

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA-D-1700-DB of 2014 (O & M)
Date of decision : 23.04.2015

Gulzar Singh

.....Appellant

Versus

State of Punjab and others

.....Respondent

CORAM HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Ashok Kumar Sama, Advocate for the
applicant/appellant.

RAMENDRA JAIN, J.

By way of present appeal, Gulzar Singh-appellant has assailed the findings of the learned Additional Sessions Judge, Fazilka in the impugned judgment dated 16.10.2013 to the extent that Happy son of Makhan Singh (respondent No.2), Raja and Vicky @ Duga sons of Jaswant Singh (respondents No.3 and 4) respectively have been acquitted for the offence punishable under Section 120-B Indian Penal Code ('IPC' - for short) and Section 376 G [sic. Section 376 (2) (g)] read with Section 120-B IPC. In terms of the said judgment dated 16.10.2013, Raju son of Makhan Singh (accused No.1) has, however, been convicted for the offence punishable under Section 376 IPC. He (accused No.1) has been sentenced

to undergo rigorous imprisonment for seven years; besides, pay a fine of Rs.10,000/- and in default in payment thereof undergo further rigorous imprisonment for a period of three years.

Along with the appeal CRM No.34155 of 2014 has been filed seeking condonation of 198 days delay in filing the appeal.

Brief facts of the case relevant for decision of this appeal are that on 16.09.2012, on receipt of information at Police Post Kuhi Khera from the Civil Hospital, Fazilka regarding rape of daughter of the appellant-Gulzar Singh, ASI Sukhpal Singh along with other police officials after collecting copy of the MLR from the MHC Police Station Sadar, Fazilka, went there. The prosecutrix was, however, not present there. Accordingly, a 'rapat' (report) was recorded in the 'roznamcha' (daily diary register) in this respect. Again, on 17.09.2012, SI Balwinder Singh, In-charge Police Post Kuhi Khera along with other police officials reached the house of the prosecutrix at Village Patre Wala, where her father Gulzar Singh (appellant) disclosed that she had gone in her relations and he would get her statement recorded after bringing her on the next day. In this respect also, a 'rapat roznamcha' (report in the daily diary register) was recorded by SI Balwinder Singh. On 18.09.2012 i.e. on the next day, ASI Balwinder Singh with other police officials was present at the Bus Stand, Kuhi Khera on patrol

duty. The prosecutrix along with her father Gulzar Singh and Makhan Singh son of Sunder Singh met the police party.

The prosecutrix then got recorded her statement, which is to the effect that she was a resident of village Patre Wala aged about 16 years and she did household work. They were two sisters. Her elder sister Seema Rani was already married. While she was small in age, her mother Amro Bai had expired and consequently, her father Gulzar Singh had solemnized second marriage with Baljit Kaur. Near to their house, there were the houses of accused Happy (respondent No.2), Raju son of Makhan Singh (accused No.1), besides, Vicky alias Duga and Raja sons of Jaswant Singh (respondents No.4 and 3) respectively. She was on visiting terms with Mani, sister of Happy etc. On 15.09.2012, she and her father Gulzar Singh were present in their house, while her mother Baljit Kaur had gone in her relations. The time would be about 8.30 a.m., that Mani by standing at the gate called the prosecutrix to accompany her to convenience themselves, on which she accompanied her and they went to the fields at some distance from her house. When they reached at a distance of about 5/6 'killas' (measurement of distance in acres) from the village at the 'watt' (ridge in the fields) at a distance of 2 'killas' in the cotton fields of Ram Chand of village Jand Wala Meeran Sangla, Mani sat in the cotton fields and when she went ahead of her at some distance, she found

the aforesaid co-accused Happy and Raju, brothers of Mani and their cousins Vicky and Raja sitting there. They caught hold of her. However, when she saw at her back, while raising an alarm, she found that Mani was going towards the village. However, all the above said persons forcibly took her in the big cotton fields and threw her on the ground and Happy caught hold of her arms, Vicky caught hold of her legs and Raju (accused No.1) by opening the string of her 'salwar' and pulling it down, forcibly, committed rape upon her without her consent. On raising an alarm, respondent No.2 Happy closed her mouth and thereafter co-accused respondent No.3 Raja forcibly committed rape upon her. Her hue and cry attracted her father Gulzar Singh, uncle Rattan Singh and Sonu son of Piara Singh and they searching for her reached there. On seeing them, Happy etc. the aforesaid accused left her and fled from the spot. Her father Gulzar Singh and others took care of her and she narrated the entire occurrence to them. At the time of her being dragged by above said persons, her 'salwar' and shirt had got torn from some places. She was brought by her father to the house. Thereafter, he took her to Abohar, where somebody them to proceed with the matter at Fazilka. Then her father and uncle Makhan Singh brought her to Fazilka and got her medico legally examined at the Government Hospital, Fazilka from a lady doctor.

Thereafter, they went to the village. However, due to fear and insult, they did not proceed further in the matter and she was sent in the relations of her father. On that day i.e. 18.09.2012, she along with her uncle Makhan Singh was going to inform the police regarding the occurrence. The Police met them on the way near the Bus Stand Khui Khera.

It was alleged that Mani daughter of Makhan Singh alongwith her brothers Happy (respondent No.2) and Raju (accused No.1) and her cousins Vicky @ Duga (respondent No.4) and Raja (respondent No.3) sons of Jaswant Singh by hatching a conspiracy took her to the fields, where Raja (respondent No.3) and Raju (accused No.1) forcibly committed rape with her, without her consent. Action was asked to be taken against them. She had heard her statement and accepted it to be correct. She put her right thumb impression on her statement, which was signed by Makhan Singh son of Sunder Singh resident of village Patre Wala and was attested by SI Balwinder Singh In-charge Police Post Khui Khera, Police Station Sadar Fazilka on 18.09.2012. Police proceedings were recorded in this regard.

On the basis of the said statement of the prosecutrix, present case was registered at Police Station Sadar Fazilka vide FIR No.163 dated 18.09.2012 (Ex.P10) by SI/SHO Chhinder Singh for the offences under Sections 376 (G)/120-B IPC.

The Police swung into action and the case was investigated by SI Balwinder Singh (PW9). The police party along with the prosecutrix and her uncle visited the place of occurrence and prepared rough site plan (Ex.P11) with correct marginal notes. Gulzar Singh, father of the prosecutrix produced the torn clothes which was worn by the prosecutrix at the time of occurrence. Parcel of the same was prepared which was sealed with the seal impression 'BS' and taken in police possession vide recovery memo Ex.P12. The statements of the witnesses were recorded. During investigation, Raju (accused No.1 who has been convicted), Happy (respondent No.2), Raja (respondent No.3) and Vicky @ Duga (respondent No.4) were arrested on 04.01.2013 and arrest memo Ex.P13 was prepared in this regard. A police request Ex.P16 for medical examination of Raju Singh (accused No.1) was moved on 05.01.2013 and Ex.P17 for the examination of Raja son of Jaswant Singh. Mani @ Manu daughter of Makhan Singh was, however, found innocent. After completion of investigation, 'challan' was prepared by SI/SHO Barjinder Singh. Police report under Section 173 of the Code of Criminal Procedure ('CrPC' - for short) in the present case in respect of the offences punishable under Section 376(G)/120-B IPC was filed against the aforesaid accused in Court.

Copies of the challan and relevant documents as envisaged under Section 207 Cr.P.C. were supplied to the

accused. After hearing learned counsel for the parties, the learned Judicial Magistrate Ist Class, Fazilka committed the case to the Court of Session vide order dated 12.04.2013.

The learned trial Court after hearing learned Public Prosecutor for the State and learned defence counsel charge-sheeted the aforesaid accused on the allegation that on 15.09.2012 at about 8.30 a.m. in the area of Jand Wala Meeran Sangla they all agreed with each other to do an illegal act of causing of committing rape with the prosecutrix and actually did some act in pursuance of that agreement and the offence they committed was punishable with imprisonment for more than two years, so they all had committed an offence of criminal conspiracy punishable under Section 120-B IPC. Besides, during the same time and place, Raja (accused No.1) with criminal conspiracy of his other co-accused committed gang rape with the prosecutrix against her wishes and without her consent and thereby they committed an offence under Section 376 G [Sic.] and his co-accused committed offence under Section 376 G read with Section 120-B IPC. The said offences were within the cognizance of the learned trial Court. The accused heard and understood the charges but they pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined as many as 10 witnesses namely Gulzar Singh PW-1; prosecutrix PW-2; Dr.Rinku Bala, Medical Officer, Civil

Hospital, Fazilka PW-3; Head Constable Tarlok Chand, Police Post Khui Khera, Police Station Sadar Fazilka PW-4; Dr. N.K.Sethi, Medical Officer, Civil Hospital, Fazilka PW-5; Pritpal Singh, Circle Patwari of Jand Wala Meeran Sangla PW-6; MHC Darshan Singh, Police Station Sadar Fazilka PW-7; Rattan Singh son of Sunder Singh resident of Patre Wala PW-8; SI Balwinder Singh, Incharge Police Post Khui Khera, Police Station Sadar Fazilka PW-9 and Baljeet Singh, Dealing Clerk, Birth & Death Branch Office of Civil Surgeon, Ferozepur PW-10

Statements of the accused under Section 313 Cr.P.C. were recorded by putting the entire incriminating material brought on record against them. They denied all the allegations of the prosecution and pleaded their false implication. Happy (respondent No.2) in his statement stated that he was innocent and was falsely implicated in the present case. Before the alleged occurrence, a dispute had arisen between the father of the prosecutrix and his father Makhan Singh and accused Raju (accused No.1/convicted) regarding the unauthorized use of electricity through 'kundi' connection in the same electric wire which leads to the house of Gulzar Singh. He (Happy) along with co-accused gave some beatings to Gulzar Singh in that quarrel. Due to that dispute, he along with co-accused were falsely implicated in this case. Sarpanch of the village namely Smt. Sukhwant Kaur had got the matter compromised between Gulzar Singh and Makhan Singh. It is

stated that Mani was not present in village Patre Wala on the day of the alleged occurrence and she had gone through her maternal village Kundral before the occurrence. Raja (respondent No.3) and Vicky @ Duga (respondent No.4) in their separate statements stated they were innocent and falsely implicated in the case.

In defence, the accused examined Banta Singh son of Hakam Singh DW-1 and Puran Chand son of Jhangi Ram DW-2.

After hearing learned PP for the State as well as learned counsel for the accused, the learned trial Court only held Raju (accused No.1) son of Makhan Singh to be guilty and sentenced him to 7 years of rigorous imprisonment for the offence punishable under Section 376(G) IPC, besides, pay a fine of Rs 10,000/- and in default of payment of fine to undergo further RI for a period of 3 months. The other remaining accused Happy son of Makhan Singh (respondent No.2), Raja (respondent No.3) and Vicky alias Duga (respondent No.4) sons of Jaswant Singh were, however, acquitted vide impugned judgment dated 16.10.2013.

Aggrieved against the acquittal of respondents No.2 to 4, Gulzar Singh father of the prosecutrix has preferred the present appeal.

We have heard learned counsel for the appellant and gone through the case file carefully.

Learned counsel for the appellant submits that respondents No.2 to 4 have wrongly and illegally been acquitted by the learned trial Court without appreciating the evidence and facts in a proper manner. There was sufficient evidence on record against them that the prosecutrix was a minor on the date of occurrence and the above accused had committed rape upon her. The prosecutrix while appearing as PW-2, it is stated, had categorically deposed that the aforesaid accused-respondents No.2 to 4 had also committed rape with her, besides, convict accused-Raju. Her statement was well corroborated by her father-Gulzar Singh PW-1. However, the learned trial Court has erred in ignoring the same. Dr.N.K.Sethi PW-5 conducted the medico legally examination of Raja (respondent No.3) and Raju (accused No.1). He specifically declared in his reports that they were well able to perform sexual intercourse. Rattan Singh PW-8 has also corroborated the prosecution version by specifically stating that the accused persons had committed rape on the prosecutrix and he was an eye-witness to the occurrence. The judgment of learned trial Court to the extent that respondents No.2 to 4 have been acquitted, it is submitted, is based on conjectures and surmises.

With these broad submissions, it is prayed for setting aside the impugned judgment insofar as respondents No.2 to 4 namely Happy (respondent No.2), Raja (respondent

No.3) and Vicky (respondent No.4) have been acquitted and their conviction is sought.

After giving our thoughtful considerations to the contentions raised by the learned counsel for the appellant, we are of the considered view that impugned judgment of the trial Court is well reasoned and sustainable in the eyes of law insofar as respondents No.2 to 4 have been acquitted and the present appeal being without any merit is liable to be dismissed for the reasons as follows:-

(i) As per initial version Ex.P1 of the prosecutrix before the police, all the four accused had dragged her in the cotton fields and thrown her on the ground. Happy (accused respondent No.2) caught hold of her arms and Vicky (accused respondent No.4) caught hold of her from her legs. The accused-Raju (since convicted) untied the string of her 'salwar' and pulled it off and committed sexual intercourse with her forcibly without her consent. When she raised an alarm, Happy (respondent No.2) closed her mouth with his hand and then Raja (respondent No.3) forcibly committed sexual intercourse with her without her consent. Her hue and cry attracted her father Gulzar Singh PW1, Rattan Singh PW8, an uncle of the prosecutrix and Sonu son of Piara Singh. On seeing them, all the accused ran away from the spot.

Contrary to this, when the prosecutrix appeared in the witness box as PW-2, she did not utter even a single word

about Raja (respondent No.3) committing rape on her. She simply stated that all the four accused caught hold of her. Happy (respondent No.2) caught hold of her arms and Vicky (respondent No.4) hold of her legs and Raju (accused No.1) forcibly committed rape upon her against her wishes and Raja (respondent No.3) was standing nearby. Happy (respondent No.2) had put his hand on her mouth and she had bit on it and he removed his hand. The allegation of biting the hand of Happy (respondent No.2) is a clear cut improvement in the statement of the prosecutrix, because had it been so, she would have, certainly narrated the said fact in her initial complaint.

(ii) The prosecutrix submitted an application Ex.P6 on 16.03.2012 before the learned Judicial Magistrate 1st Class, Fazilka (Duty Magistrate) for directing the SMO Civil Hospital, Fazilka, to conduct medical examination. In the said application she specifically mentioned that after of rape had been committed upon her, Banta son of Hakam came and rescued her. Said Banta Singh appeared as DW-1 and he deposed that Gulzar Singh (PW1) and his daughter (prosecutrix) belong to his village. Gulzar Singh was his cousin in relation. He knew Raju (accused No.1) etc. present in the court. They also belong to his village. It is stated by him that he had never seen the accused present in the Court, while committing rape with the prosecutrix nor any such

occurrence had ever been heard by him. He had seen the field of Ram Chand son of Rangu Ram of village Jand Wala Meeran Sangla. It was at a distance of about 4-5 KM. from his village locality. He was never called by the police nor was he joined in the investigation. In cross-examination he (DW1) stated that it was wrong to suggest that the field of Ram Chand was situated at a distance of 4-5 killas from the 'abadi' of village Patre Wala and nor was his land situated adjoining the land of Ram Chand. He was not cited as a witness in the case nor was his statement recorded in the case by the police. It was stated as wrong to suggest that he was deposing falsely to save the accused.

It is to be noticed that Banta Singh (DW1) was not cross examined as regards the fact that it was he who came and rescued the prosecutrix as had been stated by her in her application Ex.P6 made before the learned Judicial Magistrate Ist Class, Fazilka (Duty Magistrate) on 16.09.2012 a day after the occurrence. The prosecution in fact was liable to put so much of its case as it concerned him and failure to question him in this regard, the Court is to presume that his account has been accepted insofar as respondents No.2 to 4 are concerned. Hence the prosecution story is falsified from this angle too as regards respondents No.2 to 4.

In State of Haryana Vs. Ram Singh, 2002 (1) RCR (Criminal) 443, it was held by Hon'ble the Supreme Court that

the evidence tendered by defence witnesses cannot always be termed to be a tainted one – the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution.

According to the version of the prosecutrix, Banta Singh (DW-1) in her application Ex.P-6 had witnessed the occurrence and had rescued her, so it was the bounden duty of the prosecution to examine him and by not doing so, an adverse inference is liable to be drawn that the things did not happen in the manner as narrated by the prosecution. It is also needless to mention here that test identification parade of any of respondents No.2 to 4 was also not got conducted by the prosecution, which is also quite fatal insofar as the case against them is concerned.

(iii) The prosecutrix appearing as PW-2 had stated that Raju (accused No.1) had committed rape upon her against her wishes, whereas, contrary to it Rattan Singh an uncle of the prosecutrix being brother of Gulzar Singh appeared as PW-8 and he stated that he along with Sonu and his brother Gulzar Singh had gone to see Mani and the prosecutrix. On the way Mani was returning home but his niece (prosecutrix) was not accompanying her. At the 'katcha pahi' (passage) which was used as a way to ease out, they heard 'raula' (noise) from the

cotton crop field and when they reached there, they witnessed that Happy was holding the arms while Vicky alias Duga was holding the legs of his niece. It is stated that Raja (respondent No.3) was committing wrong act with the prosecutrix and other person Raju was witnessing it. On seeing them, all the accused fled away from the spot after leaving the prosecutrix.

The said statement of Rattan Singh (PW8) amounts to a major contradiction in the prosecution story. More so, the prosecutrix (PW-2) in her cross-examination has deposed that after reaching the house, she narrated the whole occurrence to her father only, but not to her uncle Rattan Singh (PW-8).

(iv) It may also be noticed that Gulzar Singh (PW-1) father of the prosecutrix stated that he alongwith Rattan Singh (PW8) and Sonu went in search of his daughter outside the village, where he saw that Happy was holding the arms of his daughter and Vicky was holding her legs, Raja was committing rape with her and the Raju (accused No.1) was standing there and on seeing them all the aforesaid persons fled away from the spot. Meaning thereby he (PW1) and Rattan Singh (PW-8) had witnessed the occurrence. However, in terms of the application (Ex.P6) moved by the prosecutrix before the learned Judicial Magistrate Ist Class, Fazilka (Duty Magistrate) it has been mentioned that the occurrence was witnessed by Banta son of Hakam (DW-1) who came and

rescued her. If, Gulzar Singh (PW-1) and Rattan Singh (PW-8) had witnessed the occurrence, in that event, the prosecutrix in her above application (Ex.P-6) would have certainly mentioned their names as eye-witnesses but by giving the name of Banta (DW-1) as an eye-witness the prosecution case stands falsified insofar as respondents No.2 to 4 are concerned. Besides, had Gulzar Singh (PW1) and Rattan Singh (PW8) been present there, in that event, the prosecutrix would have narrated the entire episode to them at the spot itself and not to her father Gulzar Singh (PW1) only after reaching home.

(v) As per prosecution case, rape was committed upon the prosecutrix by respondents No.2 to 4 and Raju (accused No.1/convict) on 15.09.2012, but her father Gulzar Singh (PW1) and her uncle Rattan Singh (PW8), did not immediately bring her to the police station. However, on the next day i.e. on 16.09.2012, they directly appeared before the learned Judicial Magistrate Ist Class, Fazilka (Duty Magistrate) and moved an application (Ex.P6/Mark D1) for her medico legally examination. On the same day intimation was sent by the Civil Hospital, Fazilka to the Police Post Kuhi Khera, whereupon ASI Sukhpal Singh along with other police officials after collecting the MLR from MHC PS Sadar, Fazilka, went to Civil Hospital, Fazilka, but the prosecutrix was not found present there and accordingly, a 'rapat' (report) in this respect

was recorded in the 'roznamcha' (daily dairy register) on that very day. Thereafter on the next day i.e. 17.09.2012, ASI Balwinder Singh (PW-9) along with other police officials, went to Village Patre Wala, where her father Gulzar Singh (PW1) disclosed to him that the prosecutrix had gone in her relations and he would get her statement recorded on the next day. Resultantly, another 'rapat roznamcha' was recorded in this respect. However, on 18.09.2012 when SI Balwinder Singh (PW9) and other police officials were present at the Bus Stand, Khui Khera in connection with routine patrol duty, the prosecutrix alongwith her father Gulzar Singh (PW-1) and Makhan Singh son of Sunder Singh met the police and got her statement (Ex.P1) recorded which set the law into motion.

The above conduct of the prosecutrix (PW-2) and her father Gulzar Singh (PW-1) in lodging the FIR after four days delay gives the impression that deliberation and consultation were going on with Sh. R.K.Angi, Advocate. Gulzar Singh (PW1) in his cross examination also states that SI Balwinder Singh (PW9) came to him on 16.09.2012 and 17.09.2012 but he did not make any statement before him. He asked the above police official to record his statement after four days after consulting with their family members. It could be that after deliberations and consultations, respondents No.2 to 4 were falsely implicated in the instant case. In fact the prosecutrix in her cross-examination while appearing as

PW-2 categorically stated that her father consulted Mr. Rajesh Kumar Angi, Advocate, on phone, regarding the occurrence and as per his advice, she along with her father came to his house at Fazilka for medical examination. She did not know whether any application was moved through Mr. Angi, Advocate. Mr. Angi, Advocate had produced her before the learned Magistrate at Fazilka and she had put her thumb impression on the application duly moved by Mr. Angi, Advocate before the learned Magistrate at Fazilka.

The prosecutrix in her further cross examination, stated that she had not shown her clothes to the doctor, but in the next breath deposed that she had shown the same to the doctor. It is stated as correct that when rape was committed by the accused, the stains of semen fell on her clothes i.e. 'salwar', 'chuni' and lady shirt and she had shown the same to the doctor, who conducted her medical examination. According to her, semen fell on the ground also. SI Balwinder Singh (PW9), the Investigating Officer stated that Gulzar Singh, father of the prosecutrix produced torn clothes which were worn by the prosecutrix at the time of occurrence. A parcel of the same was prepared and he sealed the parcel with his seal impressions 'BS'. The parcel was taken in police possession vide recovery memo Ex.P12. In cross examination, it is stated that the clothes of the prosecutrix were not sent to the Chemical Examiner by the MHC/SHO of

Police Station Sadar Fazilka because there was no semen or blood stains appearing on the clothes. The prosecutrix, however, stated that semen had fallen on her clothes. Besides, Gulzar Singh (PW1) in his cross examination stated that when his daughter returned to the house her clothes were loathed with mud and semen. The lady doctor, who conducted the medical examination, had also seen the mud and semen on the clothes. Therefore, failure to send the clothes of the prosecutrix for chemical examination is also fatal to the prosecution case as against respondents No.2 to 4. As against this, Dr. Rinku Bala (PW-3), who conducted the medico legally examination of the prosecutrix stated that she did not observe any semen on the clothes of the prosecutrix. She (PW3) did not mention the clothes worn by the prosecutrix at the time of her medical examination. She had not taken her clothes in possession.

Even otherwise, if the accused had forcibly raped the prosecutrix by dragging and throwing her in the cotton fields, she would have certainly suffered some rashes on her body, but her MLR Ex.P-3 as also the deposition of Dr. Rinku Bala (PW3) speaks otherwise that no mark of any external injury was seen on any part of her body, which too falsifies that she was raped by respondents No.2 to 4.

(vi) Father of the prosecutrix namely Gulzar Singh appearing as PW-1 in his cross-examination stated that after

the occurrence they brought the prosecutrix to their house and then took her to Civil Hospital, Abohar where a person met them and he told them that no action would be taken in the hospital against the accused. Then he along with Makhan and his daughter (prosecutrix) came to Fazilka and met Mr. R. K. Angi, Advocate who obtained orders from the Court and on the same they went to the Civil Hospital, Fazilka where the prosecutrix was admitted in the hospital. Then they went to Police Post Bodhi Wala, where his statement as well as of his daughter and Makhan Singh were recorded by the Police. However, no such statements have been produced by the prosecution and neither are there any such statements on the file, for which again an adverse inference is required to be drawn that the things did not happen in the manner as narrated by the prosecution as against respondents No.2 to 4.

The prosecutrix PW-2 also stated that she has not narrated the story to Sh.R.K. Angi, Advocate. To the contrary, Gulzar Singh (PW-1), father of the prosecutrix in his cross-examination has admitted that he and his daughter (prosecutrix) had narrated the whole story to Mr.R.K.Angi, Advocate, regarding the occurrence and he had written the application Mark-D at their instructions. The said application was read over and explained to him as well as his daughter (prosecutrix) by Mr.Angi, Advocate and after understanding its contents, his daughter (prosecutrix) had put her thumb

impression underneath it. He has gone to the extent that he and the prosecutrix, his daughter, had also disclosed the names of all the accused who committed rape with her and also the witnesses, who witnessed the occurrence to Mr. Angi, Advocate. Mani was also with the accused, so he had instructed his counsel that she should also be named as an accused. Hence, it is evident on the record that prosecutrix tried her level best to conceal the true facts from the Court, while she appearing as PW-2.

Mani daughter of Makhan Singh was the star witness of the prosecution case, who had taken the prosecutrix with her on the pretext of answering the call of nature in the fields, where she was raped. However, it is unexplained on the record that why she was not joined in the investigation nor produced in the Court as a witness. She was even not named as an accused in the application Ex.P-6 moved by the prosecutrix, before the learned Judicial Magistrate Ist Class, Fazilka by Sh.R.K.Angi, Advocate, despite the asking of Gulzar Singh PW-1, father of the prosecutrix. Hence the prosecution story is based on incorrect facts as against respondents No.2 to 4.

(vii) Since all the accused are related to each other, therefore, the false implication of respondents No.2 to 4 cannot be ruled out, more particularly, when there are various

inconsistencies and contradictions in the statements of prosecution witnesses.

Accordingly, the appeal, being bereft of any merit, is hereby dismissed. However, this would not in any manner mean that the conviction of Raju Singh (accused No.1) is proper or not. The Court is to consider his case on its own merit on the basis of the evidence and material appearing against him. Nothing contained in this order shall in any manner be construed as an expression of opinion on merit, in any other case/appeal pending, if any.

Since the appeal has been dismissed on the merit, the question of 198 days delay in filing the appeal is only academic and the application seeking condonation of delay is also dismissed.

(RAMENDRA JAIN)
JUDGE

(S.S.SARON)
JUDGE

23.04.2015
anil/A.Kaundal