

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 301 of 2015.

Reserved on: 19th September, 2016.

Date of Decision: 30th September, 2016.

Raman Kumar alias Kala

.....**Appellant.**

Versus

State of H.P.

..**Respondent.**

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. Rajiv Rai, Advocate.

For the Respondent: Mr. Vivek Singh Attri, Deputy
Advocate General.

Sureshwar Thakur, Judge

The instant appeal is directed against the judgment rendered on 18.06.2015 by the learned Sessions Judge, Solan, District Solan, H.P. in Sessions trial No.15-NL/7 of 2013, whereby, the learned trial Court convicted the accused/appellant herein for his committing an offence punishable under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for seven years

and to pay fine of Rs.50,000 and in default of payment of fine amount to further undergo imprisonment for a period of one year.

2. Brief facts of the case which are necessary to determine the appeal are that the prosecutrix aged about 27 years is having two children and her husband is a rickshaw puller. On 21.10.2012 at about 4.30 p.m, the prosecutrix had gone in search of her children, who had gone for playing and at that time the accused came from behind and caught hold of the prosecutrix and took her to a nearby bathroom where he committed forcible sexual intercourse with the prosecutrix after opening string of the salwar of the prosecutrix. The accused also gagged the mouth of the prosecutrix when the prosecutrix tried to raise alarm and after committing the sexual intercourse the accused ran away. The prosecutrix thereafter went to her house where her elder sister-in-law namely Bholi (PW6) met the prosecutrix and the prosecutrix narrated the entire incident to her. The husband of the prosecutrix was out of the house with his rickshaw and as such Smt. Bholi (PW6) took the prosecutrix to the police station where the prosecutrix lodged a complaint Ex.PW9/A on the basis of which FIR Ex.PW10/A came to be recorded at Police Station, Nalargah by SI Mehar Singh. After the registration of the

FIR, the police started the investigation in the case and concluded all the formalities thereto.

3. On conclusion of the investigation, into the offence, allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court.

4. The accused was charged by the learned trial Court for his committing an offence punishable under Section 376 IPC to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 13 witnesses. On closure of prosecution evidence, the statement of accused, under Section 313 of the Code of Criminal Procedure, was recorded in which he pleaded innocence. However, he has not led any defence evidence.

6. On an appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the accused/appellant.

7. The accused/appellant is aggrieved by the judgment of conviction recorded by the learned trial Court. The learned defence counsel has concertedly and vigorously contended qua the findings of conviction recorded by the learned trial Court standing not based on a proper appreciation of the evidence on record, rather, theirs

standing sequelled by gross mis-appreciation of the material on record. Hence, he contends qua the findings of conviction standing reversed by this Court in the exercise of its appellate jurisdiction and theirs standing replaced by findings of acquittal.

8. On the other hand, the learned Deputy Advocate General has with considerable force and vigour, contended qua the findings of conviction recorded by the Court below standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. The sole testimony of the prosecutrix would ipso facto hold clout with this Court for returning findings of conviction against the accused. However, any implicit reliance upon the testimony of the prosecutrix would be insagacious also thereupon it would be unbefitting to conclude of her testification qua the occurrence holding a paragon virtue of truth unless a wholesome reading of her testimony comprised both in her examination-in-chief besides in her cross-examination unveils qua hers deposing with inter-se consistency. Contrarily, also when disclosures in her cross-

examination hold unfoldments qua hers thereby contradicting her version qua the incident comprised in her examination-in-chief they would thereupon lean this Court to undermine the efficacy of her testimony. When this Court proceeds to with optimum incision analyze her testification comprised both in her examination-in-chief and in her cross-examination, the apparent visible fact which comes to the forefront is of hers accepting the factum of Mark A-1 to A-5, comprising the photographs of the bathroom whereat she allegedly stood subjected to forcible sexual intercourse by the accused. With mark A-1 to A-5 constituting the photographs of the relevant site of occurrence, in sequel with the prosecutrix in her cross-examination testifying qua existence of the house of Dr. Atul and of Desh Raj in its vicinity also hers acquiescing therein qua 8 to 10 tenants residing in its vicinity, whom she deposes to throughout the day remain housed in their respective habitations, besides hers acquiescing to the factum of the relevant area being inhabited and qua people passing through the relevant site of occurrence, acquiescence whereof when read in conjunction with her omission to raise shrieks and outbursts to invite their presence thereat also her omission to depart therefrom, predominantly also with none of the residents of the houses located in close proximity to the site of occurrence

despite the visibility of the relevant site of occurrence from their habitations noticing the occurrence, all hold the inevitable effect qua hence the prosecutrix contriving the factum of hers thereat standing subjected to forcible sexual intercourse by the accused. The prosecutrix also palpably appears to falsely implicate the accused in the alleged occurrence given hers communicating in her cross-examination qua hers embossing her signatures on Mark-A at the instance of Bholi Devi, whom she echoes in her cross-examination to dictate its contents to its scribe. Consequently, it appears of the entire report qua the occurrence also the testification in corroboration thereto rendered by the prosecutrix standing engineered by Bholi Devi for wreaking vengeance upon the accused given the evident factum acquiesced by the prosecutrix qua Rafiq, the father-in-law of Bholi Devi standing arraigned as an accused by the mother of the accused herein. In sequel, a doctored version qua the occurrence comprised in Mark-A whereupon an FIR stood registered against the accused is unworthy of credence.

11. Be that as it may, the prosecutrix had made a communication in Mark-A qua hers standing gagged by the accused, concomitantly, also of hers standing subjected to forcible sexual intercourse by him, yet the aforesaid testification would hold

paramount vigour dehors hers omitting to raise shrieks and cries to invite at the relevant site of occurrence the presence of the residents of the habitations existing in close proximity to it only when her apposite medical examination comprised in Ex.PW5/B echoed loud pronouncements qua her body holding injuries, existence whereof thereon were imperative for succoring her testification qua hers standing subjected to forcible sexual intercourse by the accused despite hers offering resistance to the sexual misdemeanors ascribed by her to the accused. However, Ex.PW5/B omits to bespeak of her body holding any injury, non existence whereof thereon holds leverage for forming an inference qua hers not offering any resistance to the sexual misdemeanors, if any, which allegedly stood perpetrated upon her person by the accused. In aftermath, sexual intercourse, if any, to which she stood subjected to is to be construed to emanate on her purveying consent to the accused. The clothes of the prosecutrix stood subjected to chemical analysis at the FSL concerned whereon the latter as portrayed by Ex.PW4/B rendered an opinion qua the existence of human semen on salwar, vaginal smear slides and vaginal swab of the prosecutrix. The existence of semen thereon may solitarily constitute clinching evidence for rendering findings of conviction against the accused yet

with a rider of the prosecution by cogent evidence displaying of the Salwar, whereon semen stood detected as unveiled by Ex.PW4/B belonging to her. The testification of the prosecutrix comprised in her cross-examination unveils qua the relevant clothes as stood handed over to the Investigating Officer concerned standing worn by Bholi Devi since 2-3 days hitherto, testification whereof when remains not firmly denied by PW-6 on hers standing held to cross-examination by the learned defence counsel, hence evidently displays of the Salwar, whereon semen stood detected by the FSL concerned not belonging to the prosecutrix rather it belonging to Bholi Devi also a married lady. Consequently, occurrence thereon of human semen is insignificant for returning findings of conviction against the accused. Evidently, the prosecutrix is a married lady, consequently, the existence of semen in her vaginal slides besides in her vaginal swab would be unbefitting to conclude therefrom qua the existence of human semen thereon belonging to the accused unless it stood formidably displayed in Ex.PW4/B of semen found therewithin belonging to the accused. However, the aforesaid display remains undepicted in Ex.PW4/B. In sequel, the existence of human semen in the vaginal swabs of the prosecutrix cannot firmly connect the accused in the alleged occurrence.

12. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has not appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court suffers from perversity or absurdity of misappreciation and non appreciation of the evidence on record.

13. In view of the above, the instant appeal is allowed and the accused is acquitted for the offence punishable under Section 376 of the IPC. In sequel, the impugned judgment is set aside. The accused be released from the custody forthwith if not required in any other process of law. Record of the learned trial Court be sent back forthwith.

(Sureshwar Thakur)
Judge.

30th September, 2016.
(jai)