

**In the High Court of Punjab and Haryana at Chandigarh**

1.

CRA-D-332-DB-2013  
Reserved on: 11.12.2024  
Date of Decision: 20.12.2024

Amritpal Singh Sekhon

.....Appellant

Versus

State of Punjab

.....Respondent

2.

CRA-D-371-DB-2013

Arjun Singh

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MS. JUSTICE KIRTI SINGH**

Argued by: Dr. Anmol Rattan Sidhu, Sr. Advocate with  
Mr. Gursher Singh Dhillon, Advocate  
for the appellant (in both cases).

Mr. Gursher Singh Dhillon (Legal Aid Counsel)  
for the appellant (in CRA-D-371-DB-2013)

Mr. Maninder Singh, Sr. DAG, Punjab.

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**SURESHWAR THAKUR, J.**

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 28.2.2013, upon Sessions case bearing No.50 dated 24.01.2013, by the learned Additional Sessions Judge, Sangrur, wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 376, 506 and under Section 120-B of IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts.
3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

**Amritpl Singh:**

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|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>U/s 376 (2) (g) of IPC</i> | <i>To Undergo rigorous imprisonment for life and fine of Rs.5,000/- and in default of payment of fine to further undergo R.I., for one year.</i> |
| <i>U/s 120-B of IPC</i>       | <i>To Undergo RI for 5 years and fine of Rs.1,000/- and in default of payment of fine to further undergo R.I., for six months.</i>               |
| <i>U/s 506 of IPC</i>         | <i>To Undergo R.I. for one year and to pay fine of Rs.500/- and in default of payment of fine to further undergo R.I., for one month.</i>        |

**Arjun Singh:**

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|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>U/s 376 (2) (g) of IPC</i> | <i>To Undergo rigorous imprisonment for life and fine of Rs.5,000/- and in default of payment of fine to further undergo R.I., for one year.</i> |
| <i>U/s 120-B of IPC</i>       | <i>To Undergo RI for 5 years and fine of Rs.1,000/- and in default of payment of fine to further undergo R.I., for six months.</i>               |
| <i>U/s 506 of IPC</i>         | <i>To Undergo R.I. for one year and to pay fine of Rs.500/- and in default of payment of fine to further undergo R.I., for one month.</i>        |

4. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellants-

convicts, 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.

5. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst their respective instant criminal appeals.

**Factual Background**

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PA/2 is assigned. As per the prosecution case, on 17.09.2012 the prosecutrix (whose identity is not being disclosed in view of the provisions of Section 228-A of the Indian penal Code) suffered statement to the police that she was 19 years of age studying in Government Ranbir College, Sangrur in BA Ist year. Amritpal Singh Sekhon was also studying with her. On 14.09.2012 she had gone to college as usual. After the period was over, she was standing near staff room, where Amritpal Singh Sekhon came and told her that his mother had called her and they have to leave immediately. He took her on her scooty, but instead of taking her to his house, he took her to the house of Mandeep Singh @ Monu forcibly. Mandeep Singh @ Monu was alone at his house. Amritpal Singh took her in the room situated at back side and made her sit on the bed. He also sat with her. After sometime Amritpal Singh told her that his friend Arjun Singh was waiting for him and went out. At about 12.30 p.m., Arjun Singh came to her room that he wanted to talk with her with regard to Amritpal Singh. Arjun Singh bolted both the doors of the room and threw the mattress of the bed

and threw her on the mattress and he forcibly raped her. The incident occurred in connivance with Amritpal Singh and Mandeep Singh @ Monu, who threatened her that if the matter was reported to any member of her family she will be eliminated. She went home on her scooty in fear and did not disclose anything to any member of her family. Subsequently on 17.09.2012 she narrated entire story to her mother. After recording the statement of the prosecutrix ASI Karamjit Singh made his endorsement and sent it to police station on the basis of which formal FIR was registered against the accused.

**Investigation proceedings**

7. The investigating officer took the prosecutrix to Civil Hospital, Sangrur where she was medico-legally examined. After medical examination the attending doctor handed over parcels which were taken into police possession. On 18.09.2012 he along with the prosecutrix reached at the spot and prepared rough site plan at the instance of complainant and took into possession the cover of the mattress after making it into parcel. He interrogated Mandeep Singh at his house. He was not arrested being juvenile and his family was directed to produce him in the juvenile court. He arrested accused Arjun Singh on 12.10.2012 and his personal search was conducted and separate memos were prepared to that effect. He got the accused Arjun Singh medically examined from Civil Hospital, Sangrur. He recorded statements of witnesses. The photo copy of RC of Honda Activa was taken into police possession. Accused Amritpal Singh Sekhon was arrested on 17.11.2012 on the identification of complainant, who was coming from the side of Nankiana chowk and his personal search was conducted and separate memos were prepared to that effect. On return to the police station, he

deposited the case property with MHC. After the completion of entire investigations challan against the accused was presented in the Court of learned Illaqa Magistrate. On presentation of challan and appearance of the accused in the Court of learned Area Magistrate, copies of report under Section 173 Cr.P.C., and other related documents were supplied to the accused as required under Section 207 Cr.P.C.

**Committal Proceedings**

8. Since an 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 24.1.2013, hence proceeded to commit the accused to face trial before the Court of Session.

**Trial Proceedings**

9. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused-appellants, for the offences punishable under Sections 376(2)(g), 506 and 120-B of IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

10. In proof of its case, the prosecution examined 7 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

11. 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.

12. As above stated, the learned trial Judge concerned, proceeded to convict the convicts-appellants for the charge(s) (supra), as became drawn

against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonments, as well as of fine, upon the convicts-appellants.

**Submissions of the learned counsel for the appellants**

13. The learned counsel for the aggrieved convicts-appellants has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He has further argued, that since the trial Court concerned, in the order(s) (supra) has held that the prosecutrix was a consenting party, thereby her entire story would not be believed.

**Submissions of the learned State counsel**

14. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, the consequent thereto sentence(s) (supra), as become imposed upon the convicts, 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 both the instant appeals, as preferred by the convicts-appellants be dismissed.

**Reasons for allowing the instant appeals**

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

16. (i) The prosecutrix while stepping into the witness box, thus deposed in her cross-examination, that though she raised a hue and cry, upon perpetration of the sexual assault upon her by the accused, but yet therein she stated that only on account of the doors of the room, being bolted by the accused, thus thereupons the said cries were not heard by the neighbours residing in the neighbourhood of the crime site, nor the neighbours arrived at the crime site. However, the said assigned reason for the non arrivals of the neighbours concerned, who were residing in the neighbourhood of the crime site, becomes falsified from the fact that;

a) She deposed that when she stepped outside the room she did not raise any alarm, thereby reiteratingly the testification (supra), made in her cross-examination that she resisted the sexual assault, as became perpetrated upon her person by the accused through her raising a hue and cry, which however, went unnoticed on account of the accused bolting the doors of the room from inside, thus obviously becomes falsified.

b) From the further fact that she subsequent to the happening of the crime event, thus evidently went to her home and when enroute her proceeding to home, there evidently occurred a busy locality, but her not intimating the incident to any of the persons whom she met enroute her going to her home after the crime event taking place, thus naturally bespeaks about her being a consensual partner to the sexual assault, if any, as became perpetrated upon her person by the accused.

c) Her keeping reticent for two days besides from the fact that despite her stating that she narrated the entire incident to the

doctor, who conducted medical examination upon her, but the doctor omitting to reveal in the MLR, that prior to hers making examinations, over the prosecutrix, thus the latter had intimated to her, about the alleged sexual assault becoming made upon her. The further consequent inevitable effect of the said omission in the MLR as drawn vis-a-vis, the prosecutrix by the examining doctor, is but that, the subsequent thereto story propounded by the prosecutrix loses its credibility.

17. Now, since 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 rife embellishments vis-a-vis with her previously recorded statement in writing.

18. Therefore, in the above regard, it is apposite to refer to the most dire improvement or embellishment, which became made by her during hers rendering a testification before the learned trial Judge concerned, thus from her previously recorded statement before the police officer. The said apposite dire improvement becomes embodied in the fact that, in her previously recorded statement in writing she made a disclosure therein, that she was wearing salwar at the time of the happening of the crime event, but in her subsequently recorded statement in Court, she narrated that she was wearing jean and top at the time of the happening of the crime event. Though, she then became confronted with her previously made statement in writing, whereins, the said fact did not occur at all, but she was unable to render any valid explication in respect of the (supra) inter se discrepancy.

Therefore, the (supra) improvement or embellishment, as made by the prosecutrix during hers recording her testification before the learned trial Judge concerned, thus from her previously recorded statement in writing before the police officer concerned, but leads to an inference that her rendered testification in Court, thus become unamenable for assignings of any credence thereto. In sequitur, the benefit thereof is to be assigned to the accused.

19. Moreover, from the fact that though she deposed that pursuant to the sexual assault becoming perpetrated upon her by the accused, there occurred a fluid discharge from her vagina, yet when she further testified that when she arrived at home, she suffered bleeding, resulting in her undergarments gathering bloodstains. However, the said best evidence became not preserved by the prosecutrix. Resultantly for destruction of the said best incriminatory evidence, an adverse inference is to be made against the prosecutrix or therebys the prosecutrix is deemed to be making a false testification. She further testified in her cross examination that there were one or two bruises on her legs, but as per the apposite MLR, the doctor has stated that there was no injury on the legs of the prosecutrix, therebys too her testification is not confidence inspiring.

20. Be that as it may, even if assumingly, the accused Arjun Singh 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 hers not resisting the perpetration of sexual

assault upon her person, thus at the instance of the accused Arjun Singh.

(b) The existence of untorn clothes of the prosecutrix, at the crime site, also is 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 Arjun Singh, especially if she was a non-consensual partner to the sexual assault, thereby her clothes would have been torn, rather than her clothes being found in an untorn condition at the crime site.

21. Insofar as the incriminatory role assigned to the accused Amritpal Singh is concerned, the same becomes dispelled from the hereinafter meted queries to her by the learned Public Prosecutor concerned, and the answers theretos as become rendered by the prosecutrix, queries and answers whereofs become extracted hereinafter. The said was done after the prosecutrix becoming declared hostile and with the leave of the Court, thus on the asking of the learned Public Prosecutor concerned, the prosecutrix becoming subjected to cross examination.

*“Court Question: That you have complete faith upon Amritpal?”*

*Ans. Yes*

*Court Question: Amritpal breach that faith on that day?*

*Ans. No*

*Court Question: Amritpal was aware about the occurrence which was to happen with you?*

*Ans. Yes”*

22. Since readings of the above queries and answers rendered theretos, but pointedly reveal that thereby there is complete exculpation of the guilt of appellant Amritpal Singh, thereby the incrimination drawn against him is required to be become declared to fall apart.

**Final order**

23. The result of the above discussion, is that, this Court finds merit in both the appeals, and, is constrained to allow them. Consequently, the appeals are allowed. The impugned judgment convicting, and, sentencing the appellants, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused 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 appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

24. Records be sent down forthwith.

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

**(SURESHWAR THAKUR)**  
**JUDGE**

**(KIRTI SINGH)**  
**JUDGE**

**December 20<sup>th</sup>, 2024**  
**Ithlesh**

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