

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1267-DB of 2014

Date of Decision : February 02, 2015

Reena

.....Appellant

VERSUS

Baljit Singh Sodhi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. N.S. Shekhawat, Advocate.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 4.6.2014 passed by the Additional Sessions Judge, Ambala whereby respondent Baljit Singh Sodhi (hereinafter referred to as 'the accused') was acquitted of the charges under Sections 376 and 506 IPC.

In her statement made in the presence of Ms. Namrata Gaur, Advocate and lady Constables on 27.1.2013 at about 4.00 p.m. before ASI Ram Singh, the prosecutrix stated that about a week ago, she had come from Delhi to Karnal by bus. In that bus, she came across the accused, a turbaned person, who started conversing with her. He told her that he could get her a job of cook with a monthly salary of Rs.7,000-8,000/-. Believing what the accused told her, she exchanged mobile numbers with him and after alighting from the bus at Karnal, went to her house. On

27.1.2013 at about 9.00 a.m., she got a call on her mobile from the accused, who asked her to come to a hotel at Ambala Cantt. concerning job. She reached there at about 2.00 p.m. where the accused took her to a room and asked her as to what she would eat. When she refused, he asked her to bring two Rasmalai from the sweet shop. When she came back, the accused bolted the door and asked her to take off her clothes. She refused but was threatened by the accused with dire consequences. After forcibly removing her clothes, he subjected her to rape. He threatened her that if she told anyone about the same or complained to the police, he would kill her. She stated that during the occurrence, his photograph fell from his purse, which she produced before the police. Accordingly, FIR under Sections 376/506 IPC was registered at Police Station, Ambala Cantt.

The accused was arrested and upon completion of the investigation and presentation of the challan, the case was committed to the Court of Sessions, where he was charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined HC Mukesh Kumar as PW1, ASI Bhaiya Ram as PW2, Constable Amit Kumar as PW3, lady Constable Monika as PW4, Constable Vinod Kumar as PW5, Harish Kumar, also numbered as PW5, HC Ram Saran as PW6, Dr.Rohit as PW7, the prosecutrix as PW8, Shri

Singh as PW11, SI Balwan Singh as PW12, ASI Virender Kumar as PW13 and ASI Ram Singh as PW14.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating material appearing in evidence against him and pleaded false implication. In defence, he examined Rajesh Kumar as DW1.

After hearing learned counsel for the parties and going through the case file, the trial Court came to the conclusion that the prosecution had miserably failed to prove its case against the accused beyond shadow of reasonable doubt. Accordingly, he was acquitted of the charges framed against him.

Having heard learned counsel for the appellant, this Court finds that though the prosecutrix claimed to have gone to Delhi to attend some marriage from where she was returning by bus and came across the accused yet in her cross-examination she could neither tell about the address where she had gone to attend the marriage nor name of the person, whose marriage she had allegedly attended. She deposed about being accompanied by her friend Kamlesh when she went to Delhi but said Kamlesh was not associated during the investigation of the case. PW14 ASI Ram Singh, the Investigating Officer of the case, also admitted that he did not visit the house of the prosecutrix to know whether she had ever gone to Delhi 8/10 days prior to 27.1.2013. Therefore, the very visit of the prosecutrix to Delhi

about a week prior to the occurrence remains unestablished.

The prosecutrix admitted that the accused did not call her during the period when she had met him in the bus and the day of the occurrence. She further deposed that after the incident when she came out of the room for going to Police Station, she received a call from the accused, who threatened her not to disclose about the incident to anyone. However, no attempt was made by the prosecutrix to collect material regarding the accused having made call to her. It is also in her testimony that she did not raise any hue and cry, either in the hotel or in the market, regarding the act of the accused in committing rape upon her. She is shown to be a mature lady, being 27 years of age. There is nothing on record to show that the accused was armed with any weapon. In that situation she ought to have resisted the act of the accused and even raised hue and cry. Regarding the call made by the accused from his mobile on 27.1.2013 before the incident, the complainant deposed that she had given mobile number belonging to her husband to the accused. In such a situation, the call which was made by the accused sometime before the incident ought to have been attended to by the husband of the prosecutrix and not by her as she did not claim to be carrying the mobile of her husband with her. In such a situation, the best witness was the husband of the prosecutrix, who could have deposed about the same but he never came forward. After the alleged incident, the prosecutrix

was neither accompanied by her husband nor any other relative to the hospital where she was medically examined. PW14 ASI Ram Singh admitted that no relative of the prosecutrix came to the Police Station on 27.1.2013. He further deposed that he did not meet her husband, children nor of the parents to verify as to whether she belonged to the village as stated by her and whether she had gone to Delhi to attend the marriage a week prior to the occurrence.

As regards the room of the hotel where the occurrence had taken place, ASI Ram Singh had deposed that he did not record the statement of either the owner or the manager to know about the booking of the room in the name of the accused. Even the Halwai from where the prosecutrix had brought Rasmalai on the asking of the accused was not examined during the investigation. It has also come in the testimony of the prosecutrix that earlier also she had come up with allegations of rape against some other person. All this shows that the possibility of false implication of the accused is writ large. The reasons for the same is obvious, if one notices about FIR No. 240 dated 18.7.2011 under Sections 406 and 420 IPC having been registered against Pushp Mohan, Lalit Kumar Jhamb, Sachin Mishra, Naveen Rana and others in Police Station Mahesh Nagar at the behest of accused Baljit Singh, who was also one of the Directors of "Million Miles". The aforementioned persons were also its directors and alleged to have swallowed crores of rupees of

different persons. Though ASI Ram Singh feigned ignorance about these facts but from the call details it is made out that on 20.1.2013, the prosecutrix had a talk with Lalit Kumar Jhamb for 132 seconds and on 25.1.2013, she had a talk with Constable Surender Singh for 173 seconds. On 26.1.2013, the prosecutrix had made three more calls to Constable Surender Singh. On 27.1.2013, the accused had a talk with the prosecutrix but prior to the said call, the prosecutrix was in touch with Constable Surender Singh on five different occasions. Thus, a conspiracy appeared to have been hatched by Lalit Kumar Jhamb and others alongwith the prosecutrix to implicate the accused falsely.

For the aforementioned reasons, this Court finds that the acquittal of the accused by the trial Court is perfectly in order. No case is made out for any interference in the impugned judgment.

The appeal is without any merit and, resultantly, dismissed.

(T.P.S. MANN)
JUDGE

February 02, 2015
satish

(SHEKHER DHAWAN)
JUDGE