

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.S-1148-SB of 2004

Date of decision : May 20, 2015

Sanjay

... Appellant

vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Bishnoi, Advocate
for the appellant.

Mr. B.S. Virk, DAG, Haryana.

Surinder Gupta, J

The appellant faced trial for offence punishable under Section 376 read with Section 511 and 506 IPC.

The case was registered on the complaint of prosecutrix (name withheld) wherein she had stated that after death of her parents she had been living with her married sister. On 5.12.2002 at about 9.00 p.m. she came out of her house to answer the call of nature where the appellant caught her and tried to commit rape but she used force and got herself relieved and returned to her house. The appellant threatened her not to disclose the incident to her sister and brother-in-law. Out of fear she did not disclose the matter till 11.12.2002. On receipt of complaint Ex.PA, formal FIR Ex.PA/2 was registered. The appellant was arrested and challan was presented in court.

On commitment the trial court finding a prima facie case for offence punishable under Section 376/511/506 IPC framed the charge against the appellant to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined prosecutrix as PW1, her brother-in-law as PW-2, ASI Rohtash Singh as PW-3, C. Anoj Kumar who had prepared the rough site plan of the place occurrence as PW-4.

On completion of prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded wherein he denied the allegations

levelled against him and pleaded his false implication. He examined Partap Singh Ex-Sarpanch of the village as DW-1, who stated that there was altercation between the parties on 5.12.2002 and the matter was got pacified but after the lapse of about one week, the prosecutrix moved false complaint to the police.

The trial court vide judgment dated 1.3.2004 convicted the appellant for offence punishable under Section 376 read with Section 511 and 506 IPC and awarded him sentence of rigorous imprisonment of 3- ½ years and to pay fine of ₹5,000 for offence punishable under Section 376 read with Section 511 IPC and rigorous imprisonment for six months and to pay fine of ₹500/- for offence punishable under Section 506 IPC.

I have heard learned counsel for appellant, learned State counsel and have perused the paper book and lower court record with their assistance.

Learned counsel for appellant has argued that there are material contradictions in the statement of prosecutrix and brother-in-law of the prosecutrix who appeared as PW2. In the FIR got recorded by the prosecutrix she has levelled the allegations that she was caught by the appellant who tried to rape her but she used force and got herself relieved and returned to her house. However, while appearing as PW-1 she has tilted the version by stating that after catching her, the appellant made her to lie on the ground, opened the string of her *salwar* and also opened the chain of his pant. She cried which attracted her sister and brother-in-law to the spot at which the appellant ran away from the spot. In the next breath she had stated that after 5-6 days of the incident she disclosed the matter to her sister and brother-in-law. Brother-in-law of the prosecutrix (PW-2) also stated that they rushed towards the spot on hearing shrieks of the prosecutrix and saw that the appellant was running away from the spot in a naked condition. He had given threat to the prosecutrix that if she disclosed anything about the incident to any one, he would kill her. He also stated that prosecutrix disclosed all the facts to him on 11.11.2002 i.e. 5-6 days after the occurrence. The prosecutrix was living in the neighbourhood of the appellant and she had admitted the writing of love letter Ex.DA and DB.

She had also written the letters mark A1 to A6 but did not identify her writing on these letters and also refused to give her specimen writing to get the writing of these letters compared. All this shows that the appellant has been falsely implicated in this case and no such occurrence, as alleged by the prosecutrix, took place. There is also unexplained delay of six days in reporting the matter to the police.

Learned State counsel has argued that the prosecutrix has fully supported her case and her statement find corroboration from the statement of her brother-in-law who appeared as PW-2. There is no reason or motive for the prosecutrix to falsely implicate the appellant in this case.

In the first version given to the police in the complaint Ex.PA, the prosecutrix has stated that when she came out of her house in the night of 5.12.2002, the appellant caught her and tried to rape her but she got herself relieved and ran towards her house. She has nowhere given the details, as stated by her while appearing as PW1, about the incident. It is nowhere in the complaint that her sister and brother-in-law also came to the spot and the appellant ran away from there on seeing them. This makes the statement of prosecutrix PW-1 as well as her brother-in-law who appeared as PW2 that he had seen the appellant running from the spot in naked condition doubtful. There is another contradiction in the testimony of the prosecutrix and her brother-in-law PW2. In the complaint Ex.PA to the police the prosecutrix had stated that due to the threat given by the appellant that he will kill her in case she reported the matter to her sister and brother-in-law, she did not disclose the incident. However, while appearing as PW-1 she has stated that her sister and brother-in-law came to the spot and have seen the appellant threatening her. In the next breath, she has stated that she narrated the incident to her sister and brother-in-law after 5-6 days of the incident. This creates doubt about the prosecution version that under threat of appellant, the prosecutrix did not report the matter to her sister and brother-in-law thereby resulting in delay in reporting the matter to the police. If sister and brother-in-law of the prosecutrix were aware of the incident and were witness to it, no reason has been put forth as to why the matter was not reported to the police with all promptness.

There is another circumstance which create suspicion about the case of prosecution. The accused has produced on file the love letters written by the prosecutrix which she has admitted. In the letter Ex.DA, the prosecutrix expressed her desire to meet the appellant within one or two days as her sister and brother-in-law were going to Delhi. She also apprised him that no body will be at home and she will apprise him about the time when he had to come to her. In the letter Ex.DB, she again apprised that her sister and brother-in-law were not going. However, under promise by her to meet, she invited him to come to the roof of the house at 12 in the night and assured that on Tuesday if her brother-in-law did not turn up, she will meet him. She also asked him to bring her all letters at 12 night. Appellant also confronted her with similar other letters mark A1 to A6. However, she denied that all these letters are in her writing and at the same time refused to give her specimen hand writing.

The above facts show that the prosecutrix was having an affair with appellant. It is also cleare from perusal of letter Ex.DB that there was some strains in her relations and that is why she asked the appellant to bring all her letters. Taking into account the contradictions in the statement of the prosecutrix and her brother-in-law, coupled with the facts that she was having an affair with appellant who was residing in the neighbourhood, the entire story put forth by the prosecution regarding the alleged attempt made by appellant to rape the prosecutrix get shrouded under thick cloud of suspicion. The prosecutrix has stated that she shrieked when the appellant caught her. The site plan Ex.PB and Ex.PC of the place of occurrence shows that the area was populated and having houses of different persons nearby but strangely enough none except brother-in-law and sister of prosecutrix came to the spot. She has also stated that she was thrown on the ground which was having *pacca* floor but she did not receive any injury on her buttocks or hips. The mere fact that the appellant has not come up with any version as to why he has been falsely implicated is not a circumstance which goes against him as onus is always on the prosecution to prove its case. The Court while scrutinizing the evidence in such cases is required to be very careful, cautious and inquisitive. The version unfolded by witnesses

or prosecutrix in the presence of documentary and circumstantial evidence can not be relied or believed with eyes blindfolded. We are living in an era of openness and close proximity in relationship amongst two persons of opposite sex. If the evidence on record suggest that there was affair between the two; they were in contact and had liking for each other; a sudden and unsubstantiated allegations of rape; is levelled to reach the truth of the allegations the entire incriminating evidence is required to be scrutinized to search the real motive, reason, compulsion or such other circumstances, giving rise to raising of such allegations.

In the facts and circumstances discussed above, I am of the considered opinion that it is a case of affinity turned sour resulting in levelling allegations of attempt to rape. The prosecution has utterly failed to prove the charge against the appellant for offence punishable under Section 376 read with Section 511 and 506 IPC.

This appeal has merits and is accepted. The appellant is ordered to be acquitted of the charge framed against him for offence punishable under Section 376 read with Section 511 and 506 IPC. Bail bonds and surety bonds of appellant stand discharged.

(Surinder Gupta)
Judge

May 20, 2015
deepak

Whether to be referred to reporter : Yes/No.