane to the charge. Therefore, he has argued, that the impugned verdict of acquittal, requires an interference, being made by this Court.

10. For supporting the above argument, he refers to the learned trial Court concerned, making allusions to certain purported testified gross improvements or embellishments, as made by the prosecutrix, from her previously made statement in writing. However, he submits that the said purported gross improvements or embellishments, as made by the prosecutrix, in her testification recorded before the learned trial Judge concerned, were rather discardable, as such purported gross improvements or embellishments, as made by the prosecutrix, in her testification recorded before the learned trial Judge concerned, with her previously made statement in writing, were contrarily rather both minimal as well as were insignificant.

Submissions of the learned counsel for respondent No. 2/accused

11. On the other hand, the learned counsel for the accused-respondent No. 2, has made a vigorous address before this Court, that the impugned verdict of acquittal, as becomes drawn by the learned trial Judge concerned, is meritworthy, and, does become planked, upon a meritworthy appraisal of evidence germane to the charge, as was existing before the learned trial Judge concerned.

12. For the reasons to be assigned hereinafter, this Court finds no merit in the instant appeal, and, is constrained to dismiss it.

Reasons for forming the above conclusion

13. The prosecutrix is a major. The husband of the prosecutrix expired about five years prior to the crime incident taking place. A son aged about 12 years is stated to be born out of the wedlock of the prosecutrix with her deceased husband. The accused is the devar (brother-in-law) of the prosecutrix.

14. It is a settled principle of law, that the solitary deposition of the prosecutrix, in case it is meritworthy, and/or upon its inspiring the confidence of the Court, thus it has to be assigned utmost evidentiary vigour, and/or can well plank the findings of conviction, as made, in respect of the charges drawn against the accused. Therefore, it becomes imperative to determine whether the above principle of law, has been proven by the prosecution, but rather beyond any shadow of reasonable doubt.

15. The rubric underlining the above principle, becomes comprised in the factum, that there are to not occur any visible rife, and, blatant improvements in the testification(s), made before the learned trial Judge concerned, by the prosecutrix, rather from her previously recorded statement in writing. For gathering whether the above principle of law governing the assignment of credence to the testification of the prosecutrix, rather becoming especially beyond any shadow of doubt, it becomes but incumbent upon this Court to make an inter se insightful, and, keenest reading(s) of the testification, recorded by the prosecutrix, before the learned trial Judge concerned, besides also prior thereto made signed statement by the prosecutrix. Necessarily, the above inter se insightful, and, keenest reading(s), and, analysis of the testification recorded by the prosecutrix, before the learned trial Judge concerned, would enable this Court to gauge therefrom,

whether the prosecutrix, in her deposition, as recorded before the learned trial

Judge concerned, has made gross improvements or embellishments, hence from her previously made signatred statement. In case, this Court on making a keenest analysis of the testification of the prosecutrix, as became recorded by her, before the learned trial Judge concerned, comes to a conclusion, that she has thereins, made a gross, or blatant improvement(s) or embellishment(s) from her previously recorded signatred statement, but naturally then this Court would be led to construe, that the deposition of the prosecutrix, hence does not inspire the confidence of this Court, nor this Court would proceed to draw a finding of conviction against the accused.

16. In the above endeavour, it becomes necessary to refer to the initial version, as became narrated by the prosecutrix, in respect of the genesis of the crime event. The initial version qua the genesis of the crime event, becomes unfolded in the scribed complaint, to which Ex. PW-1/B is assigned, and, which became lodged at the instance of the prosecutrix, before the police officer concerned, and, which led to the registration of the appeal FIR. In Ex. PW-1/B, there occurs a narration, that accused Satender, her devar, made a cell phone call to her on 23.8.2017, and, in pursuance thereto, she proceeded to the house of her in-laws on 24.8.2017. She has further echoed thereins, that at the relevant site, the accused attempted to commit rape upon her. A reading of Ex.PW-1/B discloses, that the crime event allegedly took place on 24.8.2017. However, in her statement recorded under Section 164 of the Cr.P.C., and, to which Ex. PW-1/C, is assigned, the prosecutrix made a narration, that in the morning of 23.8.2017, at about 8.40/8.45 A.M., when she received a call from accused Satender, she proceeded to the crime site, and, that there the accused attempted to commit rape upon her. Visibly the above said inter se contradiction inter se Ex. PW-1/B, and, the subsequent thereto

Ex.PW-1/C, and, as appertains to the time, and, date of the occurrence, does concomitantly spark an inference, that the prosecutrix has, but naturally belied the factum of the crime event, as initially disclosed by her, in her statement Ex. PW-1/B, rather occurring on 24.8.2017. Since the statement made under Section 164 of the Cr.P.C., became made, before the jurisdictionally empowered Magistrate, therefore, prima facie sanctity is to be assigned to the said statement, as embodied in Ex. PW-1/C. However, when the date, and, time of the incident, as spelt therein, is contrary to the one, as became echoed by the prosecutrix, in her complaint, to which Ex. PW-1/B is assigned, but naturally it brings home an inference, that the genesis of the prosecution case, as became recorded in Ex.PW-1/B, is but a completely prevaricated, and, an untruthful event. In other words, with the above apparent rife, and, blatant contradictions inter se Ex. PW-1/B, and, Ex. PW-1/C, this Court is constrained to draw a conclusion, that the genesis of the prosecution case gets staggered, nor the verdict of acquittal, as challenged before this Court, does require any interference.

17. Be that as it may, the additional improvement inter se Ex. PW-1/B, and, Ex. PW-1/C becomes comprised in the factum, that in Ex. PW-1/C, the prosecutrix narrated that the accused made her lie on the ground, and, also opened the button of his pant, and, whereafter he laid himself upon her, and, subsequently attempted to forcibly commit rape upon her, but yet hers saving herself through hers raising an alarm, and, that in the evacuatory effort a scuffle occurring between her, and, the accused. However, contrarily in Ex. PW-1/B, exhibit whereof is the complaint, and, which resulted in the registration of the appeal FIR, and, which became the plank for the drawing of charges against the accused, the prosecutrix had evidently, omitted to make

of his pant, and, that thereafter, he had laid upon her, and, subsequently had tried to commit rape upon her, and, that she had, in the evacuatory effort, also a scuffle with the accused. Therefore, since the initial version qua the genesis of the crime event, is carried in Ex. PW-1/B, and, when it becomes the plank for the drawing of charges against the accused. However, yet when inter se improvements or embellishments inter se Ex. PW-1/B, and, Ex. PW-1/C, do evidently surface, as appertaining to the trite factum, that in Ex. PW-1/C, which became recorded subsequent to Ex. PW-1/B, the prosecutrix attributing to the accused, the incriminality of his laying her on the ground, and, his after opening the button of his pant, his attempting to subject her to forcible sexual intercourse, but yet hers evacuating herself through hers raising an alarm, and, that a scuffle occurring between her, and, the accused. Nonetheless, the said narrations become omitted to be spelt by her in her earlier version, as enclosed in Ex. PW-1/B. Resultantly an inference becomes spurred qua the prosecutrix but naturally making an open blatant, and, rife improvement inter se Ex. PW-1/C, and, Ex. PW-1/B. The above inter se contradiction, and, improvements, do naturally stain the creditworthiness of the prosecutrix.

18. In addition, the prosecutrix, in Ex. PW-1/B, has attributed to the accused, the incriminatory role of his catching hold her from her behind, and, by putting his hand into her thighs, his breaking the string of her salwar, and, thereafter his laying her on the ground. Even if assuming, that the said event became subsequently testified by the prosecutrix, even before the learned trial Judge concerned, but yet for assigning credit thereto, rather evidence became enjoined to be adduced by the prosecutrix with regard to the factum, that the accused had broken the string of her salwar. The best evidence in respect thereof became comprised in the investigating officer concerned, collecting the salwar, which the prosecutrix was wearing at the relevant time, and,

besides also became comprised in his also collecting the broken cord of the salwar, which the prosecutrix was wearing at the relevant time. However, the above collection(s) never became made by the police officer concerned. The absence of the above collection(s), being made by the police officer concerned, does garner an inference, that even the above incrimination, reared by the prosecutrix, against the accused in Ex. PW-1/B, is completely false, and, obviously no credence can be assigned thereto. As but a natural corollary thereof, the subsequent thereto attribution of criminality to the accused, qua his thereafter laying on the ground, also loses credence, and, is to be discarded.

19. Even if assuming the statement recorded by the prosecutrix, under Section 164 of the Cr.PC., before the jurisdictionally empowered Magistrate, does embody a truthful echoing, that a scuffle occurred, at the crime site, inter se the accused, and, the prosecutrix, and, that the prosecutrix hence succeeded to save herself from the clutches of the accused, but yet certain injuries, which were but a natural sequel of the said scuffle, were rather to occur on the respective bodies of the accused, and, the prosecutrix, besides were also required to be proven from the respectively drawn MLRs of both the accused, and, the prosecutrix, hence by the doctor, who prepared them. In that regard, PW-7, who made a medico legal examination of the prosecutrix, though during the course of his examination-in-chief, did prove the apposite MLR, to which Ex. PW-7/B is assigned. Moreover, though, there is a reference therein about multiple small bruises occurring on the right forearm, and, thigh of the prosecutrix. However, the occurrence of the above multiple small bruises on the right forearm, and, thigh of the prosecutrix yet have been testified by PW-7 in his cross-examination, qua the factum of their becoming self inflicted, rather cannot be ruled out. Therefore, even if PW-7

does prima facie support the allegations of the prosecutrix, that the accused fondled with her thighs, and, also may support, that subsequently, in the rescuratory efforts, a scuffle occurred between the accused, and, the prosecutrix, but yet the effect of the above becomes waned, especially when, as above stated, the police officer concerned, did not make the collection(s) of the salwar of the prosecutrix, which she was wearing at the relevant time, nor obviously he made the collection(s) of the string/cord thereof, which the prosecutrix alleges to be broken by the accused. Additional fortification to the above inference becomes acquired by the further factum, that in Ex. PW-7/B, there is a narration by the prosecutrix, that she had been subjected only to a physical assault. Necessarily thereins, there is no allegation, that the accused had attempted to commit rape upon her. Therefore, necessarily with the prosecutrix in Ex.PW-7/B, rather not making any echoing about the multiple small bruises, as were found on her right forearm, and, thigh, hence being a sequel of the scuffle which ensued between her and the accused, in the apposite rescuratory attempt, subsequent to the accused attempting to commit rape upon her, does beget an inference, that the testification made by PW-7, in his cross-examination, that such multiple small bruises were self inflicted, does hence gather credence. Therefore, the support, if any, which may become drawn by the prosecutrix from Ex.PW-7/B, does also become completely insignificant, and, irrelevant.

Principles

20. 1. For determining the occurrence of blatant, and, gross improvements or embellishments, made by the prosecutrix in her testification, made before the learned Court below, rather with her previously made statement in writing, a keenest perusal of

both (supra) has to be made.

2. In case the prosecutrix has made variant stands, at different stages of the investigations, about the date and time of the occurrence, thereupon, such variant stands, do become the plank for making a conclusion, that the prosecutrix has made open, rife, and, blatant improvements or embellishments from her earliest recorded statement in writing.
3. In case the prosecutrix makes variant attributions of criminality to the accused respectively in her statement, recorded by the police, and, before the learned Judicial Magistrate concerned, thereupon, the said variant stands or inter se digression(s), would leave this Court to conclude, that such digression(s) are rife, and, blatant, and, thus the deposition of the prosecutrix, would be construed to be not amenable for assigning any creditworthiness thereto.
4. In case there is an attribution qua the accused that during the course of the relevant occurrence, he had broken the cord of her salwar, thereupon, it became imperative upon the investigating officer concerned, to collect the salwar as well as the broken cord thereof. Omission to make the above collections would also make deep inroads into the veracity of the genesis of the prosecution case.

Final order

21. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Accordingly, the appeal is dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Personal, and, surety bonds, if any, furnished by the accused concerned, are ordered to be forthwith cancelled, and, discharged.

22. Records be sent down forthwith.

23. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 27, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes