

2024:PHHC:126096-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-252-2024
Reserved on: 18.09.2024
Date of decision: 24.09.2024

PARAMJIT KAUR ...Appellant
Versus
STATE OF HARYANA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Japsehaj Singh, Advocate
for the appellant. (legal aid counsel)

Mr. P.P.Chahar, Sr. DAG, Haryana
for respondent No. 1 - State.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the complainant, against the verdict drawn on 15.04.2006, upon Sessions Case No. 16 of 2005, by the learned Additional Sessions Judge, Kurukshetra, wherethrough in respect of charges drawn for offences punishable under Sections 376 (2)(g), 456, and 506 IPC, he made a verdict of acquittal qua the accused-Narender.

FACTUAL BACKGROUND

2. The prosecutrix has filed the present complaint against accused Narender alias Billa and Lal Singh (proclaimed offender) under Sections 354, 376, 453, 506 read with Section 120-B IPC on the allegations that she was having two daughters namely Amandeep aged 9 years and Rubi aged 4 years and also one son namely Gurjeet Singh aged 8 months from the wedlock of her

2024:PHHC:126096-DB



husband Kewal Singh. Her husband Kewal Singh used to work as truck driver and remained out of the house with the truck for 6-7 days. She used to reside in the matrimonial home alongwith her children. On 05.05.2001 at about 10.00 p.m., accused Narender Singh and Lal Singh entered the house of the complainant-prosecutrix by climbing the wall and asked her for the whereabouts of her husband Kewal Singh. She told them that he was not in the house. Both the accused told her that they would stay in the house of complainant. Both the accused caught hold of her. Accused Lal Singh tried to put his penis in her vagina by penetrating the penis. On account of intervention of the daughter of the complainant, the accused Lal Singh could not commit rape upon her. Thereafter, both the accused ran away from there after giving a threat to kill her in case the matter was reported to anybody. On the next morning, the father of the complainant visited her house and she alongwith him went to the police station, but no action was taken by the police and thereafter the complainant filed the present complaint.

3. After recording of the preliminary evidence, vide order dated 11.06.2001, the accused were ordered to be summoned under Sections 376, 458, 506 read with Section 34 IPC, by the learned Illaqa Magistrate. Accused Lal Singh was declared as proclaimed offender by the learned Illaqa Magistrate vide order dated 12.09.2005.

COMMITTAL PROCEEDINGS

4. Finding the offence punishable under Section 376 IPC, to be exclusively triable by the Court of Session, therefore, the learned committal

2024:PHHC:126096-DB



Court, vide order dated 12.09.2005, committed the case for trial, to the Court of Sessions.

TRIAL COURT PROCEEDINGS.

5. On finding a *prima facie* case, charge under Sections 376, 458, 506 read with Section 120-B IPC became framed, against accused Narender, on 29.09.2005, but subsequently on 15.04.2006, the charge drawn against the accused was amended, and he was charge sheeted under Sections 376 (2) (g), 456 and 506 IPC, to which he pleaded not guilty, and, claimed trial.

6. In support of the prosecution case, the prosecution examined the prosecutrix as PW-1 and her father Gurbax Singh as PW-2. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Kurukshetra, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In his defence, the accused examined Sardara Singh as DW-1.

7. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Kurukshetra, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondent No. 2.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT.

8. The learned counsel for the appellant-prosecutrix, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be

2024:PHHC:126096-DB



quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

9. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

18. Taking into consideration the ratio of authorities cited by learned public prosecutor as well as learned defence counsel, it is no doubt true that the conviction can be recorded on the sole testimony of prosecutrix and corroboration is not rule, but it has to be seen as to what extent that statement of prosecutrix can be relied upon. At this stage the ratio in 2005 (3) Criminal Court cases 834 titled as Sadhu Musahar & Anz. Vs. State of Bihar relied upon by learned defence counsel is applicable in which it has been observed that statement of prosecutrix inspires confidence and does not suffer from any basic infirmity.

*19. Now looking into as to what extent the solitary statement of prosecutrix can be believed, taking into consideration the contents of the complaint, statement made by her during preliminary evidence and the statement made by her during deposition as PW1. While deposing in the court, the prosecutrix has stated that when she along with her father Gurbax Singh had gone to police station Jhansa, the SHO had recorded her complaint in writing. **She was confronted with her complaint in which it is not so recorded.** She has also stated that she had mentioned in her complaint that SHO Police Station Jhansa directed her to get herself medico legally examined from civil Hospital, Jhansa. **She was also confronted with her complaint in which it is not written.** She has also mentioned that she had written in her complaint that the doctors of Civil Hospital Jhansa had refused to conduct her medical examination on the ground of delay. **She was further confronted with the contents of the complaint wherein it was not recorded.** At the time of deposing in the court she has stated that accused Narender had a knife in his hand*

2024:PHHC:126096-DB



whereas in the complaint it was not so recorded. She has further stated that at the time of her examination in the court of learned Illaqa Magistrate on 10.5.2001 she had told before the court that she had gone to civil hospital Jhansa for her medical examination but the concerned doctors refused to get her medico legally examined on account of delay. She was confronted with her statement Ex.DB dated 10.5.2001 where this fact has not been mentioned. The most material improvement made by the prosecutrix is that at the time of filing of complaint she had mentioned that accused Lal Singh had tried to commit rape upon her whereas while deposing in the court at the time of preliminary evidence she improved her version and stated that she was subjected to rape by accused Lal Singh and accused Narender had gagged her mouth and laid her on the earth. Either accused had committed rape upon the prosecutrix or they had tried to commit rape upon the prosecutrix. There is much difference between rape and the attempt to rape.

20. With regard to delay in filing the complaint, the record shows that the incident the allegedly took place on 5.5.2001 at around 10.00 p.m. The complaint has been filed in the court on 10.5.2001 i.e. after five days of the occurrence. The delay has been tried to be explained by the prosecutrix by saying that her husband was away and on his coming back to his house the next day, the incident was narrated to him. The father of prosecutrix has visited the house of prosecutrix on the very next day i.e. on 6.5.2001. The father of prosecutrix had accompanied her to police station Jhansa. In spite of that no FIR was lodged by the police. She was directed to get herself medico legally examined but neither medical examination of the prosecutrix could be conducted nor the FIR could be recorded. It has been admitted by the prosecutrix that no application was moved against the police officials of police station Jhansa who had refused to register the FIR. In such like cases in which allegations of rape are there, delay is most material.

21. Now coming to the medical evidence, it is apparent on the record that the prosecutrix was not medico legally examined. The plea has been taken by the prosecutrix that she had gone to police station Jhansa, alongwith her father where the police officials directed to her to get herself medico legally examined.

2024:PHHC:126096-DB



When she had gone to civil hospital, Jhansa the doctors had refused to get her medically examined on the ground that 24 hours had already passed, it is admitted by prosecutrix that she had not moved any application against the doctor who had refused to get her medico legally examined. So far as injuries on the person of prosecutrix are concerned, it has not been stated by the prosecutrix at any point of time that she had received any injury either on her body or on her private parts. Though presence of injuries is not a pre-condition to prove the offence of commission of rape yet it plays a major role which cannot be discarded altogether.

22. The other witness examined by the prosecution is Gurbax Singh father of prosecutrix who is admittedly not an eye witness. He has reiterated the version of prosecutrix on the ground that it was told to him by the prosecutrix. Since it is the hear say evidence, it cannot be said to be corroboration with the statement of prosecutrix.

23. The husband of prosecutrix has not joined her at any point of time. He did not accompany her to the police station. He also did not support her at the time of filing of the complaint. Even his statement was not recorded at any point of time.

24. The totality of the circumstances show that the prosecutrix was not having cordial relations with her in laws. There was also property dispute between them which resulted into filing of this complaint. It has already been discussed in detail in the foregoing paragraphs that the prosecutrix has improved her version at the time of deposing in the court, allegations of attempt to rape were made while filing complaint and while deposing in the court they were converted into commission of rape. The statement of prosecutrix does not inspire confidence so as to convict the accused. Though, it has been argued by learned public prosecutor and counsel for the complainant that even if there is even slightest penetration, accused is guilty of offence punishable under section 376 read with 511 IPC and also 376 IPC, yet in the present case, it has been observed that the statement of prosecutrix is not believable.

2024:PHHC:126096-DB

**Inferences of this Court.**

10. The above made reasons by the learned trial Judge after making an incisive analysis of the deposition of the prosecutrix, besides analyzing the documents on record, thus do not suffer from any gross infirmity. Resultantly this Court finds no merit in the appeal.

11. Initially the prosecutrix, as revealed from a perusal of the records, is a married women, aged about 34 years, and consequently, she was a major at the relevant time and thus was fully capacitated to mete consent to the accused rather for his allegedly subjecting her to sexual intercourses. Though the confidence inspiring testification of the prosecutrix is sufficient to pass a verdict of conviction. Therefore, it has to be gauged from an insightful reading of the testification of the prosecutrix qua whether she had rendered a confidence inspiring testification in respect of the crime event. For the testification of the prosecutrix to be construed to be confidence inspiring, this Court has to make a wholesome reading of her testification.

12. From a wholesome reading of the testification of the prosecutrix discernments are to be made, whether she has upon stepping into the witness box, thus made gross improvement(s) or blatant digressions from her previously made statement in writing. In case, such blatant improvement(s) or rife contradiction(s) occur in her examination-in-chief, from her previously made statement in writing, thereupon, the prosecutrix is to be declared to be rendering a unreliable version and the denial made by the prosecutrix qua hers rendering a consent is not reliable.

2024:PHHC:126096-DB



13. In the said regard, a reading of the deposition of the prosecutrix reveals that though she had in her previous statement stated that when she along with her father Gurbax Singh had gone to police station Jhansa, qua then the SHO had recorded her complaint in writing. However, in her cross examination, when she became confronted with her previously made statement in writing, yet therein the said fact did not occur. Moreover, though a further speaking occurs in her examination-in-chief, that she had mentioned in her complaint that the SHO Police Station Jhansa, directed her to get herself medico legally examined from civil Hospital, Jhansa, but even the said stated fact did not occur in her previously made statement, thereby too, the said made speaking by the witness (supra) in her examination-in-chief, thus is an improvement or embellishment from her previously made statement in writing. Furthermore, the fact mentioned in her deposition that she had written in her complaint that the doctors of Civil Hospital Jhansa had refused to conduct her medical examination on the ground of delay, also do not occur in her previously made statement. In addition, at the time of her deposing in the Court, as PW-1, she had grossly improved from her previously made statement in writing, inasmuch as, in her deposition before the Court, she had stated that the accused Narender had a knife in his hand, whereas, the said speaking does not find occurrence in her previously made statement.

14. The most material improvement made by the prosecutrix, is that, in her complaint she had stated that accused Lal Singh had tried to commit rape upon her, whereas, while her stepping into the witness box, as PW-1, she blatantly improved from her supra previously made statement, inasmuch as, she

2024:PHHC:126096-DB



had stated that she was subjected to rape by accused Lal Singh and accused Narender had gagged her mouth and laid her on the earth.

15. Since the prosecutrix did not enable the making of medical examination upon her, thus for proving qua hers being subjected to coitus at the instance of the accused. Consequently, the effect of, qua want of any medical examination being made upon the prosecutrix, when becomes combined with the fact that, she had in her previously made statement, made a narrative that the accused had only attempted to commit rape upon her, whereas, on hers stepping into the witness box, she had blatantly improved from the (supra) made statement, to the extent that she therein alleged qua hers being subjected to rape by the accused, is that, thereupon, it appears that the prosecutrix has not rendered a confidence inspiring version qua the crime event.

16. Contrarily, it appears that since the prosecutrix has made (supra) improvement(s) or rife digression(s) from her previously made statement in writing, thereby no credence is required to be assigned to her deposition. In sequel, when the prosecutrix was evidently a major, thereby, if any alleged sexual intercourses took place between her and accused, therebys, the said engaged intercourses are deemed to be made with her lawful consent.

Final order of this Court.

17. In consequence, there is no merit in the appeal, and, is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

18. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

2024:PHHC:126096-DB



19. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

24.09.2024

kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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