

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-821-2019 (O&M)
Date of decision: 20.12.2024.

Archana Sharma

....Appellant.

Versus

State of Haryana and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Dr. Anju Sharma, Advocate
for the appellant.

Mr. S.K. Panwar, Addl. A.G., Haryana.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 08.01.2019, passed by learned Additional Sessions Judge, Fast Track Court, Faridabad, vide which respondent No.2-accused Dr. Parkashveer Pathak has been acquitted of the offence punishable under Sections 323, 376B and 506 IPC.

2. The factual scenario, as per prosecution version is that statement of prosecutrix Ex.PE was recorded before the Legal Aid Prosecution counsel, wherein prosecutrix stated that she is wife of accused Parkashveer. After their marriage, accused used to beat her and she was being harassed by her husband and mother-in-law. They levelled allegations regarding her character. Her mother-in-law levelled false allegations against her and got registered false cases against her with the police. Due to said

harassment, she filed a case under Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to be as D.V. Act') in the month of January, 2014 and since then though they resided in the same house, they were living separately and there existed no physical relation between prosecutrix and accused. Despite that her husband (accused) forcibly made physical relations with her on 18.10.2016 at about 9.30 A.M. When she said that she would lodge a complaint against him, her mother-in-law who had come downstairs after hearing the commotion, instigated accused to kill her and accused tried to press her throat in order to kill her. She informed police by dialing No.100 and also lodged complaint by visiting the office of Deputy Commissioner of Police, Ballabgarh. She sought action against her husband and mother in law as she faced threat to her life and liberty at their hands. Upon her statement, formal FIR was registered. Her statement under Section 164 Cr.P.C. was recorded by learned Illaqa Magistrate. Accused Parkashveer and Smt. Asharfi Devi were joined in the investigation. During investigation, accused Smt. Asharfi Devi was found innocent and she was kept in column No.2 of report under Section 173 Cr.P.C.. Statements of the witnesses under Section 161 Cr.P.C. were recorded. After completion of necessary investigation, final report under Section 173 Cr.P.C. was presented in the Court of Illaqa Magistrate. Thereafter case was committed to the Court of sessions for trial.

3. After having found a prima facie case, charge for offences punishable under Sections 376B, 323/34 and 506/34 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

4. Prosecution in order to prove its case against the accused has examined as many as 13 witnesses. After closing of the prosecution

evidence, statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication. In his defence, accused examined DW1-Pintu.

5. After considering evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused, who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 08.01.2019.

6. Aggrieved of the said decision, present appeal has been filed by the appellant challenging acquittal of the accused/ respondent No.2.

7. Learned counsel for the appellant vehemently contended that prosecutrix had been residing separately from the accused though under same roof since considerable time, but despite that accused performed sexual intercourse with the complainant without her consent. He caused simple hurt on person of complainant and he along with his mother committed criminal intimidation by threatening the complainant to kill her. He further contended that learned trial Court has not considered that specific order was passed by learned Magistrate concerning Domestic Violence under the D.V. Act, much prior to the occurrence and complainant was given protection against accused for committing any act of domestic violence upon her. Though accused and complainant were residing under same roof, but it does not mean that there was no separation in between them. Appellant was residing separately from accused in another room and they were not on talking terms since a considerable period. As they were having strained relations so their residence and mess were separate under the same roof. He argued that trustworthy testimony of complainant has proved the charges against accused beyond the shadow of reasonable doubt.

Immediately after the occurrence she had approached the investigating agency to set criminal law into motion, but swift action was not taken on her complaint. She also approached medical authorities but she was not provided the medicolegal report qua her medicolegal examination. Ultimately complainant approached Commissioner of Police regarding her grievance and only then she was medicolegally examined and investigation in the present case was conducted. He urged that medical evidence fully corroborates the ocular version of prosecutrix and that conviction of accused can be based upon sole testimony of prosecutrix, which is reliable and trustworthy. He prayed that accused be convicted for the charge framed against him as prosecution has successfully proved guilt of the accused beyond all shadows of reasonable doubt.

8. A glance at the prosecution evidence reveals that in order to prove its case, prosecution has examined PW1 SI Sharwan Kumar, draftsman, who prepared the scaled site plan Ex.PA on 9.1.2017 by visiting the spot at demarcation of ASI Savita.

PW2-Constable Saroj Bala, delivered special reports to learned Illaqa Magistrate and other higher police officers on 28.10.2016.

PW3-Dr. Aruna Gupta, Medical Officer, B.K. Hospital, Faridabad, medicolegally examined the prosecutrix on 6.11.2016 and opined that possibility of sexual intercourse cannot be ruled out. She proved on record, MLR of prosecutrix as Ex.PB.

PW4-Dr. Sushil, Medical officer, B.K. Hospital, Faridabad had conducted UN-BNF and proved his report Ex.PC. regarding the same.

PW5-Rakesh Kumar, Lab Technician, proved report Ex.PD of Urine Pregnancy Test which was conducted on 7.11.2016.

Prosecutrix herself stepped into witness box as PW6 and has deposed on similar lines as per her complaint Ex.PE. She deposed that on 18.10.2016 at about 9/9.30 A.M. when she came in her room after taking bath, her husband Parkashveer caught hold of her, pushed her on the bed and forcibly made physical relations with her, despite her resistance. She raised alarm and verbal altercation took place between them. On hearing her alarm her mother-in-law also reached at the spot and told Parkashveer to end the quarrel for once and for all by throttling her. She informed the police while dialing on 100 number. At that time both her children were in school. She approached police at Women Police Station Ballabgarh and she was referred to Women Police Station Faridabad. Police authorities while stating that it was a dispute between husband and wife, did not take any action. On that day she also went to B.K. Hospital for her medico legal examination where she was medico legally examined by Dr. Aruna Gupta. On 28.10.2016 her statement was recorded in presence of Legal Aid Counsel which is Ex.PE. Her statement Ex.PF was got recorded by police from the Magistrate.

PW7 Dr. Sachin Garg, Medical Officer, B.K. Hospital, Faridabad medicolegally examined the accused and opined that there was nothing to suggest that he was not capable of performing sexual intercourse and proved his MLR Ex.PG.

PW8 HC Shishu Pal proved notice under Section 107/151 Cr.P.C. Ex.PH regarding this case issued by DCP, Ballabgarh on 7.6.2016.

PW9 ASI Sushila registered formal FIR Ex.PJ on complaint Ex.PE of the prosecutrix on 28.10.2016 and made her endorsement in this regard Ex.PK.

PW10 Ms. Divyanshi daughter of accused and the prosecutrix, stated that she is a student of 11th class and her younger brother was student of 5th class. Her parents are doctors. Previously her father and mother were running a hospital and were having separate cabin on ground floor. She along with her brother used to reside with her parents on first floor and her grand mother was residing at 2nd floor. There are two bed rooms on first floor. In one bed room, she used to reside with her mother and brother and her father used to reside in other bed room. The relations between her parents were not cordial since long. They used to see television in the room of her father. Wardrobe of her mother was in his father's room and her mother used to go her father's room for using bathroom and for taking her clothes. There was Wi-fi connection in the cabin of her father at ground floor and when they used to ask him to switch on wi-fi then he used to ask them to tell their mother to take back the case. On 18.10.2016, she and her brother were at school and when they returned home they did not find their mother at home.

PW11 ASI Savita Investigating Officer of this case has deposed about the various investigation proceedings conducted by her during the course of investigation.

PW12 Raj Kumar Tiwari, Criminal Ahlmad brought the file titled as 'Dr. Archana Sharma Vs. Dr.Parkashveer' under D.V. Act and produced order dated 21.09.2016 passed in the said case Ex.PP.

PW13 Constable Dharmender proved copy of DD No.765-PB dated 18.10.2016 Ex.PQ.

9. In defence, accused examined DW1 Pintu, who stated that he was working as a barber and also as a masseur. He deposed that on

18.10.2016 at about 9.00 A.M. he had gone to the house of accused Parkashveer at first floor and stayed there till 10.00 A.M. Wife of accused was present at the ground floor, in the office where she sits. During said period of one hour no one came to the house and only compounder had come to inquire about the medication of some patient. After doing his work he came downstairs and had wished wife of accused who was sitting downstairs.

10. After having heard learned counsel for the appellant 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 indeed unable to prove its case against the accused beyond reasonable doubt.

11. Specific version of prosecutrix as per her complaint Ex.PE. is that she filed a case of domestic violence against her husband/ accused in the month of June, 2014 and since then she and accused had been residing separately under the same roof. There were no physical relations of any kind between them. On 18.10.2016 at about 9.30 A.M., her husband forcibly established physical relations with her against her wishes. On raising alarm by her, her mother-in-law also came down stairs and asked the accused to kill her, upon which accused tried to kill her by pressing her neck.

12. During investigation of this, case statement of prosecutrix was recorded by learned Illaqa Magistrate under Section 164 Cr.P.C. In said statement she stated that her marriage was solemnized with Dr. Parkashveer (accused) and she is having two children. Since her marriage she was being tortured by her husband and mother-in-law mentally as well as physically. Her mother-in-law used to lodge false complaints against her to police, on

minor issues. While facing all these things, she filed a case of domestic violence against accused and her mother-in-law on 18.1.2014. She and accused had been residing in the same house, but their rooms were separate. Prosecutrix had been residing separately with her children whereas accused had been residing separately with his mother. No maintenance was ever provided to her during this period by the accused and they did not have any physical relations. On 18.10.2016 her husband was getting massage. Prosecutrix went to take her bath. The barber had already gone. As soon as she came out after taking her bath, she was caught hold by accused and he dragged her up to his room. Prosecutrix tried to save her but accused raped her after applying condom and, thereafter, condom was disposed of by him in the bathroom. In the meantime, on hearing noise, her mother-in-law came downstairs and asked accused to press her throat as she had been troubling them. Then she dialed at 100 number to call police and also lodged complaint with the Deputy Commissioner of Police but no action was taken. Then, she went to Dr. Aruna Gupta, at B.K. Hospital, Faridabad and got conducted her medical examination. None came to collect said medical report and that report was not saved. She again went to Deputy Commissioner of Police and got lodged the complaint. Her complaint was lodged by the police after ten days and then her medicolegal examination was conducted again.

13. It is a matter of record that prosecutrix had preferred an application under Sections 12, 17, 18, 19, 20, 22 and 23 of the D.V. Act on 18.1.2014 and on her said complaint, order Ex.PP. was passed by the Court. While deciding application for interim maintenance, vide Ex.PP. apart from granting her interim order for payment of money as well providing the

expenses of children, learned Magistrate also granted interim relief to prosecutrix to the effect that “the respondent shall not commit any acts of domestic violence as spelt out in Section 3 of the Domestic Violence Act.”

14. Definition of 'domestic violence' is given in Section 3 of the D.V. Act, Section 3 (a) of said Act reads as under:-

For the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

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Further, Explanation I (ii) is also relevant which reads as under:-

“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;”

15. Now, it is to be analyzed that whether evidence on record is sufficient to prove the offences regarding which accused has been charge sheeted i.e Sections 376B, 323/34 and 506/34 IPC. Prosecution case mainly rests of testimony of prosecutrix. It is trite law that in rape cases, conviction can be based on the sole testimony of prosecutrix, if it is found to be reliable, trustworthy, and it does not require any further corroboration.

16. Gainful reference can be made to the decision in **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon’ble the Supreme Court observed that testimony of a victim of rape has to be treated as if she

is an injured witness 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 suspected 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.”

17. In the instant case to adjudge that whether testimony of prosecutrix is of sterling quality, her statement while appearing as PW6 is to be appreciated and evaluated in the light of other material evidence produced on record by the prosecution. While appearing as PW6 prosecutrix has stated that her mother-in-law was 92 years old at the time of her testimony and she was residing at second floor of the house. She has stated during her cross-examination that till that day she was legally wedded wife

of accused and that no order of judicial separation between them had been passed by any Court. She further stated that the house where she had been residing is having an area of 146 square yards consisting of four rooms and two bathrooms on the ground floor besides operation theatre (OT) and dispensary, whereas the first floor of the said house where prosecutrix and accused have been residing alongwith their children is consisting of two bedrooms, drawing cum dining room, kitchen and bathroom. There is only one entry for the first floor of house towards dining-cum-drawing room. Doors of both the bed rooms and of the kitchen open towards drawing cum dining room. She also deposed that she was a medical graduate and was in the medical profession in the capacity of a doctor since last twenty years and was married with the accused on 18.11.1991. Perusal of the testimony of the prosecutrix PW6 reveals number of material discrepancies due to which her testimony by itself cannot be made the sole basis for conviction of accused.

18. While appearing as PW6, she categorically stated that on 18.10.2016 at about 9/9.30 A.M. after taking bath when she came in her room, her husband Parkashveer caught hold of her, pushed her on bed and forcibly made physical relation with her despite her resistance. However, in her statement Ex.PF, she stated that when she came out after taking bath then her husband caught hold of her and pulled her to his room. She tried to get herself released but he raped her against her wishes after using the condom, thereafter he disposed of said condom in bathroom. While appearing as PW6 she stated that rape was committed upon her when she had already reached in her room after taking bath. While as per her statement Ex.PF when she came out after taking bath then she was pulled by her husband in his room and he committed rape upon her. Learned trial

Court has rightly observed that aforesaid contradiction is material in the facts and circumstances of the present case.

19. It is further to be noticed that prosecutrix in her testimony deposed that at the time of occurrence, bathroom attached to her bed room was not in use and at that time she as well as her children were using bathroom situated in the room of accused. In the site plan Ex.PA and rough site plan Ex.PL, no such bathroom has been shown existing in the bed room of prosecutrix. If such bathroom was there then even if it was not being used it was to be shown in the aforesaid site plans. As no such bathroom existing in the room of prosecutrix has been shown, it also makes the stand of prosecutrix doubtful.

20. Statement of prosecutrix is also contradictory with regard to mess being used by both the parties being at the same place. At one place she deposed that she used to cook meals for her children, while maid cooked food for her husband and mother-in-law. At another place of her testimony she deposed that her mother-in-law had been residing at 2nd floor and she also used the kitchen situated at 2nd floor. PW11 Savita, Investigating Officer, stated that accused and prosecutrix alongwith their children were using one kitchen, lobby and drawing room jointly at that time, which does not prove the stand of prosecutrix. All these material discrepancies create doubt regarding authenticity of her statement.

21. Statement of prosecutrix Ex.PE, on the basis of which present case has been registered, is also silent regarding pulling or dragging by her husband when she came out from the bathroom whereas as already observed in Ex.PF, she had stated regarding the same. Admittedly, there are no injuries which were found on the person of prosecutrix which may have

indicated dragging or pulling by her husband.

22. Ex.PE, is silent regarding giving slaps by the accused on person of prosecutrix. The factum of giving slaps is not mentioned in Ex.PF. Though in Ex.PE, prosecutrix specifically stated that her husband tried to press her neck, but no injury or mark was found present on her person. While appearing as PW6 she put forth another version that at the time of commission of offence she had resisted by slapping the accused, though she could not recollect the number of the slaps, whereas in Ex.PE it was not so mentioned. Her statement is clearly discrepant as on one occasion she stated that she resisted the accused by giving him slaps and then she deposed that she herself was given beating by the accused during the occurrence and she was left half dead, though she was conscious. Again this fact is missing in her statement Ex.PE.

23. Another aspect to be noticed is that no call details were produced on record by prosecution, in order to prove that after the alleged occurrence she had called the police by dialing No.100 from her mobile phone.

24. Prosecutrix while appearing as PW6 stated that on the day of occurrence she had visited B.K. Hospital and she was medicolegally examined by Dr. Aruna Gupta. Pursual of deposition of PW3 Dr. Aruna Gupta, Medical Officer, B.K. Hospital, Faridabad reveals that on 6.11.2016, prosecutrix was brought by the police before her, where she was medicolegally examined by her. The patient had given the alleged history of sexual assault on 18.10.2016 and she had come for examination on 6.11.2016. Testimony of PW3-Dr. Aruna Gupta is silent regarding conducting medicolegal examination of prosecutrix on 18.10.2016 which

has also caused a serious dent in the prosecution version. PW11 ASI Savita, Investigating Officer of the case deposed that prosecutrix was taken to B.K. Hospital on 05.11.2016 for her medicolegal examination. As Dr. Aruna Gupta was not present, they again went to B.K. Hospital on 06.11.2016. Thereafter, she moved an application Ex.PM, for conducting medical examination of prosecutrix and medical examination of prosecutrix was conducted. Therefore, testimony of prosecutrix that she was medico legally examined by Dr. Aruna Gupta on 18.10.2016 is not proved on record.

25. Testimony of PW10 Divyanshi daughter of prosecutrix is of no consequence as admittedly at the time of alleged occurrence she and her brother were away to school.

26. Thus, after analyzing the evidence on record it can safely be concluded that prosecution has indeed failed to prove its case against the accused beyond reasonable doubt. Evidence on record is insufficient to convict the accused of the offences as charged with and he has been rightly acquitted by learned trial Court.

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 08.01.2019 which calls for interference.

28. No other argument was raised.

29. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 08.01.2019 passed by learned trial Court being upheld.

30. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

20.12.2024.

Komal

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