

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-884-DB-2013 (O&M)
Date of Decision: 29.09.2015

J _____

.....Appellant

Vs.

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. A.S. Gulati, Advocate, for
Mr. A.S. Sullar, Advocate,
for the applicant-appellant.

Mr. Ram Kumar Makkad, D.A.G., Haryana.

S.S. Saron.J.

CRM No. 35980 of 2013

Heard.

For the reasons, mentioned in the criminal miscellaneous
application, delay of 30 days in filing the appeal is condoned.

CRM stands disposed of, accordingly.

CRA-D-884-DB-2013

This appeal has been filed by the prosecutrix against the
judgment and order dated 09.04.2013, passed by the learned
Sessions Judge, Panchkula, whereby Jaswinder Singh @ Jassi-
respondent No. 2 has been acquitted.

The complainant-appellant lodged a written complaint Ex. PE for taking action against Jaswinder Singh @ Jassi-respondent No. 2, Rinku younger brother of respondent No. 2 and Gian, father of respondent No. 2. According to the complainant-appellant, respondent No. 2 had forcible physical relations with her on the promise to marry her. He assured that he would marry her soon. Respondent No. 2 continued to have sexual relationship with her and stayed in her house for 24 hours a day on the false pretext of marrying her. On the insistence of the complainant he in the presence of some persons married her at the Kali Mata Mandir, Pinjore on 03.01.2011. They exchanged garlands and he put the 'Mangal Sutra'. Respondent No.2 started staying at the house of the complainant and they started living as husband and wife. Respondent No. 2 after some days informed her that he would call his relatives and the marriage would be performed as per Hindu rites but the complainant later noticed that the visits of Jaswinder Singh @ Jassi-respondent No. 2 to her house had gradually decreased. The complainant informed the father and brother of respondent No.2 who threatened and abused her and denied the marriage. They came to the house of the complainant and held out threats to kill her; besides, abused her. They slapped and boxed her. They said that their boy had never married her. In case she made any complaint anywhere in this regard, they would get her picked up from her house as they had approach till the top. A complaint was given to the Panchayat in this regard on 28.10.2011. The accused then accepted her as their daughter-in-law and she was sent alongwith Jaswinder

@ Jassi-respondent No. 2, to his house stating that from then onwards they would live as husband and wife and marriage would be performed according to rites and ceremonies. However, till the filing of complaint, the marriage was not performed according to rites and ceremonies in the presence of relatives. The complainant some days back came to know that Jaswinder @ Jassi-respondent No. 2 had performed second marriage with Anita resident of Billianwali Baddi on 28.01.2011. The appellant met the accused in this regard but they did not pay any heed to her and threatened to get her kidnapped. They said that she could not spoil anything of theirs. They would not get the marriage of their son performed with her. Whatever action she may want to take, she could take. In case she did something, they would get her killed and abducted from her home. In this manner accused No.1 (Jaswinder Singh @ Jassi-respondent No.2) by coming to the house of the complainant and by seducing her had messed around with her honour, besides, for a long time by coming to her house kept on raping her and accused No.2 and 3 i.e. Rinku and Gian some days earlier to the making of the complaint on 12.12.2011 had given a beating to her and also held out threats to kill her. The complainant apprehended that they could at any time cause damage to her life and property. It was, therefore, requested that action be taken against the accused by registering a case for committing rape by seducing her and for holding out threats to her life and for beating her and during the life time of the wife getting married with another lady, for which she would be grateful. A Daily Diary Report was entered on the complaint Ex. PE of the appellant.

Thereafter, FIR Ex. PE/2 was registered on 12.12.2011 at Police Station Pinjore District Panchkula for the offences punishable under Sections 376, 323 and 506 of the Indian Penal Code, 1860 (IPC-for short).

The prosecutrix was medico-legally examined by Dr. Shveta Gupta, Medical Officer, PHC Pinjore (PW-12), who tendered in her evidence an affidavit Ex. PJ. According to the affidavit, no mark of fresh external injury was present over face, lips and mouth. There was no mark of external injury present on the neck and chest. There were no marks of external injuries on the other parts of the body. In pubic area no mark of external injury was present on P/V, no DPV/BPV, Hymen rupture, Uterus normal size, Freely mobile, vagina admits two fingers of right hand easily, no injury over labia majore, labia minora, clitoris present were noticed. The final impression was that from the above finding, it was true that patient (prosecutrix) had been subjected to sexual intercourse.

The statement of the prosecutrix was also got recorded by the Illaqa Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.-for short). After completion of investigation, police report 'challan' was submitted in the Court of learned Chief Judicial Magistrate, Panchkula on 15.06.2012. The learned Chief Judicial Magistrate, Panchkula *inter alia* observed that the offence under Section 376 IPC was *prima facie* made out against the accused (respondent No.2). The learned Chief Judicial Magistrate, Panchkula, since the said offence under Section 376 IPC was

exclusively triable by the Court of Sessions committed the case to the said Court vide his order dated 10.07.2012. Respondent No. 2 as also Gian Singh and Rinku were directed to be produced in the said Court.

The learned Sessions Judge, Panchkula, vide order dated 27.07.2012 framed charges against respondent No. 2 for the offence punishable under Sections 376 IPC while Rinku and Gian Singh were charged for the offences under Sections 506 and 323, IPC. Respondent No. 2 as also Rinku and Gian Singh pleaded not guilty to the charges and claimed trial.

The prosecution in order to establish its case, examined seventeen witnesses, besides, tendered documents in evidence including the FSL Report Ex.PG and closed its evidence on 21.02.2013.

The statement only of respondent No. 2 in terms of Section 313 Cr.P.C. was recorded on 27.02.2013, in which he pleaded in his defence that he was innocent and had been falsely implicated in the case at the instance of the complainant. It was stated that the complainant was habitual in making false complaints and extracting money after moving complaints in the garb of compromise and he had no forcible relations with the prosecutrix nor had he ever promised to marry her as she was already married. The statements of the other two accused namely Gian Singh and Rinku were not recorded as there was no incriminating material against them. They were accordingly acquitted vide order dated 27.02.2013.

In defence, respondent No. 2 examined Karan Singh

Constable DW-1 who was posted at Police Station, Pinjore. He brought the summoned record and roznamcha of the police station. He proved the Daily Diary Report No.31 dated 22.02.2010, which was recorded by SI Rajesh Kumar regarding the prosecutrix, which was tendered in his evidence Ex. DA. He also brought the original application bearing No.270-dasti dated 25.10.2011 which was addressed to the SHO Police Station Pinjore given by the prosecutrix and also the original undertaking that she did not want to pursue the complaint. The copy of complaint and undertaking of the prosecutrix were tendered in evidence as Exs. DB and DC.

In cross-examination, it was stated by Constable Karan Singh (DW-1) that documents Ex. DA, Ex. DB and Ex. DC were not prepared by him nor had he been joined in the investigations of these cases by the respective investigating officers. He had no personal knowledge about the said documents and he had deposed as per the records.

The learned Sessions Judge, Panchkula after considering the evidence and material on record has acquitted respondent No.2. The prosecutrix aggrieved against the said acquittal has filed this appeal.

Learned counsel for the appellant contends that the acquittal of respondent No. 2 is absolutely erroneous inasmuch as respondent No. 2 had promised to marry the appellant and he had physical relations with her on the pretext of marriage. It is also contended that Haseena Begam (PW-6) has deposed in her evidence that respondent No. 2 had solemnized his marriage with the

appellant.

We have given our thoughtful consideration to the contentions of the learned counsel for the appellant; besides, gone through the trial Court records that was requisitioned. However, find no merit in the same.

The prosecutrix was examined in the case as PW-8. She has *inter alia* stated that respondent No. 2 is her husband and they used to reside together. Earlier she had very good relations with respondent No. 2. Thereafter, respondent No. 2 Jaswinder Singh @ Jassi started visiting her house frequently and she had got married with him on 03.01.2011 at Kali Mata Mandir in the presence of few persons. The marriage was solemnized as per Hindu rites, garlands were exchanged and Jaswinder Singh @ Jassi-respondent No. 2 had also put 'Mangal Sutar' and 'Sindoor'. The said marriage was solemnized by a Pandit. Thereafter, she stated that she became suspicious about the conduct of her husband (respondent No. 2) as he did not take her to his house and started putting her off on one pretext or the other and did not take her to his house. Then she came to know from other sources that he had performed a second marriage and had not informed her. Then she complained in this regard to his brother and father. A number of Panchayats were convened to resolve the issue. In the Panchayat that was convened on 28.10.2011, the brother and father of respondent No.2 accepted her as his wife. Thereafter, they i.e. the brother and father of respondent No.2 raised disputes over trivial matters. Then she got the FIR registered and was medically examined. Her statement under

Section 164 Cr.P.C. was recorded on 05.01.2012. It is stated by the Prosecutrix that she had given her consent for physical relations as he had assured her that he would marry her but later on he married another lady. She had consented for the physical relations on the allurements given by the accused (respondent No.2) to marry her.

In cross-examination it has been stated that she knew Haseena Begam (PW-6) for about two years. She did not know whether Haseena Begam (PW-6) had filed a complaint of sexual harassment against anyone. It was stated by her as correct that after registration of the present FIR, she had remained in the house of Haseena Begam (PW-6) for about 20-25 days and thereafter, she moved to another rented house. It was stated as correct that FIR bearing No. 49 dated 29.05.1999 under Sections 363, 366, 376, 506 and 120-B IPC, Police Station Naggal was registered against Pawan Kumar, Suresh Kumar and Jasbir and she had also appeared as a witness in the said case. It was stated by the prosecutrix that she had married Gurdev Singh son of Narata Singh, resident of Manakpur Devilal in the year 1999 and out of the said marriage, one male child namely Navjot Singh was born. Navjot Singh was residing with his father Gurdev Singh. She had not filed any case against Gurdev Singh regarding dowry or matrimonial dispute. It was voluntarily stated by her that the said marriage was resolved, (sic-dissolved) through the Panchayat and Gurdev Singh had remarried. The said Panchayat 'Faisala' (decision) was reduced into writing.

The learned trial Court has held that the appellant was married and no material regarding the dissolution of the marriage

with Gurdev Singh in the Panchayat had been produced on record. Indeed no such material has been produced.

Even otherwise it is well established that the appellant was already married to one Gurdev Singh in the year 1999 and the said marriage had not been dissolved by a decree of divorce in accordance with the provisions of Hindu Marriage Act, 1955. Besides, it is not shown from any material, available on record, whether any divorce was obtained in the Panchayat and even if it was valid and legal by the custom to which the appellant may be governed by.

The medical evidence available on record only shows that there is evidence that the patient (prosecutrix) had been subjected to sexual intercourse. However, it is not shown that there was any forcible sexual intercourse. In cross-examination Dr. Shveta Gupta, Medical Officer, PHC Pinjore (PW-12) has stated that the patient at the time of examination did not mention that she was a married woman but had given the history that she was the daughter of Bahadur Singh. The name of the husband was not disclosed by her. It was stated as correct that there was no injury on any part of the body and private parts. She had given her opinion only on the basis that the patient (prosecutrix) was unmarried. It is to be noticed that respondent No. 2 does not deny the fact of sexual intercourse and in his statement under Section 313 Cr.P.C., he is quite clear that he had no forcible relations with the prosecutrix and he had not ever promised to marry her as she was already married.

In Vinod Kumar vs. State of Kerala 2014 (2) R.C.R.

(Criminal) 440, the Supreme Court held that where the accused was already married and the prosecutrix married the accused and had sexual intercourse with him despite the fact that the accused informed her that he was married, the accused cannot be held guilty of rape and it was consensual intercourse. In the said case, it was observed that the prosecutrix was a graduate and even otherwise was not a gullible woman of feeble intellect. The Court was convinced that the prosecutrix was aware that a legal marriage could not be performed; besides, the testimony of PW-4 and PW-5 in the said case independently indicated that the prosecutrix had been made aware by knowledgeable and independent persons that no legally efficacious marriage had occurred between the couple.

In the present case, it has come in the cross examination of the prosecutrix while appearing as PW-8 that she was married to one Gurdev Singh. The marriage according to the prosecutrix had been dissolved in the Panchayat in respect of which a writing was also recorded; however, no material in the shape of oral evidence or the writing stated to have been recorded has been produced on record in this regard. Admittedly, the marriage has not been dissolved by a decree of divorce in accordance with the Hindu Marriage Act, 1955. The prosecutrix, therefore, in the present case was aware that she being already married could not have solemnized a second marriage with respondent No. 2. As such in the light of the observations in Vinod Kumar's case (supra), it is to be taken that the physical relations between the parties were consensual and

respondent No. 2 cannot be held guilty of rape.

In the facts and circumstances of the case, we are of the view that the learned trial Court rightly held that the relations between the appellant and respondent No. 2 were consensual.

Keeping in view the aforesaid facts and circumstances of the present case, we find no ground to interfere with the judgement and order dated 09.04.2013, passed by learned Sessions Judge, Panchkula.

Consequently, there is no merit in the appeal and the same is accordingly dismissed summarily in terms of Section 384 Cr.P.C.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

September 29, 2015
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