REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 878-879 OF 2011

MOHAN LAL & ANR **Appellants**

VERSUS

STATE OF PUNJAB **Respondent**

WITH

CRIMINAL APPEAL NO. 884 of 2011

O R D E R

1. These appeals have been preferred against the impugned judgment and order dated 3.12.2010 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal Nos. 1009-SB of 2000, 1031-SB of 2000 and 1080-SB of 2010, by way of which the High Court has affirmed the judgment and order dated 25.09.2000 passed by the Additional Sessions Judge, Fatehgarh Sahib, Punjab in Sessions Case No. 15T/98/22.12.95, by way of which the learned trial court has convicted the appellants along with others, namely, Ranjit Singh and Smt. Jasbir Kaur for the offences punishable under Section(s) 376(2)(g) and 366 of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), and awarded sentence of 10 years to each of them and fine of Rs.2000/- and Rs. 3,000/- respectively, and in default of payment of fine, to undergo further RI for one year and six months respectively.

2. The facts and circumstances leading to filing of these appeals are that, one Manjit Kaur (PW-1), who was a student of class X had gone along with 15-16 other girls from her school to attend sport meet at Fatehgarh Sahib. All those 15-16 girls had been walking to reach Fatehgarh Sahib. In the meanwhile, Balbir Singh, the Director of Physical Education, asked Manjit Kaur, prosecutrix (hereinafter referred to as 'Prosecutrix') that she should sit on the scooter of Mohan Lal Verma, one of the appellants herein. She was not initially willing to go along with Mohan Lal Verma on his scooter, but she was threatened by Balbir Singh-appellant, and thus under the pressure and force, she sat on the scooter of Mohan Lal Verma. When Mohan Lal Verma reached near petrol pump of Machlian, he stopped the scooter and pretended to repair it. Ranjit Singh, also a teacher in the same school and who had also been convicted by the Trial Court and the High Court, and whose SLP has been dismissed vide order dated 18.3.2011, arrived there on cycle and Mohan Lal Verma-appellant forced Manjit Kaur to sit on his cycle. As she had no other option, she sat on the cycle of Ranjit Singh who, after reaching Gurdwara Jyoti Sarup told her that he had to give some message to his sister, and that she should accompany him. Manjit Kaur was not willing and resisted to a certain extent but she was persuaded/forced to accompany Ranjit Singh. Both went to the house of Jasbir Kaur. By this time, Mohan Lal Verma, Amarjit Singh and

Balbir Singh had already reached the place. Manjit Kaur was offered tea by Jasbir Kaur and thereafter, she pushed her into the room where Ranjit Singh committed rape upon her in the presence of other persons as a result of which she became unconscious.

3. Darbara Singh (PW-3), father of the prosecutrix lodged the FIR, though at a later stage, i.e. after one week, in the police station. The matter was investigated, charge sheet was filed against all these persons and after conclusion of the trial, the trial court convicted all the aforesaid appellants as well as Ranjit Singh and Jasbir Kaur, and awarded sentence referred to hereinabove. The High Court, while hearing their appeals, acquitted only Jasbir Kaur and maintained the conviction and sentence of other persons, hence these appeals.

4. Shri V.K. Jhanji, learned senior counsel and Shri Manoj Swarup, advocate appearing for the appellants had raised a large number of issues pointing out various discrepancies in the case of prosecution. The prosecutrix (PW-l), her mother, Smt. Jaswant Kaur (PW-2) and her father, Darbara Singh (PW-3) were examined, but since PW-3 died during the trial, he could not be cross-examined by the defence, and as such his evidence could not be relied upon. Undoubtedly, PW-1 and PW-2 supported the case of the prosecution but in the last resiled from the same.

5. We have gone through their depositions and it is clear that in the earlier part of their evidence, both the witnesses had clearly implicated all these accused. The FIR could not be lodged immediately after the incident, as there was no one in the family to support their cause. Smt. Jaswant Kaur (PW-2) had to send a telegram to her husband and it is only after he reached their place, that FIR was lodged. The victim was examined on several dates within the period of two years and she had been consistent throughout, that rape had been committed upon her. However, her father died during the trial and it may be because of his death that both the prosecutrix and her mother had resiled to a certain extent from the prosecution case. Naturally, when the protective shield of their family had withered away, the victim and her mother could have come under immense pressure from the appellants. The trial Court itself has expressed its anguish as to how the accused had purposely delayed and dragged the examination of the prosecutrix and finally succeeded in their nefarious objective when the father of the prosecutrix died and the prosecutrix resiled on the last date of her cross-examination. The appellants belonged to a well-to-do family, while the prosecutrix came from poorest state of the society. Thus, a sudden change in their attitude is understandable

6. Legally, a witness has no obligation whatsoever

unless they agree to testify. The only real moral (and legal) obligation is that if they agree to testify to what they witnessed, it must be the truth as they saw it.

But the community has a legal and moral responsibility to respond to criminal victimization in order to preserve order and protect the community. Victims and witnesses of crime are essential partners in this community effort. Without their participation and cooperation as a citizen, the criminal justice systems cannot serve the community.

7. A witness is a responsible citizen. It is his duty to support the case of the prosecution and should depose what he knows about the case. In the instant case, it is shocking that the mother of the prosecutrix had turned hostile and she repeatedly told the court that there had been some talks of compromise. In a case where an offence of this nature had been committed, we fail to understand as to how there can be a compromise between the parties. The conduct of the mother herself is reprehensible.

8. It is a settled legal proposition that statement of a hostile witness can also be examined to the extent that it supports the case of the prosecution. The trial court record reveals a very sorry state of affairs, inasmuch as no step had ever been taken by the prosecution or the Investigating Officer, to prevent the witnesses from turning hostile, as it is their solemn duty to ensure that the

witnesses are examined in such a manner that their statement must be recorded, at the earliest, and they should be assured full protection.

9. There is nothing on record, not even a suggestion by the appellants to the effect that the victim had any motive or previous enmity with the appellants, to involve them in this case. Unfortunately, the trial court went against the spirit of law, while dealing with such a sensitive case of rape of a student by her teachers, by recording the statement of prosecutrix on five different dates. Thus, a reasonable inference can be drawn that defence had an opportunity to win her mother.

10 Also, the manner in which the trial court conducted the trial is shocking, especially in view of the provisions of Section 309(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.PC'), which reads as under:-

> **"309 (1) - In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:**
>
> **Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses".**

11. The said proviso has been added by amendment vide Act 5 of 2009 w.e.f. 31.12.2009, but even otherwise, it was the duty of the trial court not to adjourn the proceedings for such a long period giving an opportunity to the accused to persuade or force, by any means, the prosecutrix and her mother to turn hostile.

12. Giving recognition to the principle of speedy trial, sub-sec (1) of section 309 Cr.P.C., envisages that when the examination of witnesses has once begun, the same shall be continued from day to day, until all the witnesses in attendance have been examined. Speedy and expeditious trial and enquiry were envisaged under section 309 Cr.P.C.

13. In Lt. Col. S.J. Chaudhary v. State (Delhi Administration) AIR 1984 SC 618, it was held that it is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piece-meal. Once the trial commences, except for a very pressing reason which makes an adjournment inevitable, it must proceed *de die in diem* until the trial is concluded.

(See also: Akil @ Javed v. State of NCT of Delhi, 2012 (11) SCALE 709).

14. In Mohd. Khalid v. State of West Bengal, (2002) 7 SCC 334, this court held that when a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. While deciding the said case, the court placed great emphasis on the provisions of Section 309 Cr.P.C. and placed reliance on the earlier judgment in State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667; and N.G. Dastane v. Shrikant S. Shivde, (2001) 6 SCC 135. In the said case, this court has deprecated the practice of the courts adjourning the cases without examination of witnesses when they are in attendance. The trial court should realize that witness is a responsible citizen who has some other work to attend for eking out a livelihood, and a witness cannot be told to come again and again just to suit the convenience of the advocate concerned. Seeking adjournments for postponing the examination of witnesses without any reason, amounts to dereliction of duty on the part of the advocate as it tantamounts to harassment and hardship to the witnesses. Tactics of filibuster, if adopted by an advocate is also a professional misconduct.

15. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. (Vide: Maneka Gandhi

v. Union of India & Anr., AIR 1978 SC 597; Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr., AIR 1992 SC 1701; Vakil Prasad Singh v. State of Bihar, AIR 2009 SC 1822; and Shri Sudarshanacharaya v. Shri Purushottamacharya & Anr. (2012) 9 SCC 241).

16. The appellants before us and Ranjit Singh were public servants being teachers in a government school, prosecutrix had been a student in their custody, therefore, provisions of Section 376(2)(b) IPC are applicable, and as it was a case of gang rape, provisions of Section 376(2) (g) IPC are attracted.

17. The requirement of education for girls and the functions of a teacher have been dealt with and explained at some length by this Court in Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors., (1997) 2 SCC 534, which read as follows:

> **"11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "Guru Brahma, Guru Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as society duty, to impart education, to bring them**

up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the student for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to independence , is fathom deep due to indifference on the part of all in rural India except some educated people, Education to the girl children is nations asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girl. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher, who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected

of a teacher . The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin….”.**(Emphasis added)**

18. As there was a fiduciary relationship between the accused and the prosecutrix being in their custody and they were trustee, it became a case where fence itself eats the crop and in such a case the provisions of Section 114-A of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Evidence Act’) (which came into effect from 25.12.1983) are attracted. Undoubtedly it is a case which provides for a presumption against any consent in a case of rape even if the prosecutrix girl is major, however, every presumption is rebuttable, and no attempt had ever been made by any of the appellants or other accused to rebut the said presumption.

19. In Vijay @ Chinee v. State of Madhya Pradesh (2010) 8 SCC 191, this Court has placed very heavy reliance on the provisions of Section 114-A of the Evidence Act, making a reference that it came by an amendment in the year 1988 and further made an observation that the accused-appellants in that case did not make any attempt to rebut the said presumption. One of us (Justice B.S. Chauhan) has

been the author of the said judgment. In fact, the provisions of Section 114A of the Evidence Act were not attracted in the facts of that case for the reason that the condition provided for its attraction were not available/attracted in that case.

20. The issue in respect of applicability of Section 114-A of the Evidence Act has been considered by this Court in Raju & Others v. State of Madhya Pradesh reported in (2008) 15 SCC 133, and while deciding the said case, reliance has been placed on the judgment in Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635, wherein this Court has held as under:-

> ***"……Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a part with the evidence of an injured witness and to an extent is ever more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding…."***

21. In view of the above, we are of the considered opinion that it was a fit case where the provisions of Section 114-A of the Evidence Act are attracted and no attempt had ever been made by any of the appellants or other accused to rebut the presumption. In such a case, we do not see any reason to interfere with the finding of fact recorded by the courts below.

22. So far as the conviction is concerned, as it was case of gang rape by teachers of their student, the punishment of 10 years rigorous imprisonment imposed by the trial court is shocking, considering the relationship between the parties. It was a fit case where life imprisonment could have been awarded to all the accused persons. Unfortunately, Smt. Jasbir Kaur had been acquitted by the High Court, and State of Punjab did not prefer any appeal against the same. One of the accused, Ranjit Singh, had approached this court and his special leave petition has been dismissed. Thus, in such circumstances, we are not in a position even to issue notice for enhancement of the punishment to the accused.

23. In view of the above, appeals do not have any merit and accordingly are dismissed .

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
April 11, 2013.

ITEM NO.103 COURT NO.7 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 878-879 OF 2011

MOHAN LAL & ANR **Appellant (s)**

VERSUS

STATE OF PUNJAB **Respondent(s)**

WITH APPEAL(CRL) NO. 884 of 2011

(With appln(s) for bail and office report)

Date: 11/04/2013 These Appeals were called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) **Mr. Manoj Swarup, Adv.**
Mr. Anup Kumar, Adv.
Mr.Rutwik Panda,Adv.

Mr. V.K. Jhanji, Sr.Adv.
Ms. Jyoti Mendiratta, Adv.

Mr. Debasis Misra, Adv.

For Respondent(s) **Ms. Srajita Mathur, Adv.**
Mr. Kuldip Singh,Adv. (Not present)

UPON hearing counsel the Court made the following
O R D E R

Appeals are dismissed in terms of the signed order.

(NAVEEN KUMAR) **(MR. M.S. NEGI)**
COURT MASTER **COURT MASTER**
(Signed reportable order is placed on the file)