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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1649-SB-2009
Reserved On:25.04.2024
Pronounced On:07.05.2024

GURMIT SINGH

...Appellant

Versus

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Sidhu, Advocate
for the appellant.

Mr. Sandeep Kumar, DAG, Punjab and
Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

1. This instant appeal has been preferred by the appellant-accused against the judgment of conviction and order of sentence dated 01.06.2009 passed by learned Sessions Judge, Bathinda in Sessions Case No.33 of 24.07.2008 arising out of FIR No.19 dated 25.02.2008 registered under Sections 376 and 323 of IPC at Police Station- Raman. The appellant was sentenced as under: -

Under Section	Sentence
376 IPC	<i>R.I of 7 years along with a fine of Rs.5,000/- and in case of default on fine, R.I of 2 years.</i>
506 IPC	<i>R.I of 6 months</i>

FACTUAL MATRIX

2. Compendiously, the facts are that on 25.02.2008, when the prosecutrix was present in the orchard taken on lease by her parents, the

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appellant whose agricultural fields were situated nearby, forcibly caught hold of the prosecutrix from her arm and dragged her in the orchard. Thereafter, the appellant committed rape upon the prosecutrix after breaking open the string of her Salwar (pants). When the prosecutrix raised hue and cry, her mother came at the spot and raised alarm causing the appellant to flee from the spot. On the same day, ASI Kundan Lal received information regarding admission of prosecutrix in Civil Hospital, Raman. After seeking opinion of the doctor, statement of the prosecutrix was reduced into writing. Thereupon, the FIR (supra) was registered. The prosecutrix was medico-legally examined by the concerned doctor and the factum of rape was confirmed. During the course of investigation, vaginal swabs were taken and sent for chemical analysis along with *Salwar* (Pants) and *Kameez* (Shirt) of the prosecutrix. The school certificates of the prosecutrix showing her date of birth to be 12.02.1992 were taken into possession by the police. After following due procedure, the appellant-accused was arrested on 27.02.2008 and medically examined. Thereafter, the final report under Section 173 Cr.P.C. was presented by the concerned police before the learned trial Court.

3. The learned trial Court upon finding a prima-facie case, framed charges against the appellant for commission of offences punishable under Section 376 and 323 of IPC, to which he pleaded not guilty and claimed trial.

4. On assessing the material available on record, the learned trial Court vide judgment of conviction and order of sentence dated 01.06.2009 convicted and sentenced the appellant-accused under Section 376 and 323 of

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IPC, as detailed above. Aggrieved by the same, the appellant has approached this Court by way of the present appeal.

5. The remaining portion of the sentence awarded to the appellant in the present case, after he had already undergone a custody of 3 years 4 months and 27 days out of the maximum sentence of 7 years, was suspended by this Court vide order dated 18.11.2011.

CONTENTIONS

6. Learned counsel for the appellant-accused *inter alia* contends that appellant has been roped in the present matter out of an ongoing enmity between him and some co-villagers and therefore, the complainant has concocted a false story to destroy the social standing of the appellant. The aforesaid contention is supported by the fact that a compromise by way of affidavits of the prosecutrix, her father and her mother was affected between the respective parties, wherein, it was categorically admitted by the said deponents that the appellant never committed rape upon the prosecutrix but he was embroiled due to old enmity. He further contends that entire case of the prosecution is riddled with material contradictions as the prosecutrix herself admitted in her cross-examination that she was medically examined at around 9:15 p.m. but deposition of the Medical Officer-PW3 shows that she examined the prosecutrix at 7:00 p.m., which is reflected in the MLR as well.

7. Learned counsel for the appellant further contends that there is no mention of any injury upon any part of the body of the prosecutrix in the FIR or her statement made before the police. Further, the prosecutrix never mentioned to the concerned Medical Officer that she had been raped. He

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further contends that most interestingly, no marks of struggle on forearms, wrists, face, back and lower abdomen were found to be present. Also, no teeth/biting marks or bruises of any kind were found on the body of the prosecutrix during her medico-legal examination, as admitted by PW3-Medical Officer during his examination-in-chief. He further contends that on the day of the alleged occurrence, i.e., 25.02.2008, the Medical Officer-PW3 had advised the prosecutrix to procure an opinion of a gynecologist but the same was sought on 05.03.2008, after a delay of 9 days. The Gynecologist who examined the prosecutrix was examined as PW5 where he categorically stated that no fresh marks of any injuries were present on the vagina of the prosecutrix and that absence of hymen was old. It is further contended that there is an unexplained delay of 8 days in sending the samples for chemical examination at Kharar.

8. Learned State contends that there is ample evidence on record to prove that the appellant had committed rape on the prosecutrix and the same has been proved beyond the shadow of reasonable doubt. Therefore, the present appeal filed by the appellant is devoid of any merit and thus, liable to be dismissed. The custody certificate dated 24.04.2024 of the appellant submitted by the learned State counsel, showing the period of custody undergone by him to be 3 years 5 months and 6 days, is taken on record.

OBSERVATIONS AND ANALYSIS

9. I have heard learned counsel for the parties and after perusing the paper-book with their able assistance, it transpires that the Medical Officer PW3 had advised for an opinion of the Gynecologist on the day of examining



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the prosecutrix and when she was eventually examined by the Gynecologist-PW5, no external mark of injury was found and the hymen was absent. However, in his cross-examination, the said Gynecologist admitted that the absence of hymen was old. Further, the report of the Chemical Examiner (Ex.PN) shows that spermatozoa was found on the Salwar and Kameez of the prosecutrix but the same was absent on the vaginal swabs taken from her. In addition, no injuries were found on the wrist, buttocks or breast of the prosecutrix. The compromise in the form of affidavits of the prosecutrix, her mother who was the sole eye-witness, and her father, albeit affected after 6 months of the date of the alleged occurrence, casts further aspersions on the case of the prosecution as it has been categorically mentioned in the said affidavits that the appellant was embroiled in the present case due to an old enmity and the real culprit could not be identified by the deponents. Thus, it is the opinion of this Court that the aforesaid facts when weighed together, establish the case in favour of the appellant.

10. Pertinently, a two Judge Bench of the Hon'ble Supreme Court allowed the appeal filed by the appellant-accused while granting him the benefit of doubt in the absence of conclusive medical evidence in **Santosh Prasad @ Santosh Kumar v. State of Bihar, 2020(2) R.C.R.(CrI.) 58**, wherein, speaking through Justice M.R. Shah following was observed: -

“5.3 As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and



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trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

5.4.1 In the case of Raju (supra), it is observed and held by this Court in paragraphs 11 and 12 as under:

"11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be



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presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

11. In view of the above discussion, this Court finds that learned counsel for the appellant has been successful in establishing the case of the appellant. Hence, the present appeal is allowed and consequently, the impugned judgment of conviction and order of sentence dated 01.06.2009 passed by learned Sessions Judge, Bathinda, is hereby set aside.

12. The appellant is hereby acquitted of the charges framed against him in the present case and his bail bonds and surety bonds also stand discharged.

13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

07.05.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No