

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-458-DB-2010 (O&M)

Reserved on: 07.09.2022

Date of pronouncement:15.09.2022

Roop Lal ... Appellant

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Harmanpreet Singh, Advocate (Amicus Curiae)
for the appellant.

Ms. Ishma Randhawa, Additional Advocate General, Punjab.

N.S.SHEKHAWAT, J.

There can never be more graver and heinous crime than the father committing rape on his own daughter. The protector then becomes the predator. The father is the fortress and refuge of his daughter. Charged of raping his own daughter under his refuge and fortress is worst than the gamekeeper becoming a poacher and treasury guard becoming a robber (*State of Himachal Pradesh Vs. Asha Ram: AIR 2006 Supreme Court 381*).

The case of the prosecution is that the accused, who unfortunately happens to be the father of the victim, had been repeatedly committing sexual assault and rape on her for about 2 months prior to the date of occurrence. On 23.07.2008, ASI Deva Singh (PW-7) along with other police officials was present at Gangsar Chowk, Kartarpur, in connection with patrolling, then Baljinder Kaur @ Babbu PW-1/

complainant came there with the prosecutrix/victim (name of the prosecutrix/victim has been withheld as per provisions contained under Section 228-A of the IPC and has been referred as 'the victim'), aged about 7/8 years, and Devinder Kumar to report the matter to the police. As per Baljinder Kaur @ Babbu, she was resident of Mohalla Kaulsar, Kartarpur and was unmarried and was residing with her parents. The land of her family was situated at a distance of about 1.5 kms from their home. They had also kept cattles at their tubewell. The appellant/accused was employed by them as a servant to look after the tubewell and the cattles. He was living there with his daughter ie. the victim, aged about 7/8 years. Roop Lal, the appellant was employed 14/15 days ago and was also provided a room at the tubewell. At about 5.00 p.m. on 22.07.2008, the complainant went to the tubewell to milk the buffaloes and the door of the room of the appellant was closed. She heard the shrieks of the victim and went towards the room. She pushed open the door on reaching and saw that the appellant was naked on the floor and was committing bad act forcibly with his daughter (victim), who was also naked. On seeing her, the appellant had put on his clothes and ran away. The victim was weeping and her clothes was stained with blood. The complainant removed the blood stained clothes of the victim and provided her other clothes and brought her to her home. On reaching home, she shared the matter with her mother-Gurdev Kaur and decided to report the matter to the police. On the next morning, she alongwith her neighbour Devinder Kumar reported the matter to the police and her statement Ex.PA was recorded by PW-7, ASI Deva Singh, which was converted into FIR Ex.-PW7/B.

After the registration of the FIR, the accused was arrested and

the victim was taken to the hospital for medico-legal-examination. The blood stained clothes of the victim were taken into possession by the police vide recovery memo Ex.PB dated 23.07.2008. The rough and the scaled site plan Ex.PW3/A was prepared. The victim was produced before the learned Judicial Magistrate 1st Class, Jalandhar and her statement under Section 164 Cr.P.C. Ex.PW6/C was recorded by Mrs. Manjinder Kaur, Judicial Magistrate 1st Class, on 26.07.2008. Her Statement under Section 164 Cr.P.C. Ex.PW6/C has been reproduced below:-

“Stated that I reside alongwith my Daddy Roop Lal and my remaining sister – brother are residing with my maternal grandmother. My Daddy has been committing wrong act with me for the last two months. He used to say me to put down the Salwar and when I used to resist then (he) used to beat me and when I used to refuse to put down my salwar then he used to commit wrong act with me after putting down my salwar, when I used to sleep then (he) also used to commit wrong act with me. Roop Lal is not my real father. (when) I was 2 years old then my real father died then my Mummy solemnized her marriage with Roop Lal. Roop Lal also used to commit wrong act with my sister Shinku. She was three years old and then she died when Roop Lal was committing wrong act with Shinku. Now I shall not reside with Roop Lal.”

After the completion of the investigation, the final report under Section 173 Cr.P.C. was presented in the Competent Court and vide order dated 28.11.2008, the Court of Judicial Magistrate 1st Class, Jalandhar committed the case to the Court of Sessions Judge, Jalandhar. Vide the impugned judgment and order dated 07.01.2010, the Court of learned Additional Sessions Judge, Jalandhar convicted the appellant under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 14 years alongwith a fine of Rs.2,000/- and in case of default of making of payment

of fine, to further undergo rigorous imprisonment for one year. Challenging the impugned judgment and order passed by the Additional Sessions Judge, Jalandhar, the instant appeal has been preferred before this Court.

We have heard learned counsel for the appellant as well as the learned State counsel and have gone through the records of the case with their assistance.

Learned counsel for the appellant has vehemently argued that the statement made by PW-1 Baljinder Kaur @ Babbu, complainant is motivated as a dispute had arisen between the appellant and Baljinder Kaur regarding the payment of his salary. The appellant had worked for $\frac{3}{4}$ months for the complainant and when he demanded his salary, the complainant refused to pay it. Consequently, a fight ensued between both of them and the complainant got the appellant falsely implicated in the instant case, even though no such alleged occurrence had taken place. Furthermore, the complainant wanted to retain the victim as she was unmarried, with a view that she may work as a servant for her throughout her life. Consequently, she managed to get a false case registered with such serious allegations. Still further, it was submitted that the acts of accused did not constitute the offence of rape and at the most, the offence under Section 354 of IPC was made out against the appellant. With these submissions, the learned counsel for the appellant submitted that the impugned judgment and order passed by the learned trial Court are liable to be set aside by this Court.

The arguments raised by learned counsel for the appellant have been seriously contested by the learned State counsel by placing reliance on

the testimonies of PW-1 Baljinder Kaur @ Babbu-complainant and PW-2 victim. It has been contended that the statement of the complainant and victim are trustworthy, which has been duly corroborated by the medical evidence. Still further, as per the FSL report, Ex.PW4/C, Spermatozoa were detected in the contents of the Exhibits i.e. Vaginal swabs and vaginal slides. Even the doctor had opined after seeing the FSL report that the possibility of sexual assault having taken place could not be ruled out and it is prayed by learned State counsel that the impugned judgment and order may be upheld.

The approach to be adopted by the Court in evaluating the testimony of victim of rape was illuminatingly postulated by the Hon'ble Supreme Court in the case of "***State of Uttar Pradesh Vs. Chhotey Lal (2011) 2 Supreme Court Cases 550***" as follows:-

"26. The important thing that the Court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false

accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.”

On the aforesaid touchstone, reverting to the facts of the instant case, it is observed that the appellant had ravished his own daughter i.e. the victim in the most inhumane manner, which was witnessed by PW-1 Baljinder Kaur @ Babbu/complainant. The occurrence had taken place at about 5.00 p.m. on 22.07.2008. On noticing the said barbaric incident, the complainant informed her mother Gurdev Kaur and reported the matter to the police without unnecessary delay. The FIR Ex.PW7/B was registered in the morning on 23.07.2008 and such prompt reporting clearly rules out the embellishments or concoction of the prosecution version. Immediately thereafter, the police swung into action and the accused was arrested. The victim was medico-legally-examined by the doctor and the recoveries were made without unnecessary delay.

The complainant Baljinder Kaur @ Babbu was examined as PW-1, who supported the case of the prosecution completely. She narrated the occurrence in her testimony as PW-1 and was put to searching cross-examination, but her testimony could not be shaken. Still further, the victim appeared as PW-2 and certain questions were put to her by the Court in order to check as to whether the witness was competent to depose as a witness before the Court. After examining the victim, the court certified that she was competent to depose on oath and thereafter, her statement was recorded. The victim clearly stated that they were four brothers and sisters i.e. three sisters and one brother. The name of her mother was Geeta, but about one year ago, she died at the time of delivery of a child. She along with her father came to reside at the house of the complainant, but her father

i.e. the appellant had been committing sexual intercourse with her against her wishes. Whenever, she resisted, he used to beat her up. One day, when the appellant was doing bad thing with her, Babbu aunty (complainant) reached there to rescue her, after hearing her cries. On this, her father ran away and she was bleeding from her private parts and was taken to a doctor. Again the said witness was put to incisive cross-examination and she would with stood the test of cross-examination. We have perused her testimony and found her worthy of credence.

It is a well settled preposition of law that the conviction for the offence under Section 376 of IPC can be based on the sole testimony of the rape victim. In “*State of Punjab Vs. Gurmit Singh, 1996, SCC (Crl.) 316*”, and “*State of Maharashtra Vs. Chandraprakash Kewalchand Jain, 1990 SCC (Crl) 210*”, the Hon’ble Supreme Court has held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person’s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are the factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused, where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

We have scanned and scrutinized very carefully the evidence on record, especially the testimonies of PW-1 Baljinder Kaur @ Babbu and PW-2 victim, with a view to satisfy our conscience to find out whether the verdict of conviction of the appellant that has been rendered by the learned trial Court could, in law, be sustained by this Court. We find the evidence of both the said witnesses to be trustworthy, convincing and reliable and it is safe to base the judgement of conviction on the said two witnesses and we uphold the findings of the trial Court in that regard.

Still further, the testimony of PW-2 victim find supports from the medical evidence in the shape of the statement of PW-4 Dr. Sarita Mehra, who was examined as PW-4 by the trial Court. She medico-legally-examined the victim on 23.07.2008 and after examination, when she received the report of Chemical Examiner Ex.PW4/C, she opined that the possibility of sexual assault having taken place upon the child could not be ruled out and her opinion in this regard was exhibited as Ex.PW4/D. She stated in the cross-examination that it was not a case of insertion of the penis of the vagina. She volunteered that the patient was a small child and the rapist might have ejaculated outside because the chemical examiner report detected spermatozoa. We do not agree with the contention of the learned counsel for the appellant that it is impossible to have sexual intercourse with a minor child of 7 years, whose vagina is not fully developed as to admit a fully grown penis. It has been held by the Hon'ble Supreme Court that a number of pronouncements that the penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission or semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the

purpose of Section 375 IPC. As per report of the Chemical Examiner, the spermatozoa was detected in the samples sent to it and the doctor had clearly opined that there was a possibility of sexual assault on the prosecutrix. Still further, the prosecution examined PW-6 Mrs. Manjinder Kaur, Judicial Magistrate 1st Class, Jalandhar, who recorded the statement of the victim under Section 164 Cr.P.C. as Ex. PW6/C. As per the said statement Ex.PW6/C (reproduced above), the father of the victim had been committing wrong act with her daughter for the last two months. He used to ask her to put down the *salwar* and when she resisted, he used to beat her. He used to commit bad act with her. She further disclosed that the appellant was not her real father. When she was aged 2 years, her real father died and later on her mother solemnized marriage with the appellant. Even the appellant used to commit wrong act with her sister Shinku also, who was aged 3 years old. When the appellant was committing wrong act with Shinku, she died. She flatly refused to reside with the appellant in her statement under Section 164 Cr.P.C.

Still further, the prosecution examined PW-8 Dr. Vinod Singh Bagga, who clearly opined that there was nothing suggestive of the fact that the accused could not perform sexual activities. Still further, the prosecution examined PW-7 SI Deva Singh, who proved the steps taken during the course of investigation and was cross-examined at length, but nothing material could be elicited from his cross-examination.

We have considered the submissions made by learned counsel for the appellant and find no substance in the same. Learned counsel for the appellant contended that the complainant made the statement with an oblique motive as there was a dispute between the appellant and the

complainant regarding the payment of his salary. It was elaborated by him that the appellant had worked for 3 to 4 months with the complainant and when he demanded his salary, the complainant started quarrelling and foisted a false case on him. In fact the complainant is herself an unmarried girl and it is highly unbelievable that to take a revenge of a petty monetary dispute, she would stoop to such an extent to level false allegations of rape. Even otherwise, we have carefully examined her testimony as PW-1 and found her to be a trustworthy witness. Even we find no substance in the argument raised on behalf of the appellant that the alleged acts of the appellant do not constitute the offence of rape and at the worst, the offence under Section 354 IPC is made out. In fact, the said argument liable to be rejected, in view of the testimony of PW-2 victim, which is duly supported by the medical evidence.

In view of the finding recorded above, we uphold the impugned judgment and order passed by the Court of Additional Sessions Judge, Jalandhar and the appeal deserves to be dismissed. The appellant may be taken in custody if on bail in this case, to serve the remaining sentence.

Record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

15.09.2022

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Whether speaking/reasoned : Yes
Whether reportable : Yes