

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-1402-DB-2014 (O & M)
Date of decision: 11.08.2015

P _____ ...Appellant

Versus

State of Punjab and others ... Respondents

CORAM: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Madan Sandhu, Advocate
for the appellant.

S.S. Saron, J

The appeal has been filed by the prosecutrix against the judgment and order dated 12.06.2014 passed by the learned Additional Sessions Judge, Mansa to the extent that Gurjit Kaur alias Binder Kaur, Gurtej Singh alias Teji, Bhupinder Singh alias Bhinder, Paramjit Singh alias Pamma and Soni Kaur (respondents No.2 to 6) have been acquitted of the offences punishable under Sections 406 read with Section 120-B, 376 and 494 Indian Penal Code ('IPC' - for short)

FIR (Ex.PB) in the case was registered on the statement of the prosecutrix, which was recorded by ASI Nazar Singh on 31.10.2012. ASI Nazar Singh along with other police officials was on patrol duty at the Bus Stand, Sardulgarh. The prosecutrix, whose name has been withheld, along with her father Gurdeep Singh (PW-3) came there and got her statement recorded with him. According to the prosecutrix she was 19 years of age. Her father Gurdeep Singh (PW-3) was a labourer. She was illiterate and came from a village back ground. Dhira Singh son

of Bhan Singh (who stands convicted by the learned trial Court for the offence punishable under Sections 376 and 417 IPC) had come to the house of her neighbour Paramjit Singh (respondent No.5). Paramjit Singh (respondent No.5) and his wife Soni Kaur (respondent No.6) introduced the prosecutrix to Dhira Singh (convict). Both of them informed her that Dhira Singh was engaged in the work of boring wells and that he was well settled, besides, he was unmarried. Dhira Singh also represented himself before the prosecutrix to be unmarried. They pressed upon the prosecutrix for marrying Dhira Singh. Paramjit Singh and his wife (respondents No.5 and 6) used to arrange meetings between the prosecutrix and Dhira Singh. These meetings were concealed from her family members. The prosecutrix was of the firm belief that Dhira Singh (convict) was unmarried and would not mislead her.

Dhira Singh (convict) along with two unidentified persons (later on identified as Gurtej Singh @ Teji and Bhupinder Singh @ Bhinder - respondents No.3 and 4), according to their plan, came on two motorcycles at about 12.00/1.00 a.m. at night on 11.08.2012. They came near the house of the prosecutrix and called her out. The prosecutrix at the asking of Dhira Singh took gold ornaments weighing about 9 'tolas' (a unit of weight, one 'tola' is equal to 11.664 grams) along with her. Dhira Singh took her on his motorcycle to his village Mal Singh Wala, Tehsil Budhlada. Paramjit Singh and his wife Soni Kaur (respondents No.5 and 6) were also present at the 'phirni' of the village (circular road around the village). They left her with Dhira Singh. Paramjit Singh gave his mobile phone to the prosecutrix for her use. At the house of Dhira Singh at village Mal Singh Wala, Binder Kaur (alias Gurjit Kaur) (respondent

No.2) mother of Dhira Singh was also present. She also informed the prosecutrix that her son Dhira Singh was still unmarried. She assured the prosecutrix that she would keep her as a daughter-in-law in their house. During the night, Dhira Singh kept the prosecutrix in his house and committed sexual intercourse with her.

On the next day, Dhira Singh took the prosecutrix to Rahon Mandi, District Nawanshahar. She was kept in a rented accommodation there on the pretext that he would marry her. There also he had sexual intercourse with her. Dhira Singh then took her to Laxmi Narain Mandir Chandigarh on 18.09.2012. He got an affidavit deposed from her and solemnized his marriage with her. Dhira Singh then kept her with her relatives at Bhawanigarh from 18.09.2012 to 28.09.2012. There also on the pretext that he was married, had sexual intercourse with her. The family of the prosecutrix on 24.08.2012 lodged a report at Police Station Sardulgarh that the prosecutrix was not traceable after she had left the house. The prosecutrix was brought to Police Station Sardulgarh by Dhira Singh on 29.09.2012. He produced proof of his marriage with her. The police of Police Station Sardulgarh then produced her before learned Sub Divisional Judicial Magistrate, Sardulgarh on 29.09.2012. There she made a statement in favour of Dhira Singh that she was married to him. Accordingly, the learned Sub Divisional Judicial Magistrate, Sardulgarh sent her to the Protection Home at Majitha Road, Amritsar. Dhira Singh had assured her that he would come to Amristar and take her along with him and would keep her in his house as a wife but he did not come to Amritsar to take her along with him. Later she learnt that Dhira Singh was already married and he had two children from his first marriage.

Dhira Singh, it was alleged, had fraudulently committed rape with her by representing that he was an unmarried person. He committed rape on the pretext of marriage and again committed rape with her in his village, then at Rahon Mandi in the house of his relative. Dhira Singh and his mother had misappropriated her 9 'tolas' of gold by keeping the same in their house. Action was asked to be taken against Dhira Singh, his mother Binder Kaur (respondent No.2), her neighbour Paramjit Singh (respondent No.5) and his wife Soni Kaur (respondent No.6) and two unidentified persons (i.e. respondents No.3 and 4).

The prosecutrix was made to appear before the learned Sub Divisional Judicial Magistrate, Sardulgarh on 23.10.2012. Then she came with her father and narrated the incidents that had occurred. The statement of the prosecutrix was sent through PHG Attar Singh for registration of a case (FIR). Case was registered at Police Station Sardulgarh on 31.10.2012.

Investigation in the case was conducted by ASI Bhupinder Singh (PW-2). He during trial proved on record his endorsement (Ex.PA/1) on the statement of the prosecutrix; besides, the FIR (Ex.PB). A rough site plan (Ex.PD) of the house of Dhira Singh was prepared. Statements of witnesses were recorded in terms of Section 161 of the Code of Criminal Procedure ('Cr.P.C.' - for short). ASI Bhupinder Singh then produced the prosecutrix for her medical examination at Civil Hospital, Mansa on 06.11.2012. The doctor after examining her handed over a parcel and a sealed envelope to ASI Bhupinder Singh, which was taken in possession in pursuance of memo (Ex.PC). Then the accused

Dhira Singh was arrested by ASI Bhupinder Singh on 08.11.2012.

Supplementary statement of the prosecutrix was then recorded on 10.11.2012 and Gurtej Singh @ Teji and Bhinder Singh (respondents No.3 and 4) were nominated as accused. On the same day, the medical examination of Dhira Singh was got conducted. Gurtej Singh (respondent No.3) was arrested vide memo (Ex.PK) on 04.12.2012 and two gold rings were recovered from him in pursuance of his disclosure statement (Ex.PL), which were converted into a parcel and taken in possession by the police in pursuance of a separate memo (Ex.PM). Personal search of Gurtej Singh was conducted vide memo (Ex.PN). Rough site plan (Ex.PO) of the place of recovery was prepared. Bhupinder Singh @ Bhinder (respondent No.4) was arrested vide memo (Ex.PP) on 05.12.2012. His personal search was conducted vide memo (Ex.PQ). The birth certificate of Dhira Singh was taken in possession vide memo (Ex.PR). The samples of the case, which were taken in possession were sent to the office of the Chemical Examiner at Kharar.

An application regarding Paramjit Singh @ Pama and Soni Kaur (respondents No.5 and 6) being innocent not being involved in the case was filed with the police and an inquiry had been marked to the Deputy Superintendent of Police. The police report ('challan') was filed, therefore, only against four accused i.e. Dhira Singh (convict), Gurjit Kaur (respondent No.2), Gurtej Singh (respondent No.3) and Bhupinder Singh (respondent No.4) on 04.02.2013 alleging the commission of offences punishable under Sections 420, 376, 494, 406 and 120-B IPC.

The learned Illaqa Magistrate observed that a prima facie case for the offence under Section 376 IPC had been said to have been committed. He accordingly committed the case to the Court of learned

Sessions Judge, Mansa for trial against the aforesaid four accused. The learned Additional Sessions Judge, Mansa to whom the case was assigned framed charges against the aforesaid four accused for the commission of offences punishable under Sections 406, 376, 494 and 120-B IPC. They pleaded not guilty to the charges and claimed trial.

The statements of the prosecutrix in examination-in-chief and that of Gurdip Singh, father of the prosecutrix, were recorded. The prosecutrix had been partly cross-examined and then an application was filed by the learned Assistant Public Prosecutor for the State in terms of Section 319 Cr.P.C. for summoning Paramjit Singh (respondent No.5) and his wife Soni Kaur (respondent No.6) as additional accused. The said application was allowed by the learned Additional Sessions Judge, Mansa vide order dated 16.07.2013 and they were ordered to be summoned for the commission of offences under Sections 406, 420 and 120-B IPC. On their appearance, charges were framed against all the six accused for the offences under Sections 406 read with Section 120-B, 376 and 494 IPC. Later the charge was amended and the accused were charged for the offence under Section 420 IPC as well. The accused pleaded not guilty to the charges and claimed trial.

The prosecution in order to establish its case examined as many as nine witnesses and also tendered documents in evidence including the affidavit of Constable Simranjit Singh as Ex.PX and the birth certificate of Mehak Preet son of Dhira Singh as Ex.PY.

The statements of the accused in terms of Section 313 Cr.P.C. were recorded and the evidence appearing against the accused was put to them. The accused Dhira Singh (convict), Gurjit Kaur

(respondent No.2) and Bhupinder Singh (respondent No.4) took the plea that they were innocent and had been falsely implicated in the case due to party faction in the village. Gurtej Singh (respondent No.3) stated that he was innocent and had been falsely implicated in the case as after the alleged occurrence he used to help Dhira Singh (convict) in effecting a compromise. Paramjit Singh (respondent No.5) stated that he was innocent. He had been implicated falsely in the case as he borrowed a sum of Rs.25,000/- from Gurdip Singh, the father of the prosecutrix. He stated that an altercation took place between him and Gurdip Singh regarding return of Rs.25,000/-. An application was moved by him before the higher police officers and in the inquiry, he was declared innocent. Soni Kaur (respondent No.6) who is the wife of Paramjit Singh (respondent No.5) took a similar plea as her husband. In defence, the accused examined Ram Singh (DW-1), who proved on record the application dated 23.01.2013 moved by Pal Kaur as Ex.DW-1/A and the inquiry report as DW-1/B; besides, Inspector Pritpal Singh (DW-2), who conducted the inquiry on the application of Pal Kaur proved the record of his inquiry report as Ex.DW-2/A.

The learned Additional Sessions Judge, Mansa vide judgment and order dated 12.06.2014 convicted Dhira Singh for the offences punishable under Sections 376 and 417 IPC for committing rape and for misstating the fact of his being unmarried and inducing prosecutrix to indulge in sexual relations with him, which had caused harm to her body, mind and reputation. However, the prosecution, it was held, had failed to bring home the guilt against the remaining accused beyond shadow of reasonable doubt. Accordingly respondents No. 2 to 6

were acquitted. Dhira Singh, as already noticed, was sentenced to undergo rigorous imprisonment for 7 years, besides, pay a fine of Rs.5000/- and in default in payment of fine, it was ordered that he shall further undergo rigorous imprisonment for a period of five more months for the offence punishable under Section 376 IPC. He was also sentenced to undergo rigorous imprisonment for 6 more months for the offence punishable under Section 417 IPC. Both the sentences were ordered to be run concurrently. The prosecutrix aggrieved with the acquittal of respondents No.2 to 6 has filed the present appeal.

Learned counsel for the appellant has contended that the mother of Dhira Singh namely Gurjit Kaur @ Binder Kaur (respondent No.2) had misrepresented to the prosecutrix that her son Dhira Singh was unmarried whereas he was married. Therefore, the offence of cheating is made out against her. Besides, she had misappropriated the gold ornaments of the prosecutrix. It is further contended that Paramjit Singh and Soni Kaur (respondents No.5 and 6) are neighbours of the prosecutrix. They had misrepresented that Dhira Singh was unmarried and thereby forced her to go with him. It is also contended that Gurtej Singh @ Teji and Bhupinder Singh @ Bhinder (respondents No.3 and 4) who were stated to be the unidentified persons, were also part of the conspiracy to cheat the prosecutrix. Therefore, they are also liable to be convicted and sentenced for the offences as alleged.

We have given thoughtful consideration to the matter.

As already noticed Dhira Singh against whom there were allegations of having committed rape and cheating, has been convicted and sentenced in the present case by the learned Additional Sessions

Judge, Mansa for the offences under Sections 376 and 417 IPC. It is to be noticed that initially police report ('challan') was filed against four accused i.e. respondents No.1 to 4 for the offences under Sections 420, 376, 494, 406 and 120-B IPC. The allegations of committing rape and cheating; besides, misrepresentation are against Dhira Singh. Moreover, he is said to have committed the offence under Section 494 IPC for performing second marriage during the life time of his first wife namely Sukhjit Kaur (PW-8).

The prosecutrix while appearing as PW-1 supported the prosecution case and proved her statement recorded by the police as Ex.PA. The father of the prosecutrix namely Gurdip Singh (PW-3), deposed that her daughter was not traceable and was missing. He also supported the prosecution case. Dr. Deepika Jindal (PW-5) conducted medical examination of the prosecutrix and she tendered in evidence her affidavit Ex.PW-5/A in examination in chief, the MLR (Ex.PW-5/B) of the prosecutrix and chemical examiner's report (Ex.PW-5/C). Sukhjit Kaur (PW-8) is the wife of Dhira Singh. She deposed regarding her marriage with Dhira Singh and that she had two children from the said marriage.

A reading of the allegations of the prosecutrix would show that the offence of rape is attributed to Dhira Singh only, who has been convicted and sentenced. Insofar as the accused Gurjit Kaur @ Binder Kaur, Paramjit Singh alias Pamma and Soni Kaur (respondents No.2, 5 and 6) are concerned, the allegations are of cheating the prosecutrix by misrepresenting to her the fact that Dhira Singh was unmarried knowing well that he was married and he had two children from the marriage.

The learned trial Court in this regard considered the question as to whether the accused Dhira Singh, his mother Gurjit Kaur, Paramjit Singh and Soni Kaur had deceived the prosecutrix and if so, whether such deception makes out the offence of cheating. The learned trial Court insofar as the role of Gurjit Kaur, Paramjit Singh and Soni Kaur (respondents No.2, 5 and 6) was concerned, noticed that it had been alleged by the prosecutrix that all three of them had assured her that Dhira Singh was unmarried. It was held that taking these allegations as true, even then it could not be said that they by stating a wrong fact of marriage of Dhira Singh induced the prosecutrix to marry him or to indulge in sexual relations with him. Besides, nothing had come on record that Paramjit Singh and Soni Kaur (respondents No.5 and 6) knew about the marital status of Dhira Singh and that they knowingly stated a wrong fact to the prosecutrix. It was held that the bald statement of the prosecutrix that all the said three accused had assured her that Dhira Singh was unmarried was not sufficient to hold that they had deceived the prosecutrix with a dishonest intention to cause harm to her.

Insofar as offence under Section 406 read with Section 120B IPC regarding misappropriation of the gold of the prosecutrix is concerned, the learned trial court noticed that the prosecutrix while appearing in Court as PW1 submitted that while leaving her house on 11.08.2012 with Dhira Singh, she took 9 'tolas' gold with her. The same was in the shape of a necklace, 9 rings and 1 'tikka' (an ornament worn on the forehead). According to the prosecutrix, the gold was kept by Dhira Singh and his mother in their house. Therefore, the allegation of misappropriation was only against Dhira Singh and his mother. She did

not name Gurtej Singh and Bhupinder Singh (respondents No.3 and 4) that they connived with main accused and committed criminal breach of trust of the gold ornaments. It was noticed that the Investigating Officer Bhupinder Singh while appearing as PW2 came up with a new story that on 10.11.2012 a supplementary statement of the prosecutrix was recorded wherein she named Gurtej Singh and Bhupinder Singh (respondents No.3 and 4). Gurtej Singh (respondent No.3) was arrested on 04.12.2012 and he made a disclosure statement (Ex.PL) that two finger rings were handed over to him by Dhira Singh which he had concealed in the drawers of the bed and that only he knew about the same and could get the same recovered. On the basis of the said disclosure statement (Ex.PL), the accused Gurtej Singh (respondent No.3) is said to have got recovered two gold rings from the place which he had disclosed, which were taken in possession in pursuance of memo (Ex.PM). It was noticed by the learned trial Court that except for the two rings alleged to have been recovered from accused Gurtej Singh (respondent No.3), no recovery of the remaining alleged gold ornaments had been effected from any other accused. Besides, the prosecution had miserably failed to prove on record that the gold ornaments weighing 9 'tolas' were ever entrusted to any of the four accused (i.e. respondents No.2, 3, 5 and 6) or that they had committed criminal breach of trust of the said property. It was also noticed that the prosecutrix during her cross examination on this aspect had stated that she did not have any bill of the above said gold jewellery with her. The father of the prosecutrix namely Gurdip Singh (PW-3) although had deposed in his examination in chief that the prosecutrix had taken 9 'tolas' of gold with her to the village of the

accused but when cross examined on this aspect, he replied that whatever he had stated in his examination in chief was not in his personal knowledge rather his daughter had informed him of the same. The testimony of Gurdip Singh (PW-3), it was held did not inspire confidence as the same was hearsay evidence. ASI Bhupinder Singh (PW-2) the Investigating Officer in the case in his cross examination accepted that no bill regarding ownership of gold rings was produced by Gurdip Singh, father of the prosecutrix. It was noticed that Gurdip Singh did not even state as to from where he purchased the gold. The same was also not got identified by him. It was held that where the ownership of the gold rings had not been proved and the recovery of remaining gold ornaments was never effected from any of the accused; besides, the prosecution had failed to link the two rings allegedly recovered from Gurtej Singh with the gold rings allegedly carried by the prosecutrix. Accordingly, no case of misappropriation of gold ornaments was made out against any of the accused. All the accused were acquitted for the offence under Section 406 IPC.

The learned trial Court in the facts and circumstances has correctly appreciated the evidence and material on record insofar as respondents No.2 to 6 are concerned. The allegation against Gurjit Kaur @ Binder Kaur (respondent No.2) is that after the prosecutrix was taken by Dhira Singh from her house on 11.08.2012, he took her to his house at village Mal Singh Wala where his mother was also present and she told the prosecutrix that her son Dhira Singh was still unmarried; besides, she assured her that he would keep her as a daughter in law in the house.

However, the said allegation against Gurjit Kaur (respondent No.2) to the

effect that she represented to the prosecutrix that her son Dhira Singh was unmarried and that she would keep the prosecutrix as her daughter in law is not substantiated or proved by any cogent or convincing evidence of the prosecution. In any case, there is no allegation against Gurjit Kaur (respondent No.2) that she by stating a wrong fact of Dhira Singh being unmarried, had induced the prosecutrix to marry him or to indulge in sexual relations with him. Besides, nothing had come on record that Paramjit Singh and Soni Kaur (respondents No.5 and 6) knew about the marital status of Dhira Singh and that they knowingly stated a wrong fact to the prosecutrix. The bald statement of the prosecutrix that all the three accused (i.e. respondents No.2, 5 and 6) had assured her that Dhira Singh was unmarried was indeed not sufficient to hold that the above three accused deceived prosecutrix with a dishonest intention to cause harm to her.

The prosecution also failed to prove on record that the gold ornaments weighing 9 'tolas' were ever entrusted to any of the accused. The prosecutrix while appearing as PW1 did state that while leaving her house on 11.08.2012 with Dhira Singh, she took 9 'tolas' gold with her. The same was in the shape of necklace, 9 rings and 1 'tikka'. The gold according to the prosecutrix was kept by Dhira Singh and his mother in their house. She, therefore, did not name Gurtej Singh and Bhupinder Singh (respondents No.3 and 4) regarding criminal breach of trust of the gold ornaments. According to ASI Bhupinder Singh (PW-2) the Investigating Officer in the case, a supplementary statement of the prosecutrix was recorded on 10.11.2012 wherein she named Gurtej Singh and Bhupinder Singh (respondents No.3 and 4). Gurtej Singh (respondent

No.3) after his arrest on 04.12.2012 made a disclosure statement (Ex.PL) that two finger rings were handed over to him by Dhira Singh which he had concealed in the drawers of a bed and only he knew about the same and could get the same recovered. The accused Gurtej Singh (respondent No.3) is said to have got recovered the two gold rings from the place which he disclosed. However, except for the two rings alleged to have been recovered from him (respondent No.3), there is no recovery of the remaining alleged gold ornaments from any other accused. The prosecution even otherwise failed to prove the element of entrustment of gold ornaments weighing 9 'tolas'.

In Ram Narain Poply v. Central Bureau of Investigation, AIR 2003 SC 2748, it was held that to constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's open use, or use in violation of a legal direction or of any legal contract and the misappropriation or conversion or disposal must be with a dishonest intention. The term entrustment it was said, is not necessarily a term of law. It may have different implication in different context. In its most general significations all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all.

In the present case the element of entrustment has not been proved. Therefore, the offence of criminal breach of trust would indeed not be made out. In fact, the prosecutrix during her cross examination stated that she did not have any bill of the gold jewellery with her.

Gurdip Singh (PW-3), the father of the prosecutrix, deposed in his

examination in chief that the prosecutrix had taken 9 'tolas' of gold with her to the village of the accused but in cross examination he stated that whatever he had stated in his examination in chief was not in his personal knowledge. His daughter had rather informed him of the same.

The testimony of Gurdip Singh (PW-3) being based on hearsay evidence would be clearly inadmissible in evidence. ASI Bhupinder Singh (PW-2) the Investigating Officer in the case in his cross examination accepts that no bill regarding ownership of gold rings was produced by Gurdip Singh (PW-3), father of the prosecutrix. Gurdip Singh (PW-3) did not state as to from where he purchased the gold. The same was also not got identified from him. The ownership of the gold rings has not been proved and the recovery of gold ornaments except for two rings was not shown to have been effected from any of the accused. According to the prosecutrix, the alleged gold items were kept by Dhira Singh and her mother (respondent No.2) in their house. The two gold rings are, however, shown to have been recovered from Gurtej Singh (respondent No.3). In any case it is indeed not shown as to how they reached him or were entrusted to him. The prosecution failed to link the alleged recovery of two rings from Gurtej Singh with the gold rings allegedly carried by the prosecutrix. In the circumstances, no case of misappropriation of gold ornaments can be said to be made out.

There is no material on record to show that Paramjit Singh and Soni Kaur (respondents No.5 and 6) were aware of the marital status of Dhira Singh and they had made a false representation to the prosecutrix that he was unmarried. The prosecutrix was girl of 19 years and she was able to understand the consequences of what she was doing.

The offence under Section 494 IPC is not made out because Sukhjit Kaur (PW-8) who is the first wife of Dhira Singh has not complained against him and in terms of Section 198 Cr.P.C. only the person aggrieved by an offence punishable under Section 494 or Section 495 of IPC, i.e. the first wife who could make such a complaint. There is no complaint by Sukhjit Kaur (PW-8); therefore, the said offence has rightly been held to be not made out.

In K.Venkateshwarlu v. State of A.P., (2012) 8 SCC 73, Hon'ble the Supreme Court said that it had repeatedly stated as to what should be the approach of the High Court while dealing with an appeal against acquittal. It was held that if the view taken by the trial Court is a reasonably possible view, the High Court cannot set it aside and substitute it by its own view merely because that view is also possible on the facts of the case. The High Court, it was further held has to bear in mind that presumption of innocence of an accused is strengthened by his acquittal and unless there are strong and compelling circumstances, which rebut that presumption and conclusively establish the guilt of the accused, the order of acquittal cannot be set aside unless the order of acquittal is perverse, totally against the weight of evidence and rendered in complete breach of settled principles underlying criminal jurisprudence, no interference is called for with it.

In the circumstances the learned trial court on correct appreciation of the evidence and material on record has acquitted respondents No.2 to 6 for the offences for which they were charged and there is nothing to dislodge the findings reached at by the learned trial Court. No ground is made out to interfere with the acquittal of

respondents No.2 to 6 recorded by the learned trial court. Therefore, there is no merit in the appeal and the same is accordingly dismissed.

It is, however, made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the appeal, if any, filed by Dhira Singh and the same are only for the purpose of disposal of the appeal against acquittal of respondents No. 2 to 6.

(S. S. Saron)
Judge

(P. B. Bajanthri)
Judge

11.08.2015
pooja saini/A.Kaundal