

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-684-2023 (O&M)

Date of reserved: 12.08.2024

Date of pronouncement: 31.08.2024

Surjit Singh

....Appellant.

Versus

State of Punjab and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Chanakya Batta, Advocate for the appellant.

Sukhvinder Kaur, J.

1. Appellant-Surjit Singh has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 28.02.2023, passed by learned Additional Sessions Judge, Fast Track Special Court, Ludhiana, vide which the respondent has been acquitted of the offences punishable under Sections 376, 506, 120-B IPC.

2. The factual scenario, as highlighted by the prosecution, is that initially the prosecutrix, resident of village Kothe Fatehdeen, submitted complaint dated 09.07.2013 (Ex.PW3/1) to SSP, Ludhiana (Rural) alleging that she is aged about 16 years, her mother has since expired and she is residing with her father, who is a rickshaw puller. On 28.05.2013, his father had gone to his work and was not present at house. She was alone in her room and in the adjoining room, her paternal aunt Balwinder Kaur is residing. At about 2.00 P.M., accused Parminder Singh son of Gurnam Singh, resident of village Kothe Fatehdeen came to her room alongwith her

paternal aunt (Tayi) Balwinder Kaur. Parminder Singh asked for a glass of

water and her paternal aunt told her to bring water from refrigerator. When she went towards the refrigerator for fetching water then her paternal aunt left room and bolted the door from outside. Parminder Singh started outraging her modesty. When she resisted, then he gagged her mouth and threatened her by taking out his revolver and pointing it towards her. He forcibly removed her clothes despite her resistance and at the revolver point he committed rape with her. Then he threatened her that if she would disclose about the occurrence to anyone, then he would kill her father. Thereafter, Parminder Singh knocked at the door and her paternal aunt opened the same from outside. Parminder Singh left the room by threatening her with dire consequences if she would disclose about the occurrence to anyone. She did not disclose about the occurrence to anyone till then i.e. 08.07.2013, but as she was under mental pressure so she disclosed about the occurrence to her paternal uncle (Taya) Surjit Singh. Prayer was made for taking necessary action against the accused. On aforesaid complaint of the prosecutrix, FIR was registered against Balwinder Kaur and Parminder Singh. Parminder Singh absconded and Balwinder Kaur was arrested. Private complaint was filed by complainant Surjit Singh on 04.01.2013. Police conducted inquiry in the matter and submitted the cancellation report on 06.02.2014. Thereafter, protest petition was filed by the prosecutrix on 25.03.2014. After concluding of the preliminary evidence, learned Magistrate summoned both the accused to face trial for offences punishable under Sections 376, 506, 120-B IPC and Sections 25 and 27 of the Arms Act.

3. Vide order dated 10.08.2018, passed by learned Judicial Magistrate Ist Class, Jagraon, the case was committed for trial to the Court

of Sessions, the offence under Section 376 IPC being exclusively triable by the said Court.

4. Finding a prima facie case, charge for offences punishable under Sections 376, 506, 120-B IPC and Section 27 of the Arms Act was framed against the accused, to which they pleaded not guilty and claimed trial.

5. As many as 08 witnesses were examined by the prosecution to prove its case. Statements of accused under Section 313 Cr.P.C. were recorded while putting incriminating evidence against them. They claimed innocence and false implication. Accused examined DW1-Sarabjit Kaur, DW2-Sukhminder Kaur, DW3-Paramjit Singh and DW4-Inspector Mohd. Jamil and closed the defence evidence after tendering into evidence documents Ex.D4 to Ex.D7, Mark A and Mark B. After considering the evidence on record, learned trial Court acquitted the accused of the offences for which they had been charge-sheeted, vide judgment dated 28.02.2023.

6. Aggrieved by the said decision, Surjit Singh, uncle of the victim has preferred the present appeal alongwith application seeking leave to file an appeal against acquittal of the accused/ respondents No.2 and 3.

7. Learned counsel for the appellant vehemently contended that it stands proved that accused Parminder Singh in connivance with co-accused Balwinder Kaur committed rape upon the prosecutrix on 28.05.2013 while threatening her at revolver point. He further contended that learned trial Court has failed to appreciate the evidence on record in the right perspective. Delay of 42 days in submitting the complaint to the police by the prosecutrix has been explained as she has categorically stated that after the incident of 28.05.2013, she went to the house of her paternal aunt at

village Ashahur, where she stayed for about 40 days and being under great mental pressure, after coming back she disclosed about the said occurrence to her paternal uncle (Taya) Surjit Singh and then an application was given to SSP, Ludhiana (Rural) against the accused persons. FIR registered in this case was incorrectly cancelled. Learned trial Court has ignored the statement of victim recorded under Section 164 Cr.P.C. before learned Magistrate, wherein she narrated the entire occurrence in detail. Learned counsel has urged that learned trial Court has put great emphasis on the complaint dated 11.06.2013 allegedly given by victim against Gursewak Singh and his family, but learned trial Court failed to consider that the said complaint is manipulated one and it does not bear signatures of the victim. As after committing of rape on 28.05.2013 by accused Parminder Singh, the victim went to the house of her paternal aunt (Bua) at village Ashahur, so, the aforesaid complaint against Gursewak Singh was not given by her to the police. Even during her cross-examination, the victim denied that she ever worked in the house of Gursewak Singh at village Kothe Jeewa and denied that she knew any Gursewak Singh and also denied that she had given application dated 11.06.2013 against Gursewak Singh at Police Station City, Jagraon, levelling allegation of rape against Gursewak Singh. It was argued that statements of DW1 and DW2 do not inspire confidence that at the time of alleged occurrence, when it was peak summer, in the afternoon, the aforesaid witnesses were sitting outside their houses and were noticing the house of victim, which was not even visible from the house of DW1-Sarabjit Kaur. He contended that learned trial Court has failed to consider the fact that sole testimony of victim is sufficient for conviction of the accused and prosecution version has been brushed aside by learned trial

Court without any cogent reason and prayed that this appeal be accepted, judgment dated 28.02.2023 be set aside and accused be convicted for the offences charged and be punished accordingly.

8. In order to prove its case, prosecution has examined complainant Surjit Singh as PW1, who stated that prosecutrix is his niece and daughter of his younger brother Joginder Singh. He stated that the prosecutrix disclosed to him on 09.07.2013 about the incident of 28.05.2013, when Parminder Singh came to the house of the prosecutrix at about 2.00 P.M. and committed rape upon her under threat, at the revolver point.

Prosecutrix/victim, stepped into the witness-box as PW2 and reiterated the version as revealed earlier.

PW3 C. Parampreet Singh brought the original summoned record pertaining to complaint submitted by victim, which was received in SSP Office, Ludhiana (Rural) through Fax on 11.07.2013 against Parminder Singh son of Gurnam Singh and Balwinder Kaur wife of Pinder Singh, both residents of village Kothe Fatehdeen. He proved on record copy of same as Ex.PW3/1. FIR No.136 dated 11.07.2013 was registered at Police Station City Jagraon under Sections 376, 506, 120B IPC and Sections 25 and 27 of Arms Act against the accused and proved on record copy of the same as Ex.PW3/2.

PW4 Dr. Ravinder Kaur, Medical Officer deposed that on 12.07.2013 she was posted as Medical Officer at Civil Hospital, Jagraon and on that day, a Board of Doctors including Dr. Ranbir Kaur, Gynecologist and herself was constituted by Dr. Kishan Singh, Medical Officer, Civil Hospital, Jagraon, to medico-legally examine the prosecutrix

at 2:30 PM. The prosecutrix was medico-legally examined by them and found the following:-

Alleged history of sexual assault on 28.05.2013 (at about 2.00 P.M.). She was unmarried staying with her Tai. On general physical examination, no signs of any injury on body including private parts were present. PW4 reported as under:-

“Local Examination

Bleeding per vaginum was present, she had kept pad for this. She did not disclose in history that she was having periods but after examination, she said that she was having periods. On per speculum examination, hymen was partly torn on right side. Patient did not allow per vaginum examination.

Advice

X-ray for bone age.

Ultrasound Pelvis”

PW4 proved on record carbon copy of MLR Ex.PW4/A of prosecutrix bearing her signatures as well as signatures of Dr. Ranbir Kaur.

PW5 Ms. Palwinderjit Kaur, Additional District and Sessions Judge, Patiala, proved the statement of the prosecutrix recorded by her under Section 164 Cr.P.C. as Ex.PW2/A.

PW6 SI Baldev Singh stated that on 11.07.2013 complaint Ex.PW6/A was marked to him for inquiry by Inspector Mohd. Jamil, SHO, Police Station City Jagraon, vide Endst. Ex.PW6/B. He conducted proceedings Ex.PW6/C and sent Ruqa to Police Station through HC Paramjit Singh, on the basis of which, FIR Ex.PW6/D was registered. He prepared the rough site-plan Ex.PW6/E and also deposed about the other

proceedings of investigation.

PW7 AIG Surinder Kumar, STF/Jalandhar Range stated that on 31.08.2013 he was posted at Jagraon as DSP when complaint was marked to him by SSP, Jagraon. He made detailed inquiry and came to conclusion that Parminder Singh and Balwinder Kaur had committed the offence and made the zimni as Ex.PW7/1 regarding the same.

PW8 Mr. Bikram Sharma, Advocate deposed that he has been working as Notary Public since 1991. He identified his signatures on the affidavit Ex.PW8/1 which he had attested on identification of Ex.Sarpanch Udham Singh.

9. After having heard learned counsel for the parties at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

10. Prosecution case mainly rests on the testimony of prosecutrix. It is trite law that conviction can be based on the sole testimony of the prosecutrix, if it is found to be reliable and trustworthy and it does not require any further corroboration.

11. It has been held by the Hon'ble Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi (2012) 8 SCC 21** as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the

consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

12. It is appropriate to refer to **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon'ble the Supreme Court observed that

but same cannot be presumed to be a gospel truth in all circumstances. It was observed as under:

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. 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.”

13. Now advertng to the present case, it is to be seen whether testimony of the victim is of sterling quality on the sole basis of which conviction of accused can be based.

14. As per prosecution version, the alleged incident took place on 28.05.2013, but the matter was reported to the police by the prosecutrix only on 09.07.2013 by sending a complaint to SSP, Ludhiana (Rural) by Fax and Registered Post. Thus there was delay of 42 days in reporting the matter to

the police which has not been properly explained. Prosecutrix has tried to explain the aforesaid delay by stating that she went to village Ashahur to reside with her paternal aunt and stayed there for 42 days. Said paternal aunt (Bua) of the prosecutrix with whom prosecutrix stayed for 42 days after the alleged occurrence has not been examined by the prosecution in support of aforesaid plea taken by victim. Moreover, it does not seem probable that if she had stayed with her paternal aunt as alleged for 42 days after the alleged incident, she would not disclose about the same to her. While appearing as PW2, the victim stated that she was under mental pressure, so she disclosed about the occurrence to her paternal uncle Surjit Singh after coming back from village Ashahur. If she could tell about the alleged occurrence to her paternal uncle then she could have disclosed about the same to her paternal aunt also, moreso, when immediately after the alleged occurrence, she allegedly stayed for a long period of 42 days with her. Prosecutrix also stated in her cross-examination that her elder sister is married in the said village where her paternal aunt is residing. Therefore, it is opposed to all normal probability that if any such incident had taken place, she would not have disclosed about the same to her elder sister who was residing in the same village where the prosecutrix allegedly stayed for 42 days, immediately after the alleged occurrence. Elder sister of the prosecutrix has also not been examined by the prosecution in order to prove that she had stayed at village Ashahur for 42 days after the alleged incident. Thus, the long delay of 42 days in reporting the matter to the police has not been satisfactorily explained by the prosecution. When she neither narrated about the alleged incident to her paternal aunt nor to her elder sister and father it indeed raises strong doubt regarding credibility of her version. Therefore, in

the given circumstances, it is necessary to look for corroboration. As noticed above, aunt of victim with whom she stayed for about 40 days after the incident and her elder sister residing in the said village have not been examined for reasons best known to complainant. As per record, complaint given to SSP, Ludhiana (Rural) was sent by the prosecutrix by fax/ mail and registered post on 09.07.2013 and not by personally visiting the office of SSP, Ludhiana (Rural). There is indeed no plausible explanation as to why this course of action could not have been adopted at the earliest.

15. Even in the complaint Ex.PW3/1 submitted by prosecutrix to SSP Office, Ludhiana (Rural) and in her statement Ex.PW2/A recorded under Section 164 Cr.P.C. before the Magistrate, there is no reference that after the alleged occurrence she stayed with her paternal aunt at village Ashahur for 42 days.

16. It is further to be noted that prosecutrix was medico-legally examined by Board of Doctors including PW4-Dr. Ravinder Kaur, who was member of the Medical Board. She proved on record the MLR of prosecutrix as Ex.PW4/A. In her cross-examination, this witness stated that bleeding noticed at the time of examination of victim was due to menstruation. PW4 further stated that possibility cannot be ruled out with respect to partial tearing of hymen on account of insertion of sanitary pads. In this case, Special Investigation Team (SIT) was formed for inquiry, who had approached her for opinion. No written opinion was given by her to SIT regarding medical examination of victim. So the trial Court has rightly observed that from cross-examination of PW4 Dr. Ravinder Kaur, it cannot be ascertained that the prosecutrix was subjected to rape by the accused.

17. After registration of the FIR in the present case, detailed

investigation was conducted by the police and thereafter detailed enquiry report of Ex.D4 was given to SSP, Ludhiana (Rural) and said FIR was cancelled by the police.

18. From the testimony of PW1 complainant Surjit Singh, it emerges that chance of false implication of the accused cannot be ruled out due to the political rivalry. PW1 has stated in his cross-examination that he remained member of village Panchayat from the year 2013 to 2018. He is residing separately from his brother Joginder Singh for the last 20 years. He further stated that wife of Parminder Singh also remained Sarpanch of the village from 2008 to 2013. He admitted that he moved application against wife of Parminder Singh levelling allegations of corruption in the year 2008. Inquiry in the said matter was conducted by BDPO, Jagraon, which was decided in favour of wife of Parminder Singh. He also got published those complaints in the newspaper.

19. Prosecutrix in her cross examination has also stated that she did not know if accused Parminder Singh is residing in the same village alongwith his wife, mother and daughter. She admitted that her father did not accompany her at the time of investigation by the police. So from cross-examination of these witness and testimony of defence witnesses it is proved that the complainant and family of prosecutrix are political opponents of accused Parminder Singh. Credibility of the entire version is suspected.

20. Moreover, statement of PW1 complainant is hearsay in nature and he deposed as allegedly disclosed to him by the prosecutrix. Again this is a strange conduct of the victim that she did not disclose about the alleged incident to her father, paternal aunt (Bhua) or elder sister and rather

preferred to share the same only with her paternal uncle complainant-Surjit Singh. PW2 has admitted in his cross-examination that father of the victim did not accompany him while making complaint to the police and he accompanied the victim when her statement under Section 164 Cr.P.C. was recorded. Prosecutrix has also admitted in her statement that her father did not accompany her at the time of investigation by the police. Thus, when father of prosecutrix opted not to pursue the matter before the police, it does raise doubt about the alleged occurrence on 28.05.2013.

21. Furthermore, complainant gave incorrect age of the prosecutrix in the complaint and stated her to be aged about 16 years at the time of alleged occurrence, but DW3-Paramjit Singh, Senior Assistant, produced the record pertaining to date of birth of the prosecutrix and as per said record her date of birth is 25.09.1994. As such she was more than 18 years of age at the time of alleged occurrence.

22. Evidence in defence was led by accused. DW4-Mohd. Jamil, has proved the application given by prosecutrix dated 11.06.2013 bearing No.553-5DF at Police Station City, Jagraon as Ex.D2. Allegations of rape and physical abuse were raised against one Gursewak Singh and his family members by prosecutrix in this complaint. The said application was marked to ASI Baldev Singh on the same day. Complaint was produced before him by ASI Baldev Singh after inquiry and thereafter Inspector Mohd. Jamil consigned the said complaint Ex.D2 with no merit being found therein. As per the contents of complaint Ex.D2, prosecutrix levelled allegation of rape against one Gursewak Singh in whose house she was working and regarding family members of Gursewak Singh beating her. This application is dated 11.06.2013. As per statement of prosecutrix, after the alleged occurrence

dated 28.05.2013, she went to the place of her paternal aunt at village Ashahur on the next day i.e. on 29.05.2013 and stayed there for 42 days, however a serious dent on this assertion is also cast in view of complaint dated 11.06.2023 submitted by her.

23. Otherwise also, the contents of complaint Ex.D2 are material for throwing the light on the alleged incident of 28.05.2013. It is alleged therein by the prosecutrix that she was working in the house of Gursewak Singh. One day Gursewak Singh in drunken condition caught her from her arms and took her to his room and committed rape upon her and thereafter threatened her. On 04.06.2013 also, Gursewak Singh committed rape with her. On 09.06.2013 daughters of Gursewak Singh forcibly took her to their house and she was saved by her brother and uncle. On 10.06.2013 daughters and grandchildren of Gursewak Singh slapped her and beat her, but she was saved by her paternal aunt i.e. accused Balwinder Kaur and uncle and they took her to the Sarpanch of the village i.e. accused Parminder Singh on 10.06.2013. This application is dated 11.06.2013. Though as per DW4, no substance was found in the said application, but the contents of the aforesaid complaint belie the allegations levelled by the prosecutrix against the accused persons. In the instant case, rape is alleged to be committed by accused Parminder Singh on 28.05.2013 in conspiracy with co-accused Balwinder Kaur. This application dated 11.06.2013, is subsequent to alleged occurrence dated 28.05.2013 in the present case. Though prosecutrix has denied her signatures upon Ex.D2 but during cross-examination of DW4-Inspector Mohd. Jamil, no suggestion was given to him that this application was not bearing the signatures of the prosecutrix and was a created document and not given by complainant to the police.

24. Accused in defence have also examined DW1-Sarabjit Kaur, who stated that on 28.05.2013 at about 1/1.30 P.M., due to power supply cut, she alongwith Manjit Kaur and Harjinder Kaur were sitting in shadow of a religious place from where the house of the prosecutrix was visible. House of prosecutrix was locked and her aunt Balwinder Kaur was sitting under a tree and was stitching the clothes. DW1 has stated that she remained there upto 3.00 P.M. and nobody came to the house of the prosecutrix during this period including accused Parminder Singh. She stated that a false case has been got registered against accused Parminder Singh due to the party faction in village.

25. DW2-Sukhminder Kaur also stated that on 28.05.2013 at about 1/1.30 P.M., she went to the house of Balwinder Kaur to get stitched her clothes. House of Balwinder Kaur is adjoining to the house of prosecutrix, which was locked at that time. Prosecutrix used to work in the house of Gursewak Singh of village Kothe Jiwa and remained there upto 3.00 P.M. During this period, Balwinder Kaur kept sitting under the tree due to power supply cut and prosecutrix did not return to her house. Parminder Singh also did not visit the said house.

26. Keeping in view the facts and circumstances, when there is unexplained delay of 42 days in reporting the matter to the police, FIR registered at the instance of prosecutrix being cancelled after conducting of inquiry by an officer of the rank of SSP, political enmity being proved between complainant and accused Parminder Singh, with no palpable medical evidence to corroborate the version of prosecutrix coupled with the evidence in defence, learned trial Court has rightly reached the conclusion that prosecution has miserably failed to prove the case against accused

persons beyond the shadow of reasonable doubt.

27. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 28.02.2023 which calls for interference.

28. No other argument was addressed.

29. In view of the above, no ground is made out for grant of leave to appeal against acquittal of respondents No. 2 and 3. Same being devoid of any merit is accordingly declined. Appeal is dismissed.

30. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

31.08.2024.

Komal

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