

**In the Court of Ms.Ravi Inder Kaur Sandhu (UID-PB-00186),
Additional Sessions Judge(Fast Track Special Court), Ludhiana.**

**CIS No.SC/1345/20.09.2021.
CNRNo.PBLD01-017755-2021
Decided on: 27.07.2023.**

State	Versus	Deepak @ Deepu son of Ramesh resident of Gali No.12, Dr. Ambedkar Nagar, Model Town, Ludhiana. ... Accused.
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**F.I.R. No.166 dated 26.07.2021
Under Sections: 376, 363, 366-A IPC
and 4 Pocso Act
Police Station: Model Town, Ludhiana.**

**Present: Sh.S.S.Haider, Addl.Public Prosecutor for the State.
Accused in custody with Sh. Ashwani Nayyar, Advocate.**

JUDGMENT:

Station House Officer of Police Station Model Town, Ludhiana sent up accused Deepak @ Deepu son of Ramesh (hereinafter to be referred as “The accused”) to face trial for commission of offence punishable under Sections 376, 363, 366-A of The Indian Penal Code (hereinafter to be referred as “The IPC”) and Section 4 of POCSO Act, 2012.

2. Succinctly put, the facts of the case are that on 26.07.2021, Kanta wife of Mahinder Singh got recorded her statement to the police to the effect that her elder son along with his wife and two children has been residing separately and his two children namely Vishal and prosecutrix d/o Satinder (name of prosecutrix is not being mentioned in this judgment in compliance of provision contained in Section 228A of IPC and directions of Hon'ble Supreme Court in State of Karnataka Vs. Puttraj (2004 (1) SCC 475) are residing with her. Above said Vishal is married and residing along-with his wife namely Priya on the first floor of rented building and she along-with her grand-daughter/prosecutrix is residing on the first floor. Deepak @ Deepu resident of same locality had a bad eye on the prosecutrix. Various times she stopped him from doing so. On 25.07.2021, at about 4.00PM, when she along-with prosecutrix was

present in the house of her another son namely Joginder Kumar, when prosecutrix went on the terrace for drying clothes, but did not come downstairs. She sent her daughter in law namely Pinki wife of Joginder to locate the prosecutrix on terrace, she told her that prosecutrix is not present there. The terrace is adjoining to another houses whose stairs are opened in the street. She has strong believe that prosecutrix came down through the stairs on back side, and Deepak @ Deepu has enticed her grand daughter on the pretext of marriage.

3. On the basis of this statement, formal FIR was registered against the accused. Investigation was carried out and after completion of formal investigation, final report under Section 173(2) of the Code of Criminal Procedure (hereinafter to be referred as “The Cr.P.C.”) was presented on 20.09.2021 in the court of Area Magistrate.

4. On presentation of final report, copies of the documents as required under Section 207 of The Cr.P.C. were supplied to accused and his statement was recorded.

5. From the final report under Section 173(2) of The Cr.P.C. and the documents annexed therewith a prima facie offence punishable under section 363, 366-A of IPC and 4 of Pocso Act or in the alternative offence punishable under Section 376 of IPC was found to be made out against the accused. Charge against the accused was framed accordingly on 06.10.2021 to which, the accused pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined complainant Kanta PW1, prosecutrix PW2, Satinder son of Mahinder Singh PW3, Joginder Kumar PW4, Dr. Saurav Singla PW5, Dr. Lakhwinder Kaur PW6, SI Avneet kaur PW7, Dr. Seema Chopra PW8, Dr. Sandeep Sohi, Radiologist, PW9, SC Reena Rani PW10, SC Sandeep Singh PW11, ASI Pardeep Kumar PW12, Malkeet Singh Reader PW13, Dr. Jasneet Kaur, Medical Officer PW14. Except ocular evidence, prosecution tendered into evidence DNA test report as Ex.PX.

7. On examination under Section 313 of the Code of Criminal Procedure, the accused denied all the circumstances appearing against him in the prosecution evidence and pleaded innocence and false implication. No defence evidence was led by the accused.

8. To adjudicate upon the controversy in hand, I have appreciated the evidence on record minutely and heard the learned Addl.Public Prosecutor for the State and Ld.defence counsel.

9. In defence no witness examined.

10. Undeniably, the accusations are that on or before 25.07.2021 at about 4.00PM, in the area of PS Model Town, Ludhiana, accused kidnapped the prosecutrix, kidnap the prosecutrix with intent to have illicit intercourse. It is also against the accused that he committed penetrative sexual assault/rape upon the prosecutrix.

11. In such like cases, the story of the prosecution hinges around the statement of prosecutrix. However, in the present case the story of prosecution is not supported either by the prosecutrix or by the independent witness i.e., Kanta, Satinder and Joginder Kumar who are parents and brother of the prosecutrix respectively. When prosecutrix stepped into the witness box as PW2 she testified that she does not identify accused present before the court. She stated that accused never kidnapped her on the pretext of marriage. She further stated that accused never committed rape upon her. She testified that she did not record any statement before the police.

12. Another witness who could state against the accused is Kanta Devi wife of Mahinder Singh, who is grand mother of the prosecutrix on whose statement the present FIR was lodged. However, when she stepped into the witness box as PW1 she did not state even a single word against the accused. She testified she does not identify accused present before the court. She further stated that accused never kidnapped her grand daughter. She further stated that accused never committed rape upon the prosecutrix. She further testified she did not record any statement against the accused before the police. She was declared hostile by the Ld.APP for the State and was cross-examined by the State. However, nothing incriminating comes out against the accused. During her cross-examination she identified her thumb impression on statement Mark A at Point A. However, she voluntarily stated that police obtained her thumb impression on some blank papers. Attention of the witness was drawn towards statement Mark A and confronts with portion A to A1, A2 to A3

but the witness denied making such statement before the police. She denied that Mark B is her statement. Attention of the witness was drawn towards statement Mark B and confronts with portion A to A1 but the witness denied making such statement before the police. She testified that Mark C is not her affidavit. She denied the suggestion that accused kidnapped the prosecutrix and committed rape upon her. She further denied she is intentionally not identifying the accused present before the court. She also denied that she had deposed falsely being compromised the matter with the accused. The witness was also cross-examined by Ld. Defence counsel. During her cross-examination by Ld. Defence counsel, the witness testified that she has not brought any proof of birth of prosecutrix.

13. Another witness who could state against the accused is Satinder son of Mahinder Singh and father of the prosecutrix. However, when he stepped into the witness box as PW3 he did not state anything against the accused. He testified he does not identify accused present before the court. He further stated that accused never kidnapped her daughter. He further stated that accused never committed rape upon the prosecutrix. He further testified his mother Kanta never recorded any statement against the accused before the police. He was declared hostile by the Ld.APP for the State and was cross-examined by the State. However, nothing incriminating comes out against the accused. During his cross-examination he identified his signatures at Point B on statement Mark A. However, he voluntarily stated that police obtained his signatures on some blank papers. Attention of the witness was drawn towards statement Mark A and confronts with portion A to A1, A2 to A3 but the witness denied making such statement before the police. The witness was also cross-examined by Ld. Defence counsel. During his cross-examination by Ld. Defence counsel, the witness testified that he has not brought any proof of birth of prosecutrix.

14. Another witness who could state against the accused is Joginder Kumar son of Mahinder Kumar brother of the prosecutrix. However, when he stepped into the witness box as PW4 he did not state anything against the accused. He testified he does not identify accused

present before the court. He further stated that accused was never apprehended in his presence. He further stated that he never recorded any statement before the police. He further testified that prosecutrix was not recovered from the possession of the accused. He was declared hostile by the Ld.APP for the State and was cross-examined by the State. However, nothing incriminating comes out against the accused. During his cross-examination he identified his signatures on memos Mark E and Mark F at Point A. However, he voluntarily stated that police obtained his signatures on some blank papers. Attention of the witness was drawn towards statement Mark G and confronts with portion A to A1 but the witness denied making such statement before the police.

15. As far as the other witnesses are concerned they are of formal nature. Dr. Saurav Singla PW5 Medico legally examined the accused and proved MLR Ex.PW5/B. Similarly, Dr.Lakhwinder Kaur PW6 conducted the medico-legal examination of the prosecutrix and proved MLR Ex.PW6/B. Dr. Seema Chopra, Medical Officer appeared as PW8 who took the blood samples of prosecutrix for DNA. She proved the application Ex.P12 moved by the police and also proved the original record Ex.PW8/A. Dr. Sandeep Sohi conducted ultrasound examination of prosecutrix and proved the MLR Ex.PW9/A the ultrasound films are Ex.PW9/B, x ray report Ex.PW9/C and x ray film is proved as Ex.PW9/D. Dr. Sandeep Sohi also conducted ultrasound examination of prosecutrix and proved the report Ex.PW9/E and ultrasound film Ex.PW9/F. Dr. Jasneet Kaur Medical Officer appeared as PW14 testified that she took the DNA blood sample of accused and handed over the same to police official on 02.08.2021. She further testified that on 03.08.2021 on police request Ex.P12 she took the blood sample of prosecutrix and handed over the same to police along-with requisition form.

16. The other witnesses are official witnesses PW7 SI Avneet Kaur is the investigating officer of the case who proved the documentary evidence on the record. PW10 HC Seema Rani is the witness who carried the case property for depositing the same with CFSL Chandigarh. PW11 HC Sandeep Singh is the witness who during his tenure deposited the

DNA sample of prosecutrix and accused through C Reena Rani. PW12 ASI Pardeep Kumar was the member of Police party.

17. PW13 Malkeet Singh reader of the court of the then Ld. JMIC Ludhiana testified that Ms. Manjira Dutta has recorded the statement of prosecutrix u/s 164 Cr.P.C. Ex.PW13/B consists of three pages. He identified her signatures being working in the same court as a reader. He identified the signatures of the judicial officer on order Ex.PW13/C and Ex.PW13/D, signatures on the statements Ex.PW13/E to Ex.PW13/H being conversant with her signatures.

18. From the conjoint reading of the statements of above said witnesses, this court has come to the conclusion that the star witnesses who could elicit the allegations against the accused have turned hostile. The other witnesses are formal one from whose statements nothing discriminating comes on the record against the accused.

19. Now, the question remains whether the DNA test report proved by the prosecution i.e., Ex.PX can be read against the accused or not. No doubt as per DNA test report the presence of semen could be confirmed on vaginal swabs of prosecutrix and further male DNA profile recovered from these swabs of prosecutrix is consistent with DNA profile of accused Deepak. However, this report cannot be read against the accused in the absence of any supporting evidence.

20. **Reliance is placed upon Premjibhai Bachubhai Khasia vs State of Gujrat: Law Finder Doc ID# 200648;** in which it was held that science of DNA is at developing stage and can not be considered as conclusive proof. Positive report can be great significant where there is supporting evidence. However, DNA test report can not be accepted in isolation i.e. as sole piece of evidence to record conviction in rape case. Similarly, Hon'ble Karnatka High Court in **Sri Swami B vs State and ors: Law Finder Doc iD# 2045393**, it was held that mere production of DNA sample report would not mean that it has to be taken as gospel truth without examination or cross-examination of the doctor who has rendered such opinion. DNA test not a conclusive evidence with regard to the allegations against the petitioner.

21. On the same point, I rely upon **Nagappa vs State of Karnataka**” Law Finder Doc ID# 11664735, in which it was held that conviction on the basis of DNA test of paternity. Credibility-when there is ample chance of tampering, then under such circumstances, it is going to be highly prejudice accused persons and it was held that DNA test report can not be accepted as Gospel truth as there is ample time of manipulation, tampering of such evidence by corrupt officers or scientist which needless to say highly prejudice accused persons.

22. In the light of above discussion it is concluded that the positive DNA report should not have been accepted by the court in isolation i.e. as sole piece of evidence to record the conviction without any supporting evidence.

23. Even otherwise the DNA test report can not be read against the accused for want of link evidence. It comes out that the doctor who took the blood samples of the prosecutrix and accused appeared before the court as PW14 i.e., Dr. Jasneet Kaur but despite best efforts of the court she did not turn up for her cross-examination. Therefore, the examination in chief of Doctor Jasneet Kaur cannot be read into evidence as due to her non appearance the valuable right of the accused for cross-examination of the witness on relevant points has been curtailed.

24. So, from the co-joint reading of evidence led by the prosecution, the prosecution has failed to bring home guilt of the accused as a sequel thereto by giving benefit of doubt, accused Deepak @ Deepu is acquitted of the charges framed against him under section 376(3) of the IPC or in the alternative Section 6 of The Pocso Act. He is directed to furnish personal bond in the sum of Rs.50,000/- with one surety in the like amount under Section 437(A) of the Code of Criminal Procedure. Case property, if any, be disposed of, under rules, after expiry of period prescribed for filing appeal or revision, as the case may be and outcome thereof, if any. File be consigned to the Record Room.

Date of order:27.07.2023

(Ravi Inder Kaur Sandhu)

Additional Sessions Judge

Geeta

(Fast Track Special Court), Ludhiana.

Stenographer Gr.I

UID No.PB00186

