



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-444-DB-2006 (O&M)

Reserved on: 30.7.2024

Date of Decision: 07.8.2024

Ashoki @ Sukhinder

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Rakesh Nehra, Senior Advocate with
Mr. Chirag Kundu, Advocate and
Mr. Ankit Yadav, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 21.12.2005, upon Sessions Case No. 30 of 1997/2005, by the learned Additional Sessions Judge, Rohtak, wherethrough in respect of charges drawn against the convict-appellant qua offences punishable under Sections 365, 366, and 376(2)(g) IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the convict-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of three years, for the commission of an offence punishable under Section 365 IPC, besides also imposed, upon the convict-appellant sentence of fine, comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of six months. Moreover, the learned convicting Court also sentenced the convict-appellant to undergo rigorous

imprisonment for a period of five years, for the commission of an offence



punishable under Section 366 of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 10,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one year. In addition, the learned convicting Court also sentenced the convict-appellant to undergo rigorous imprisonment for a period of twelve years, for the commission of an offence punishable under Section 376(2)(g) of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 20,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one two years.

2. Both the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the convict-appellant, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PB is assigned. As per the prosecution case, Santosh, complainant is a permanent resident of village Rawatpura District Mahoba (U.P.). At the time of occurrence, he was residing near Delhi Bypass Rohtak. He had been living there with his wife Meera, his brother-in-law Sonu and his wife Rekha. He was doing labour work. On 3.6.1997, they had returned home at 6.00 P.M. after working in Sector-14 Rohtak. His wife Meera and wife of his brother-in-law namely, Rekha had gone to attend the call of nature. At about 10.00/10.15 p.m. they were standing on Delhi Bypass Rohtak Road. They were there waiting for opportunity to cross the



road. In the meanwhile, a large Maruti car came from the side of Sheela Bye-pass Rohtak. The occupants of the car stopped the same by the side of Meera. They pushed aside Rekha and pulled Meera inside the car. They escaped towards Delhi. When Rekha raised noise, Santosh complainant and his brother-in-law Sonu as also their neighbours reached the spot. When they reached the spot, the car had already gone to a long distance. He could not notice the number of the car on account of darkness. He was going to Police Post Sector-1, Rohtak to make a report and came across SI Ram Parkash SI in Sector-1, while he was on patrolling duty. SI Ram Parkash, recorded the statement of Santosh. He made his endorsement on the same and had sent the same to Police Station Civil Lines, Rohtak, where ASI Balbir Singh recorded the formal FIR. On 4.6.1997 at about 1.00 P.M. Santosh again met Ram Parkash SI. This time, he met SI Ram Parkash at Delhi Bye-pass. The complainant told him that his wife Meera had returned home. He also told the police officials that she had no blouse on her person, when she returned home. SI Ram Parkash went with Santosh complainant to his house and recorded the statement of Meera. He recorded the statements of Sonu and Rekha also. Meera disclosed the following incident:-

“She was doing labour work. She was living in the dairy of Jai Narain a resident of village Gandhra in Sector-14 Rohtak with her husband Santosh, her brother Sonu and her bhabhi Rekha. On 3.6.1997 at about 10.00/10.30 P.M. she had gone to the other side of the road with her bhabhi Rekha to attend the call of nature. On her way back home, she was waiting for the road to be cleared so that she would cross the same. In the meanwhile, a large white Maruti car came from the side of Sheela Bye-pass Rohtak and suddenly stopped by her side. A boy who was having a beard sitting in the car had pushed Rekha aside. He caught Meera in his arms and had pulled her inside the car. When she and her bhabhi raised noise, the



car was put in motion. An occupant of the car had shown her a pistol and had threatened her of being shot dead if she raised noise. Out of fear, she kept quiet. She was made to sit on the back seat of the car. She had one boy each on her both sides. They started towards Delhi. One of the occupants told the driver that the car has to be taken to Ritoli via Kharawar, Karor and Dighal. They were four persons in the car. When the car crossed village Kharawar and the railway level crossing was left back, one of the boys committed rape upon her. When she refused to oblige them. she was threatened of being killed. All the four boys committed rape upon her and while all this was done, the car remained in motion. The car was taken to a rivulet in the area of village Ritoli. The car was stopped there. All the four boys took bath there. The prosecutrix was also made to take bath there. They again committed rape upon her. They were addressing each other by their names, while asserting for their turn. She was thereafter left at a place near village Dighal. It was 1.00 A.M. at that time. While leaving her there, the four boys relieved her of an amount of Rs. 5000/-, a silver chain and a nose pin of gold. Her blouse also remained on the back seat of the car. She passed that night in the growth of kiker trees and in the morning, she came on foot to Dighal, wherefrom she took a bus for bus stand Rohtak. She again took a bus for Sheela Bye-pass and from there, she went home on foot. She claimed that she would be able to identify those boys.”

Investigation proceedings

4. During the course of investigations, SI Ram Parkash prepared a site plan of the place wherefrom she was kidnapped. She was sent for medico-legal examination. After medico-legal examination, the doctor gave a sealed parcel of the swab. Meera then led SI Ram Parkash to the place, where she was raped. That place was inspected by him and its rough site plan was prepared. On 5.6.1997, Meera was taken to State Crime Record Bureau, Madhuban. She told the physical features of the rapists and the expert there prepared their sketches. Satender and Rajbir were arrested on



9.6.1997, while Chand Singh and Ashok were arrested on 11.6.1997. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused Satender Singh, Rajbir, Chand Singh, Ashoki @ Sukhjinder before the learned committal Court concerned.

Committal Proceedings

5. Since the offence under Section 366, 376 and 397 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 29.9.1997, 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, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against all the four accused for the offences punishable under Sections 365, 366, 376(2)(g), 382, 506 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

7. During the course of trial, accused Ashoki @ Sukhinder (present appellant) and accused Chand Singh absented and they were declared proclaimed offenders, respectively on 26.2.1999 and on 9.2.2000.

8. In proof of its case, the prosecution examined 18 witnesses. However, it is pertinent to mention here that out of total 18 witnesses, 14 prosecution witnesses were examined in the presence of both the absentee accused. Thereafter, when accused-appellant Ashoki alias Sukhinder surrendered on 4.6.2005, the prosecution evidence consisting of 14 already



examined prosecution witnesses (supra), proceeded further qua him. Thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. 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-appellant pleaded innocence, and, claimed false implication. Though, the accused chose to adduce defence evidence, however, he did not lead any witness into the witness box.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused-appellant for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the accuse-appellant.

Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He rests the above submissions on the ground, that the present appellant had been arrested on the basis of a disclosure statement suffered by the accused. Moreover, he has submitted, that vide order dated 15.1.2001, passed by the learned trial Court concerned, two similarly situated co-accused, namely, Satender and Rajbir were acquitted of the charges framed against them. Moreover, the third similarly co-accused namely Chand Singh was also acquitted of the charges framed against him by the learned trial Court on



30.4.2002. He has further argued, that the trial Court concerned, in both the orders (supra) has held that the prosecutrix was the consenting party, and, therefore her entire story could not be believed.

Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

Reasons for allowing the instant appeal

13. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsel for the appellant rather are worthy of acceptance, and, therebys they are accepted. Consequently, finding merit in the instant appeal, the same is hereby allowed, and, the verdict of conviction and consequent thereto sentence(s) (supra), as made by the learned trial Court, is quashed and set aside.

14. Initially, the credibility of the deposition of the victim-prosecutrix is to be adjudged, on the touchstone of hers, making an unblemished account in respect of the crime event, inasmuch as, in her rendered testification rather hers omitting to make grave improvements or embellishments vis-a-vis with her previously recorded statement in writing.

15. In the above regard, it is apposite to refer to the most dire improvement or embellishment which became made by the prosecutrix, thus during the course of her testifying in Court on 29.4.2002, vis-a-vis, her prior thereto made testification before the learned trial Judge concerned, on



23.10.2000. The said gross improvement or embellishment as made by the prosecutrix, in her subsequent testification vis-a-vis her prior thereto made testification, becomes comprised in the factum, that though she in her prior testification rendered on 23.10.2000, thus stated qua the non availability of light at the crime site whereby she became disabled to identify the accused. Though, she then became confronted with her previously made statement in writing, wherein, the said fact did not occur at all, besides when she was unable to render any valid explication in respect of the said omission. Therefore, the effect of the above, is that, with the prosecutrix in her initially made testification on 23.10.2000, intimating the police qua her inability to identify the accused. Contrarily, when she subsequently testified, that there was availability of light at the crime site, and, was thus enable to identify the accused, thereby as stated (supra), she subsequently embellished and improved from her previous statement in writing, besides when she was unable to purvey any explication in respect of the said inter se improvement, and, embellishment. Resultantly, any rife contra-distinct testifications, as made by the prosecutrix, thus are to be construed to be rendering her testification to be unamenable for any assignment of credence thereto. In sequel, thereby the prosecution version, as became espoused by the prosecutrix, that she had identified the assailants, thus comes under a grave shadow of doubt. In sequitur, the benefit thereof is to be assigned to the accused.

16. Though, the victim attempted to make an endeavour to incriminate the accused through hers yet stating that the accused were addressing each other by their names but even the said made testification, for the reasons (supra) rather appears to be a gross detraction from her initially



made testification before the learned trial Judge on 23.10.2000, especially when she had revealed that on account of darkness prevailing at the crime site, she was unable to identify the accused, thus despite no valid explanation becoming rendered by her qua hers omitting to even state that fact in her previously made statement to the police officer concerned. Resultantly, therebys the apposite vacillations and ditherings (supra) as made by the prosecutrix, thus at various stages, does therebys render open an inference, that as such, her testification, rather is not confidence inspiring.

17. Be that as it may, even if there was complete failure on the part of the prosecutrix to identify the accused, and/or assuming that the said fact became attempted to overcome by her through hers stating that the accused were calling out their respective names, but yet she was also required to be revealing the key characteristic features of the accused, so that therebys a valid test identification parade became conducted, so that therebys the identification as made by her of the accused in Court, becomes a worthy piece of evidence.

18. However, even though the prosecutrix appears to narrate to the investigating officer concerned, the key characteristic features of the accused, wherebys the investigating officer concerned, as revealed by Ex. PO, was led to move an application for conducting a valid test identification parade, so that thereins the prosecutrix-victim, thus is able to identify the accused. However, the accused refused to participate in the said test identification parade on the ground, that the said would be a mere sham or a charade, thus on the ground, that their faces have already been shown to the witnesses, and/or to the victim-prosecutrix.

19. Contrarily, since the said refusals were made before the Chief



Judicial Magistrate, Rohtak, and, which resulted in an order dated 10.6.1997 becoming passed by the Chief Judicial Magistrate, Rohtak. Resultantly, when the said order, which occurs at page 147 of the paper book, thus has not been shown to be lacking in any legal vitality, thereby the prosecution is deemed to have accepted the fact, that the conducting of the test identification parade, wherein, the victim may have become enabled to identify the accused, rather would be a mere sham or a charade, as the faces of the accused were also shown to the victim-prosecutrix.

20. Therefore, thereby as stated (*supra*), there would be but a complete failure on the part of the prosecutrix to identify the accused in the valid test identification parade, thus thereby she became ill enabled to even well identify the accused, thus in Court, nor the prosecution can be said to have established to the hilt the charges drawn against the accused.

21. Be that as it may, even if assumingly, the accused had allegedly committed the charged offence, but yet on account of the hereinafter extracted facts, which exist on record, the prosecutrix-victim was a consenting partner to the sexual intercourse(s), which allegedly became perpetrated upon her at the instance of the accused.

(a) Lack of injuries on the person of the prosecutrix, thus personificatory qua her resisting the perpetration of sexual assault upon her person, thus at the instance of the accused.

(b) The existence of an untorn blouse of the prosecutrix, in the crime car, also being magnificatory that, as such, the prosecutrix was a consensual partner to hers allegedly becoming subjected to sexual intercourse(s) at the instance of the accused, especially if she was a non-consensual partner,



therebys her clothes would have been torn, rather than her blouse being found in an untorn condition in the crime car.

Final order

22. The result of the above discussion, is that, this Court finds merit in the instant appeal, and, is constrained to allow it. Consequently, the instant appeal is allowed. The impugned judgment of conviction and the order of sentence(s), and, as recorded by the learned trial Judge, concerned, are quashed, and, set aside. Appellant Ashoki @ Sukhinder is acquitted of the charges framed against him. The fine amount, if any, deposited by accused-appellant, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused-appellant shall stand forthwith cancelled, and, discharged. 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. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

23. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

August 07, 2024
Gurpreet

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