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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-423-2022 (O&M)
Reserved on:- 17.05.2024
Decided on:- 21.05.2024

Partap Khobra....Appellant

Versus

State of Haryana...Respondent

CORAM:- HON’BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. H.S. Sahu, Advocate and
Mr. Sunil Sihag, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

AMARJOT BHATTI, J.

1. Appellant/accused has filed appeal against judgment of conviction dated 09.02.2022 and order of sentence dated 14.02.2022 passed by learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad in Sessions Case bearing No. 151-SC dated 22.12.2020, titled as “State Vs. Partap Khobra” in FIR No. 297 dated 12.07.2020 under Section 376(2)(n), 452 and 506 of Indian Penal Code, 1860 (for short ‘IPC’) Police Station City Tohana, vide which he was sentenced as under : -

Under Section	Punishment
376(1) IPC	Rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

506 IPC	Rigorous imprisonment for 06 months and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
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2. Brief facts of the case are that victim ‘M’ (name withheld and hereinafter to be referred as victim ‘M’) filed written complaint addressed to SHO, Police Station City Tohana that she is wife of ‘K’ (name of husband of victim ‘M’ withheld and hereinafter to be referred as ‘K’) resident of Ward No. 6, Tohana. Partap Khobra resident of Ward No. 18, Tohana used to visit their house to meet her husband for the last about three years. Her husband was a ration depot holder. Partap Khobra used to enter her house forcibly and threatened her with pistol and committed rape upon her against her wishes for the last about 5-6 months. He claimed that he had prepared her video clip and on this account, he used to blackmail her. On 18.06.2020, he called her to his house by making an excuse and committed forcible rape with her. The victim prayed for legal action against the accused.

3. On this complaint, formal FIR No. 0297 dated 12.07.2020 under Section 376(2)(n), 384, 452, 506 of IPC and under Section 25 of Arms Act, 1959 was registered at Police Station City Tohana. Investigation was carried out. Site plan of place of occurrence was prepared. Victim ‘M’ was medically examined on 13.07.2020 and her statement was also recorded under Section 164 Cr.P.C. Accused Partap Khobra was arrested on 16.07.2020. His medical examination was conducted from Civil Hospital, Tohana. Statements of witnesses were recorded. After completion of investigation, challan was presented against accused before learned Illaqua Magistrate.



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4. The accused was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 376(2)(n) of IPC is exclusively triable by the Court of Sessions, therefore, learned Sub Divisional Judicial Magistrate, Tohana committed the case to the Court of learned Sessions, Fatehabad for trial vide commitment order dated 03.12.2020.

5. Learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad, after hearing arguments, framed charge-sheet against accused Partap Khobra under Section 450, 376(2)(n) and 506 of IPC, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of case, prosecution examined HC Rajbir as PW1, Constable Lilu Ram as PW2, ASI Subhash Chand as PW3, EHC Suresh Kumar as PW4, Victim 'M' as PW5, 'K' (husband of victim 'M') as PW6, L/ASI Sushila as PW7, Sumandeep Kaur, Senior Scientific Officer, FSL Madhuban, Karnal as PW8, Anshuman Rai, Senior Scientific Assistant (B) DNA Division, FSL, Madhuban as PW9, L/HC Angrejo Devi as PW10, Dr. Sachin Mangla, Medical Officer, Civil Hospital, Tohana as PW11, Dr. Banti Bansal, Medical Officer, Himalyan Hospital, Doiwala, Dehradun as PW12 and E/ASI Amarnath as PW13. Thereafter, learned Public Prosecutor for the State closed the prosecution evidence.

7. Statement of accused was recorded under Section 313 Cr.P.C. wherein he denied the incriminating evidence put to him and pleaded

innocence and false implication.



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8. In defence, accused did not lead any evidence and closed the same vide separate statement.

9. After hearing arguments advanced by learned Public Prosecutor for the State assisted by learned counsel for the complainant and learned defence counsel, accused Partap Khobra was acquitted under Section 452 and 376(2)(n) of IPC, whereas, he was held guilty and convicted under Section 376(1) and 506 of IPC, as referred above.

10. Feeling aggrieved of this judgment of conviction and order of sentence, present appeal has been filed by convict Partap Khobra.

11. I have heard arguments advanced by learned counsel for the appellant/accused and learned counsel representing the State and have gone through the record carefully with their able assistance.

12. Learned counsel for appellant/accused argued that judgment of conviction and order of sentence passed by learned trial Court is wrong, arbitrary and unjustified. The facts and circumstances of the case were not properly appreciated. Learned trial Court failed to consider that prosecutrix was a married lady having two children. The appellant and husband of victim 'M' are cousins. There was a property dispute between them and for this reason false FIR has been registered. The incident allegedly took place on 18.06.2020 and FIR was lodged on 12.07.2020. The delay in lodging the FIR has remained unexplained.

Learned counsel for appellant/accused pointed out that testimony of victim recorded as PW5 is not trustworthy and it does not inspire

confidence. He has relied upon the authority cited in **2023(4) Crimes 141**



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Supreme Court of India in case title “**Manak Chand alias Mani Versus The State of Haryana**”, where in para no. 5, it was held as under :-

“5. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**:

“If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

This was reiterated by this Court in **Sadashiv Ramrao Hadbe v. State of Maharashtra and Another (2006) 10 SCC 92**:

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence.....”



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On this point, he has also relied upon the authorities of **Hon'ble the Apex Court** cited in **2009(1) R.C.R.(Criminal) 310**, case title "**Rajoo & Ors. Versus State of M.P.**" and **2016(5) Recent Apex Judgments (R.A.J.) 646**, case title "**Raja and others Versus State of Karntaka**".

In the case in hand, even the testimony of victim 'M' was not totally relied upon, as a result, the appellant/accused was acquitted under Sections 452 and 376(2)(n) IPC. Therefore, the learned trial Court wrongly relied upon the other part of testimony for convicting appellant/accused under Sections 376(1) and 506 IPC.

In the case in hand, no proper investigation was carried out by police. There is no recovery of pistol with which victim 'M' was allegedly threatened. The Investigating Officer did not collect call detail record of victim 'M' to confirm that it was the appellant who had called victim 'M' to his house on the said day of occurrence. There is nothing on record to show that appellant prepared obscene clip for which victim 'M' was being blackmailed. On the other hand, counsel for accused had confronted the husband of victim 'M' examined as PW6 with photographs taken from CCTV footage Mark D1 to D6 which shows that accused was present in the company of husband of victim 'M' on a scooter outside the house of accused. The said clipping is of 13:47:33. Even medical record proved on file did not support the prosecution case. Appellant/accused was wrongly held guilty under Section 376(1) and 506 IPC. The said judgment of conviction and order of sentence passed by learned trial Court is not sustainable in the eyes of law, thus appellant/accused deserves acquittal.



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13. On the other hand, learned counsel representing the State pointed out that facts of the case and evidence on record was rightly appreciated by learned trial Court. In order to prove the charge-sheet, prosecution examined victim 'M' as PW5 where she has fully supported her version. The written complaint Ex.P4 was filed in the police station on the basis of which FIR was registered. Victim is further supported by her husband examined as 'K' PW6. She was medically examined on 13.07.2020. Medical record is proved by Dr. Sachin Mangla, Medical Officer as PW11. Copy of MLR is Ex.P18. The appellant/accused was also medically examined the day he was arrested on 16.07.2020. Dr. Banti Bansal, Medical Officer as PW12 has proved his MLR Ex.P23. Sumandeep Kaur, Senior Scientific Officer, Forensic Science Laboratory, Madhuban PW8 has proved FSL report dated 11.08.2020 Ex.P16, according to which human semen was detected on exhibit 1 i.e. underwear.

The entire investigation carried out by police is proved on record by L/ASI Sushila PW7, further supported by examining other relevant witnesses. Evidence led by the prosecution was correctly appreciated and appellant was rightly held guilty for committing rape on 18.06.2020 and convicted under Section 376(1) and 506 of IPC. The testimony of victim 'M' cannot be ignored. Therefore, judgment of conviction and order of sentence passed by learned trial Court do not require any interference.

14. I have considered the arguments advanced before me and carefully scrutinized the evidence led before learned trial Court. FIR was registered on the written complaint of victim 'M' dated 12.07.2020 Ex.P4,



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pistol committed rape upon her repeatedly for the last 5-6 months. He also blackmailed her by saying that he had prepared her obscene video clip. On 18.06.2020 she was called by accused in his house on a false pretext and committed forcible rape upon her. FIR No. 297 dated 12.07.2020 Ex.P8 was registered under Section 376(2)(n), 384, 452, 506 IPC and Section 25 of Arms Act. Accused was charge-sheeted under Section 450, 376(2)(n) and 506 of IPC. To prove the charge-sheet, victim 'M' was examined as PW5 and her version was supported by her husband 'K' examined as PW6. Relevant doctors who medically examined victim 'M' as well as accused also stepped into the witness box to prove their respective medical record and reports of FSL were also proved on record. The Investigating Officer and other police officials who participated in investigation were also examined before learned trial Court. Learned Additional Sessions Judge-cum-Special Judge, Fast Track Court appreciated the evidence and acquitted appellant/accused under Section 452 and 376(2)(n) of IPC and held him guilty for the alleged rape on 18.06.2020 under Section 376(1) and 506 of IPC. Perusal of judgment passed by learned trial Court, it is evident that some part of testimony of victim 'M' was believed and partly statement was discarded. During investigation, neither any pistol was recovered nor any obscene video clipping of prosecutrix could be recovered. Thus, the appellant was convicted for the alleged occurrence which took place on 18.06.2020.

15. In order to appreciate the facts of case, statements of victim 'M' PW5 and her husband 'K' PW6 are relevant. The victim 'M' during her cross-examination as PW5 admitted that appellant/accused is her *Jeth*/brother-in-



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law in relation and he was on visiting terms in her house for last three years. It has come in cross-examination that she was living in the house alongwith her husband and other family members. At that time, she was mother of two children (elder age about 9 years and younger age about 8 years). On the other hand, appellant/accused was also residing in his house alongwith his father, wife and three children, out of which younger child was more than 9 years. The location of house of victim 'M' and appellant/accused is clarified in cross-examination of husband of victim namely 'K' examined as PW6. During his cross-examination, he categorically stated that his house and house of accused is at a distance of about half kilometre. The distance between his house and Police Station City Tohana is less than half kilometre and his work place i.e. Depot is less than half kilometre. It is further confirmed that their houses are situated in populated area.

The occurrence is proved on record by sole testimony of victim 'M' examined as PW5. Therefore, her statement coupled with facts of case and surrounding circumstances has to be scrutinized carefully. Apart from the authorities relied upon by learned counsel for appellant/accused, gainful reference can also be made to the authority cited in **2020(2) R.C.R.(Criminal) 58 Supreme Court of India** in case title "**Santosh Prasad alias Santosh Kumar Versus State of Bihar**", where it was again observed that *accused cannot be convicted of rape on the basis of sole testimony of prosecutrix unless or until the testimony is of sterling quality. In the absence of this, the Court has to see any corroboration to hold the accused guilty. In that case,*

there was variation in the statement of victim about filing of complaint, delay



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in lodging the FIR and the medical record was also not in support of the prosecution, as a result, appellant was acquitted by the Apex Court.

16. Victim 'M' as PW5 during her cross-examination stated that she does not remember the date and month when she was raped by accused for the first time. She alleged that accused committed rape continuously for about six months. She did not resist the act of accused as he threatened her. She did not disclose about the occurrence to her husband or any other family member. It has come in the cross-examination of victim 'M' that her husband was working in a Depot which was situated nearby. He had no fix time to come to the house. Even on 18.06.2020, when she allegedly went to the house of accused where she was ravished by appellant/accused, her husband was present in the market who returned home at about 02:00 pm. Even on that day, she did not disclose about the incident to her husband. It has come in the statement of victim 'M' PW5 as well as her husband 'K' PW6 that victim 'M' disclosed about the alleged rape to her husband for the first time on 12.07.2020 and on the same day written complaint was filed and present FIR was registered. Prior to this, victim 'M' did not disclose about the conduct of accused to anybody.

17. On the other hand, learned counsel for appellant/accused has pointed out that accused was falsely implicated in this case on account of property dispute. He referred to cross-examination of husband of victim namely 'K' examined as PW6 where he admitted that he came to know from his wife that their residential house was in the name of accused which was previously owned by his father. The statement of victim 'M' recorded by



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learned Sub Divisional Judicial Magistrate under Section 164 Cr.P.C. Ex.P7 is also relevant, 'where she stated regarding the occurrence as well as the dispute between two families. She claimed that accused tortured her by showing pistol and was threatening to kill her husband. She alleged that she was raped by accused by calling her to his house. He (accused) alongwith his wife were called to their house for compromise but they did not agree. He also came to their house to beat them up and wanted to transfer their property in his name. She prayed for safety of her family members.' Victim 'M' was confronted with her statement given before learned Sub Divisional Judicial Magistrate dated 17.07.2020 Ex.P7. She could not gave any satisfactory reply during cross-examination regarding the compromise for which accused and his wife were called. Learned trial Court while appreciating the evidence on record failed to consider the property dispute which was already going on between the parties. Husband of victim 'M' stated that he came to know on 12.07.2020 that house in which they were residing was transferred in the name of accused and on the same day, victim 'M' filed complaint Ex.P4 on the basis of which aforesaid FIR Ex.P8 was registered.

18. In-fact there is sole testimony of victim 'M' regarding the alleged incident of 18.06.2020 where she claimed that she was called in the house of accused at about 12/12:30 pm and was forcibly raped by accused. The husband of victim namely 'K' during his cross-examination as PW6 was confronted with photographs taken from CCTV footage dated 18.06.2020 at 13:47:33 i.e. 01:47 pm Mark D1 to D6 where he conceded that at that time he



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scooter was plied by him and accused was pillion rider. Learned trial Court ignored the aforesaid photographs by holding that said photographs were not proved on record as per law. It cannot be ignored that during cross-examination, husband of victim namely 'K' admitted the said photographs. In-fact, said CCTV footage should have been collected by Investigating Officer during the course of investigation.

19. The medical record proved on file does not help the case of prosecution. Dr. Sachin Mangla has proved on record MLR of victim 'M' as Ex.P18. The samples drawn at the time of medical examination were sent to Forensic Science Laboratory, Madhubhan. As per the report of FSL dated 11.08.2020 Ex.P16 human semen was detected on exhibit 1 (underwear). However, as per DNA report of FSL Madhuban Ex.P17 'Autosomal STR analysis indicated that DNA profile of seminal stains on Source of item No. 1 (underwear) is not matching with DNA profile of blood sample stated to be of accused i.e. item No. 7.' Moreover, the alleged occurrence took place on 18.06.2020 and victim was medically examined on 13.07.2020. Victim 'M' is a married lady having two children. Therefore, after the lapse of time, medical record proved by prosecution cannot be connected with alleged incident of rape.

20. Therefore, considering the aforesaid facts, delay in lodging report to police is fatal to prosecution case. The sole testimony of victim 'M' regarding the alleged occurrence is not trustworthy, unblemished or of sterling quality. Property dispute started between two families has not been



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doubtful in view of cross-examination of victim 'M' as PW5 and statement of her husband 'K' as PW6. Prosecution has failed to bring home the guilt of appellant/convict beyond the shadows of reasonable doubt. Therefore, in my opinion, the judgment of conviction and order of sentence under Section 376(1) and 506 of IPC is not on sound footing.

Consequently, judgment of conviction dated 09.02.2022 and order of sentence dated 14.02.2022 passed by learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad is set aside and appellant/convict is acquitted of the charge framed against him.

21. Appeal preferred by appellant/accused Partap Khobra is accordingly, allowed.

22. Pending application(s), if any, also stand(s) disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

21.05.2024*lalit*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No