



310

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1165-SB-2013
Date of Decision: 25.04.2024

NARENDER

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.B.S. Mann, Advocate
Legal Aid Counsel for the appellant

Mr. Vikas Bhardwaj, AAG, Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This instant appeal has been preferred by the appellant-accused against the judgment of conviction dated 10.01.2013 and order of sentence dated 11.01.2013 passed by learned Additional Sessions Judge, Fatehabad in Sessions Case No.27 of 2012 arising out of FIR No.116 dated 02.03.2012 registered under Sections 376 and 506 of IPC at Police Station- Sadar, Fatehabad. 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 3 months.</i>
506 IPC	<i>R.I of 2 years along with a fine of Rs.1,000/- and in case of default on fine, R.I of 1 month.</i>

FACTUAL MATRIX

2. Briefly, the facts are that the complainant-victim (prosecutrix) along with her parents met ASI Jagdish Chander and made a written complaint Ex.P1, wherein, it was alleged that the prosecutrix was a student of class IX



and 14-15 years of age. On the night of 29.02.2012, when she went outside of her house to use the washroom, the appellant-accused being her neighbour, was standing nearby. Upon seeing the prosecutrix, the appellant took her to a nearby abandoned house under threat and forcibly committed rape on her. Thereupon, the prosecutrix raised hue and cry which was heard by her mother and her brother and upon seeing them, the appellant ran away while issuing threats to kill them if the said matter was reported to the police. When the father of the prosecutrix, who was away from home, came back on 02.03.2012, he was informed about the said incident and consequently, the same was reported to the concerned police. On the basis of the said complaint, FIR (supra) was registered. The prosecutrix was medico-legally examined and her statement under Section 164 Cr.P.C. was recorded before learned ACJM, Fatehabad on 03.03.2012. The appellant surrendered before the learned Magistrate on 05.03.2012 and thereafter, he was medico-legally examined and he also got recovered his trousers (Pyjama) which he was wearing at the time of the alleged incident.

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 506 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 dated 10.01.2013 and order dated 11.01.2013, respectively, convicted and sentenced the appellant-accused under Section 376 and 506 of IPC. 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 8 days out of the maximum sentence of 7 years, was suspended by this Court vide order dated 23.09.2014.

CONTENTIONS

6. Learned counsel for the appellant-accused *inter alia* contends that the FSL report came back negative which proves that no rape was ever committed by the appellant as alleged by the complainant. He further submits that there is an unexplained delay of 2 days in lodging the FIR (supra) which points towards the fact that entire story has been concocted by the family of the prosecutrix since the appellant and the prosecutrix were having an affair which was not acceptable to her family. The said fact was categorically mentioned by the appellant in his statement recorded under Section 313 Cr.P.C. He further submits that the learned trial Court has wrongly allowed the prosecution to justify the said delay on grounds that the father of the complainant was away from home and upon his return the said FIR was lodged, however, failed to take into consideration that mother and brother of the complainant were always present. It is further contended that the learned trial Court has wrongly recorded that the prosecutrix was 14 years of age at the time of the alleged incident when as per the evidence of DW-1 Dr. Kanta Goel who had examined her along with Dr. Kuldeep Gouri to determine her age as per physical, dental and radiological examination, her age was found to be between 14 and 16 ½ half years. Therefore, her ossification test proves that the prosecutrix was above 16 years of age.



7. Learned counsel for the appellant further contends that the appellant even moved an application before the learned trial Court seeking directions to the prosecutrix to give her specimen handwriting and voice samples for the purpose of comparison with the love letters and phone recordings of the prosecutrix produced on record by him but she declined. It is further submitted that the case of the prosecution is riddled with discrepancies. Further, no independent witness was ever examined by the prosecution and the entire case of the prosecution rests solely on the testimonies of interested witnesses. It is further contended that the incriminating material available on record was never put to the appellant while recording his statement under 313 Cr.P.C. which is completely against the law and has caused grave prejudice to the appellant.

8. Learned State counsel contends that there is ample evidence on record to prove that the appellant had committed rape on the prosecutrix after threatening her and the same has been proved beyond the shadow of reasonable doubt. He further submits that the age of the prosecutrix has been duly proven on record to be below 16 years. Therefore, the present appeal filed by the appellant is devoid of any merit and thus, liable to be dismissed. The custody certificate of the appellant submitted by the learned State counsel, showing the period of custody undergone by him to be 3 years 5 months and 8 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 there is an inexplicable



delay of 2 days in lodging the FIR (supra). It is pertinent to mention here that PW3-Medical Officer who medico-legally examined the prosecutrix on 02.03.2012, stated in her deposition that there was no external mark of injury suggesting struggle except redness on the back and chest of the prosecutrix. As per the report of FSL, Madhuban (Ex.P34), human semen was only detected on the underwear of the appellant but not on any of the other exhibits analyzed including the vaginal swab. Further, the appellant took a categorical stand in his statement recorded under Section 313 Cr.P.C. as well as his examination as a witness under Section 315 Cr.P.C. that he had an ongoing love affair with the prosecutrix, although denied by the prosecutrix in her cross-examination, which was opposed by her family. In furtherance of his claim, the appellant tried to prove the love letters and call-recordings exchanged with the prosecutrix by moving an application seeking directions to the prosecutrix to give her handwriting specimen and voice samples which was declined by her. As far as the factum of the age of prosecutrix at the time of occurrence of the alleged offence is concerned, the same has not been duly established since the her age was determined on the basis of the school leaving certificate without considering the primary entry on the basis of which her age was recorded in the school records in the absence of her birth certificate. Further, the ossification test of the prosecutrix conducted by DW1-Dr. Kanta Goyal showed her age to be between 14 and 16 ½ years.

10. Dealing with the issue of delay in lodging of FIR in cases involving serious offences like murder or rape, a two Judge Bench of the Hon'ble Supreme Court in **Maharaj Singh vs. State of Uttar Pradesh**,



1994(5) SCC 188, speaking through Justice Dr. A.S. Anand has observed the following: -

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets benefit of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story."

11. Similarly, a two Judge Bench of the Hon'ble Supreme Court in **Thulia Kali v. The State of T.N., 1973 AIR (Supreme Court) 501**, speaking through Justice H.R. Khanna, has observed the following: -

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay of the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."



12. Further, 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 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 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."

13. 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 the impugned judgment of conviction dated 10.01.2013 and order of sentence dated 11.01.2013 passed by learned Additional Sessions Judge, Fatehabad, are hereby set aside.

14. 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.

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

(HARPREET SINGH BRAR)
JUDGE

25.04.2024
Ajay Goswami

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No