REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 12 of 2015

Davinder Singh ... Appellant

Versus

State of Punjab ... Respondent

JUDGEMENT

M. M. Sundresh, J.

1. The appellant stood charged and convicted for the offence punishable under Sections 376, 452 and 506 of Indian Penal Code 1860, (hereinafter referred to as IPC) by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, which was confirmed by the High Court of Punjab & Haryana in Criminal Appeal No. S.1106 SB of 2003. Seeking to overturn the aforesaid decisions, the present appeal is filed.

BRIEF FACTS:

2. As per the prosecution version, the appellant came to the residence of the prosecutrix and committed the offence punishable under Section 376 IPC, brandishing a knife. The brother of the victim namely Pargat Singh came home and

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upon seeing him, the appellant took to his heels. On returning home, PW4, the father of the prosecutrix, filed a complaint for quarrel alone as he felt that the dignity of his daughter, PW6 was at stake.

3. After the aforesaid occurrence dated 15.03.2000, the appellant along with the few other co-accused persons went to the residence of the uncle of the prosecutrix wherein she was temporarily staying anticipating trouble, and exerted threats. Accordingly, a complaint was lodged on 13.04.2000 in FIR No.60/2000 under Sections 376, 452, 506 IPC.

4. The learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar examined ten prosecution witnesses. It is to be noted that the only eye witness, who is the brother of the prosecutrix Pargat Singh has not been examined on behalf of the prosecution.

5. The Trial Court and the High Court rendered conviction against appellant under all the Sections, with the major punishment of seven years rigorous imprisonment for the offence punishable under Section 376 IPC.

SUBMISSIONS OF THE APPELLANT:

6. Learned counsel for the appellant submitted that there is no recovery of the weapon allegedly used. The non-examination of Pargat Singh would make the case of

prosecution doubtful. There was no external injury found on the prosecutrix. The inordinate delay in filing the complaint has not been taken note of. If PW4 was conscious about the reputation of his daughter being tarnished, he would not have given the complaint belatedly. At best, it could be a case of a relationship turning sour and not approved by the family. The High Court erred in recording that the appellant took co-accused persons to the residence of the uncle of the prosecutrix to commit the offence punishable under Section 376 IPC, even when it was not the case of the prosecution. The fact that the parties have compromised the matter in the year 2013 is also to be kept in mind. The High Court being the appellate forum has dealt with the matter in a cursory manner without properly analysing the evidence on record. Moreover, even the maternal uncle of the prosecutrix namely Satnam Singh has not been examined.

SUBMISSIONS OF THE RESPONDENT:

7. Learned counsel appearing for the State submitted that the findings being concurrent and in the absence of any perversity, there is no need for any interference. Subsequent arrangements between the parties will not have any bearing and, in any case, it is not permissible under law. Both the Courts have rightly relied upon the evidence of PW4 and PW6. In the absence of any enmity or motive, the evidence of PW6 has been correctly found favourable.

DISCUSSION:

8. The prosecutrix PW6 did not allege that the offence punishable under Section 376 IPC was committed at her uncle's residence. Admittedly, there is delay of 28 days in giving the complaint. The reasons assigned cannot be accepted as it defies reason and logic. If the intention of PW4 was to suppress the occurrence, there is no need to give the complaint subsequently. He did give a complaint which was not even registered. Strangely, the complaint was given by PW4 who was not present on both the occasions. Further, to commit the offence punishable under Section 376 IPC no sane person would take two accomplices, that too after committing a similar offence earlier. The best person to depose would have been the uncle of the prosecutrix Satnam Singh. There is no attempt to recover the knife from the appellant as it is a specific case of the prosecution that he committed the offence by threatening to harm the prosecutrix. The prosecution, for the reasons best known to them, has not chosen to examine him as well. PW4 is not the eye-witness. There is absolutely no reason as to why the son of PW4, who is incidentally the brother of PW6, has not been examined being the sole eye-witness. On the issue of non-examination of material witness, we wish to place reliance on the decision of this Court in **Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145**,

> **"19.** So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by

> examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses…"

9. In **Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200:**

> ***"Non-examination of witness***
> **34.** A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it."

10. The High Court has recorded a wrong factual finding that the offence under Section 376 IPC was committed even in the uncle's residence of PW6 which is not even the case spoken by her. The case of the prosecution, as projected, does not conform to the degree of probability. There is no doubt that the evidence of the prosecutrix will have to be kept at a higher pedestal but then, such a testimony will have to satisfy the conscience of the Court. It has to be seen contextually in the light of the other evidence available. It does appear that the appellant wanted to marry the prosecutrix which was stoutly opposed by her family. We are not willing to go into the subsequent compromise made between the parties, which happened

after the death of PW4. The submission made by the counsel for the appellant appears to be probable when pitted against the version of the prosecution.

11. We wish to quote with profit the following paragraphs of the decision of this Court in the case of **Rajesh Yadav (Supra),** on the approach of the court in appreciating the evidence before it,

> **"12.** Section 3 of the Evidence Act defines "evidence", broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "adjective law" highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.
> **13.** The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.
> **14.** Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of "matters" is exhaustive, and therefore, much wider than that of "evidence". However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.
> **15.** Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.
> **16.** In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word "matter", and for that purpose, the definition of the expression of the words "means and includes", meant to be applied for evidence, has to be imported to that of a "matter" as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.
> **17.** What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the

> assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.
> **18.** The word "prudent" has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.
> **19.** The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain."

12. If they feel no action was taken after the alleged occurrence and the matter was compromised as projected by the prosecution, there would have been other independent witnesses as well. The prosecution has not produced any such witness. The Courts below have not considered the evidence available on record in the proper perspective. They got carried away by the statement made by PW6. The evidence would also suggest that PW4 was not willing to give his daughter in marriage to the appellant though he was desirous of marrying her. In fact, the First Information Report itself speaks about the aforesaid fact.

13. In view of the foregoing discussion, we have no hesitation in holding that the conviction and sentence rendered by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar in Sessions Case No. 41 of 2002 as confirmed in Criminal

Appeal No. S.1106 SB of 2003 of the High Court of Punjab & Haryana require to be set aside. Accordingly, they are set aside and the appeal stands allowed. The appellant is acquitted of all the charges. The bail bond executed stands discharged.

.....J.
(SURYA KANT)

.....J.
(M. M. SUNDRESH)

New Delhi,
June 22, 2023