

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2205-SB of 2003
Date of Decision: February 04, 2015

Khursheed alias Mani alias Mani and others

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudhir Sharma, Advocate
for the appellants.

Mr.S.S.Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This appeal has been filed by the appellants against the judgment of conviction dated 10.11.2003 and order of sentence dated 11.11.2003, passed by learned Addl. Sessions Judge (Fast Track Court), Gurgaon whereby all the accused-appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 363 IPC and to further undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 366A IPC.

All the accused-appellants were further directed to undergo rigorous

imprisonment for a period of ten years and to pay a fine of ₹2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 376 (2) (g) IPC. All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that Juhru made an application to the police on 05.02.2000 to the effect that he was having three daughters and one son and two daughters were married. It is further stated in the application that his youngest daughter aged 14/15 years is unmarried. Complainant used to remain ill and so, for taking medicine, he had gone to Kosi to a Hakim for that purpose on 04.02.2000 and he stayed for a night there. Maksood met him and told him that prosecutrix had gone with Khursheed alias Mani and his brothers Jakir and Jamshed and further informed that all the three had kidnapped prosecutrix forcibly with intent that she be forced to illicit intercourse. Complainant further stated that prosecutrix was raped by Khursheed alias Mani on 04.02.2000 at 8.00 P.M. According to complainant, Khursheed alias Mani committed rape whereas Jakir and Jamshed were standing at some distance and provided help to him. On hearing hue and cry, Fajri and Maksood reached the spot and had seen the occurrence. His daughter had been taken by the accused persons forcibly to commit the offence, so action be taken. On the basis of this application, FIR was recorded. Rough site plan was prepared. Accused Khursheed alias Mani was arrested. Prosecutrix was produced before Illaqa Magistrate for getting her statement recorded

under Section 164 Cr.P.C. Prosecutrix was got medico legally examined. Statements of witnesses were recorded. Report of FSL was obtained. After necessary investigation, challan was presented against appellant Khursheed alias Mani. On the basis of police report and other evidence, he was charge-sheeted under Sections 363, 366A and 376 IPC. Later on, after recording statements of some witnesses, accused-appellants Jakir and Jamshed were summoned on the application under Section 319 Cr.P.C.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, all the accused-appellants were charge-sheeted under Sections 363, 366A and 376(2) (g) IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Subhash Chand, formal witness, who tendered into evidence his affidavit Ex.PA. PW-2 Maksood deposed as per prosecution version. PW-3 Constable Naresh Kumar, Draftsman, proved the scaled site plan. PW-4 ASI Sabha Ram deposed regarding preparing of challan. PW-5 Head Constable Balwan Singh, also a formal witness, who tendered into evidence his affidavit Ex.PE. PW-6 ASI Abhey Singh deposed regarding recording of formal FIR Ex.PG on receiving ruqa Ex.PF. PW-7 Sh.Mewa Singh, Sub Divisional Judicial Magistrate, Fatehabad mainly deposed regarding recording of statement of prosecutrix under Section 164 Cr.P.C. Ex.PH/1. PW-8 prosecutrix deposed that on 04.02.2000, at about 8.30 P.M., she had

gone to ease herself in the fields. Khursheed came and dragged her in a 'bara' and then he committed rape upon her against her wishes. She raised alarm and Fajri came. In the meantime, Khursheed alias Mani and his brothers namely Jakir and Jamshed also came. They took her to 'pahar' of Lohinga village. She further deposed that all the three committed rape upon her separately. Before she was taken to the 'pahar', Maksood and Sultan had also come, who are her uncle. Third day, accused left her all alone. A person from Lohinga village met her and he took her to his house and then informed her parents. She also deposed that then 4-5 people from her village came to village Lohinga and her father was also along with them. Then she was taken to police post Pingawa. Her statement was recorded. Then she was taken to Ferozepur Jhirka hospital for medical examination. Her statement under Section 164 Cr.P.C. was recorded by the Magistrate. PW-9 ASI Sarup Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. FSL report was tendered into evidence. PW-10 Dr.Santosh Jain, who medico legally examined the prosecutrix deposed that no external injury was seen. According to the report, the doctor stated that she is of the opinion that no sexual intercourse was performed on prosecutrix by anyone. She further deposed that two fingers entered in the vaginal orifice conveniently. In the cross-examination, this witness deposed that prosecutrix was habitual to sexual intercourse. PW-11 Dr.M.Farukh, medico legally examined Khursheed alias Mani. PW-12 Constable Mohammad Harun, deposed regarding delivering of

Special Report to the Illaqa Magistrate.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent. Appellant Khursheed alias Mani further pleaded that a false case has been instituted by father of the prosecutrix on account of previous bad relations of their family with complainant's family.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants, as stated above.

At the time of arguments, learned counsel for the appellants argued that appellants Jakir and Jamshed were found innocent during the investigation. He further argued that as per the doctor's opinion, no rape has been committed. Accused-appellants have been falsely implicated in the present case. He next argued that version of the prosecutrix is not believable. There are material contradictions in the statements of the witnesses and version is improbable. Learned counsel for the appellants, therefore, argued that there being merit in the appeal, the same should be allowed.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. Statement of prosecutrix has been duly supported and corroborated by medical evidence, complainant and eye witness Maksood. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record minutely and carefully.

From the evidence on record, I find that reasonable doubt exists in the prosecution version regarding involvement of appellants Jakir and Jamshed. First of all, appellants Jakir and Jamshed have not been medico legally examined and there is no evidence to show that they are fit to commit sexual intercourse. Secondly, PW-2 Maksood, in his statement has stated that about two years ago at 8.30-9.00 P.M., he heard cries of daughter of Juhru. On hearing cries, he attracted at the spot and found accused Khursheed, present in the Court, committing rape upon the prosecutrix. He further stated that thereafter, he went to the house of Juhru to call them. After some time he came to know that prosecutrix was not found on that place. Fajri also witnessed the occurrence. From the statement of PW-2 Maksood, who is stated to be eye witness of the occurrence, it cannot be held that appellants Jakir and Jamshed have committed rape upon the prosecutrix. This witness nowhere stated that these two appellants have committed rape. He only stated that Khursheed committed rape. Even, in his statement, he nowhere stated that Jakir and Jamshed were present there and helping Khursheed in the commission of the offence. Fajri has not been examined, who is stated to be other eye witness. Jakir and Jamshed are brothers of Khursheed alias Mani. Fajri and Sultan have been given up being unnecessary by the prosecution. Otherwise also, prosecutrix has

stated in cross-examination that Fajri has not seen the occurrence but she heard prosecutrix's cries and came. Prosecutrix also stated that nobody else witnessed the occurrence. She in her cross-examination stated that only Khursheed alias Mani committed rape upon her at the place of occurrence in their village. She further stated that all the accused committed rape upon her at 'pahar' in village Lohinga. She has been confronted with her statement Ex.DA given to the police, which was earliest version. In her statement Ex.DA, which has been duly confronted with portion 'B to B', where she stated that on that night, they did not commit any wrong with her, which means that now the prosecutrix has made material improvement by stating that Jakir and Jamshed have also committed rape upon her at village Lohinga. Complainant Juhru also could not be examined in this case as he has died. So, there remains only statement of prosecutrix. It also looks doubtful regarding involvement of appellants Jakir and Jamshed that if these persons were also present on the spot and other witnesses have come, whether, they will allow accused persons to take the prosecutrix to another village.

From the evidence on record, I find that reasonable doubt exists regarding involvement of appellants Jakir and Jamshed. Material improvements have been made by the prosecutrix qua these two appellants, which also creates reasonable doubt in the prosecution version qua them. Therefore, by giving benefit of doubt, appellants Jakir and Jamshed are acquitted of the charges levelled against them.

As regarding appellant Khursheed alias Mani, PW-2 Maksood has deposed that he has seen Khursheed alias Mani committing rape upon the prosecutrix. PW-8 prosecutrix also deposed in her statement under Section 164 Cr.P.C. that Khursheed alias Mani has committed rape upon her and also in the statement before the police Ex.DA, she has named Khursheed alias Mani that he has committed rape. The oral statements of the PWs have been duly supported by the medical evidence. Though the doctor after seeing the report of the chemical examiner has opined that no rape has been committed but at the same time, in cross-examination, she opined that prosecutrix is habitual of having sexual intercourse. Therefore, from the opinion of the doctor, it cannot be held that no rape has been committed in this case by appellant Khursheed alias Mani. Mere one line in cross-examination of prosecutrix that they are not on visiting or talking terms with the family of the accused, will not make this case false. No person will put the reputation of the family as well as prosecutrix at stake only on the ground that they are not on visiting terms and having some dispute. Even, there is no mention that what type of dispute was between the parties. There is nothing on the record to show that it is a false case. The prosecution version cannot be held as improbable or not believable. There is nothing in the cross-examination of the PWs to disbelieve the version of the prosecution qua accused Khursheed alias Mani.

Keeping in view the above discussion, I find that the judgment of conviction dated 10.11.2003 and order of sentence dated

11.11.2003, passed by learned Addl. Sessions Judge (Fast Track Court), Gurgaon qua appellant Khursheed alias Mani is correct, as per law and the same is upheld

Resultantly, the present appeal stands allowed qua appellants Jakir and Jamshed whereas it stands dismissed qua appellant Khursheed alias Mani.

As the appellants Jakir and Jamshed are on bail, their bail bonds stand discharged.

Since appellant Khursheed alias Mani is on bail, his bail bonds stand annulled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

February 04, 2015
Vgulati

(INDERJIT SINGH)
JUDGE