

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-1407-DB of 2014
Date of Decision : December 17, 2015

Kali Ram Bansal

.....Appellant

VERSUS

State of Haryana and another

.....Respondents

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

Present : Mr. Sumit Gupta, Advocate
for the appellant.

T.P.S. MANN, J.

The appellant, who is father of the prosecutrix, has filed the present appeal for challenging the judgment dated 19.3.2014 passed by learned Additional Sessions Judge (Special Court), Karnal whereby respondent No.2-Joginder Verma @ Sonu (here-in-after referred to as 'the accused'), stood acquitted of the charges under Sections 451, 328, 323, 307, 376 read with 511 and 506 IPC.

The case of the prosecution, in nutshell, is that on 18.6.2013, a VT message was received at Police Station Assandh that the prosecutrix was lying admitted in Ram Chand Memorial

Hospital, Karnal. On this, ASI Ranbir Singh visited the said hospital and after obtaining ruqa, presented application for obtaining the fitness of the prosecutrix. The doctor declared her unfit to make statement. No eye-witness was present in the hospital. On the next day, ASI Ranbir Singh again visited the hospital and submitted application for obtaining opinion of the doctor regarding the fitness of the prosecutrix to give statement. The doctor again declared her unfit for giving statement. At that time, the appellant, who is father of the prosecutrix met ASI Ranbir Singh and presented application stating therein that he was resident of village Ballah and had seven children including the prosecutrix. On 17.6.2013, his wife was away to Assandh as his brother-in-law had expired two days back while his son was away to Haridwar for immersing the ashes of his brother-in-law whereas he himself had gone to the cremation ground to attend the cremation of his neighbour Surinder Sharma. The prosecutrix, who was aged 27 years, was all alone in the house. At about 12.30 p.m., after the cremation was over, he went to the room of his house which was on the upper floor and saw the accused hugging the prosecutrix with an evil intention whereas the prosecutrix was trying to get herself released. The accused was pressing her mouth with his hand and then put some thing in her mouth. On seeing the appellant, the accused proclaimed that

nothing was going to happen with him whereas it would be the appellant who would be insulted in case the incident was reported. The accused stated that he was ready to give money to the appellant and if the appellant dare to take any action, he would eliminate him as well as his two sons. Saying so, the accused left the house of the appellant. It was also stated by the appellant in his application that prior to the occurrence, the accused had teased the prosecutrix many times and he had also made complaint at his house. It was further stated that the appellant on seeing the serious condition of the prosecutrix, got her admitted where he came to know that his daughter had been administered some poison and she had become unconscious as a result thereof. In fact, the accused had administered poison to her so that she would not make any statement regarding his ill activities. Accordingly, the appellant sought taking of legal action against the accused.

It is also the case of the prosecution that on the basis of application submitted by the appellant, FIR No. 343 dated 19.6.2013 was registered against the accused at Police Station Assandh for the offences under Sections 354-A, 425, 328, 307 and 506 IPC. During investigation of the case, spot inspection was done by FSL team. Statements of the witnesses were recorded. The accused was arrested, who suffered disclosure

statement pursuant to which he demarcated the place of occurrence. He was also subjected to medico legal examination. On 23.6.2013, the prosecutrix was declared fit to give statement and, accordingly, her statement was recorded under Section 161 Cr.P.C. On 24.6.2013, her statement was also got recorded under Section 164 Cr.P.C. by the Additional the Chief Judicial Magistrate, Karnal.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal as well as the record of the case which stands requisitioned, this Court finds that there is no evidence about the accused being determined to have sexual intercourse at any cost in spite of resistance offered by the prosecutrix. According to the prosecutrix, the accused first twisted her right arm and after removing her salwar, removed his pant. She kicked him but he again laid himself upon her and touched her male organ on her vagina. Despite the same, there was no penetration. There was no other action on the part of the accused. Therefore, the act on the part of the accused did not go beyond the stage of preparation and, thus, he cannot be held guilty for attempting to commit rape.

The prosecutrix was 27 years of age on the day of occurrence. One letter mark A was brought on record by the accused. In order to prove the handwriting on the said letter to be

that of prosecutrix, the accused examined Ram Dhan Babber, Handwriting and Finger Print Expert as DW4, who after examining the writing on leave application dated 18.9.2012 and comparing it with that on the letter mark A opined that the writings tallied with that of the prosecutrix. On going through the letter mark A, it is apparent that the prosecutrix was in love with the accused. Further, the accused did not remain loyal to her and instead, married another girl in the month of November, 2012. Realising that her lover had left her, she appears to have made an attempt to end her life by consuming organ phosphorous pesticide. Such like pesticide cannot be taken by accident because of its pungent smell.

From the testimony of PW7 Dr.Kamal Charaya, Medical Officer, Shri Ram Chand Memorial Hospital, Karnal, it is made out that the prosecutrix was admitted in the said hospital on 17.6.2013 with alleged history of consumption of organ phosphorous compound for which she was treated and discharged on 24.6.2013. During her cross-examination, the doctor admitted that when the patient was admitted on 17.6.2013, she was stable and conscious. She was in a position to answer the question. The patient remained stable on 18th, 19th, 20th and 21st of June, 2013 as per the vitals mentioned in the bed head ticket. The patient was brought by Satya Devi, daughter of

Kasturi Lal and was got admitted. If the prosecutrix was stable and conscious on 17.6.2013 and also on the four successive days i.e. upto 21.6.2013, the doctor had no material to declare the prosecutrix unfit. Even otherwise, when the prosecutrix was admitted, no injury whatsoever was noticed on her person. In case the accused had forcibly made the prosecutrix to consume organ phosphorous pesticide, there were bound to be some injuries present. The absence of any injury is indicative of the fact that it was the prosecutrix herself who had consumed the pesticide whereas the accused had no role to play.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the trial Court.

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

**(T.P.S. MANN)
JUDGE**

December 17, 2015
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**(GURMIT RAM)
JUDGE**

CRM 27701 of 2014 in
Crl. Appeal D-1407-DB of 2014

Kali Ram Bansal Vs. State of Haryana and another

Present : Mr. Sumit Gupta, Advocate
for the applicant/appellant.

Heard. Sufficient cause has been shown for
condonation of delay in filing of the appeal. The application is,
therefore, accepted and the delay of 44 days in filing of the
appeal is condoned.

(T.P.S. MANN)
JUDGE

December 17, 2015
ajay-1

(GURMIT RAM)
JUDGE