

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA No.D-1702-DB of 2014 (O & M)  
Date of Decision: 17.03.2015

S\_\_\_\_\_ ..... Appellant

Versus

State of Haryana and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON  
HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Chanderhas Yadav, Advocate for the appellant.

S.S. Saron, J.

This appeal has been filed by the prosecutrix against the judgment and order dated 01.08.2014 passed by the learned Additional Sessions Judge, Rewari whereby respondent Nos.2 and 3 have been acquitted of the offences punishable under Sections 376-D and 506 of the Indian Penal Code (IPC-for short).

Heard learned counsel for the appellant and perused the record of the learned trial Court that has been requisitioned.

The complainant-prosecutrix submitted a complaint (Ex.PS) on 30.03.2014 addressed to the 'Chowki' (Police Post) Incharge, Dhahina, Police Station Khol, District Rewari. According to the complainant (prosecutrix), she was a resident of Gulabpura and was a student of B.Com Ist Year in Senior Girls Secondary College. She was 19 ½ years of age. She was having friendship with Dheeraj (respondent No.2) son of Dharambir resident of Bhatara for the last six months. She used to often talk with him on the phone but then she found that Dheeraj (respondent No.2) did not have good intentions. Then she started avoiding him. Then Dheeraj (respondent No.2) held out threats to her that if she did not talk

with him then he would finish her life. According to the complainant, on 28.03.2014 at about 4.30 pm, she went to Government Hospital at Nangal for getting her senior secondary 10+2 marks-sheet attested from the doctor. The doctor, however, did not meet her there. When she was returning home then Dheeraj (respondent No.2) and another boy whose name she did not then know but she got information that his name was Sandeep @ Dada (respondent No.3) son of Mahender Singh resident of Nangal were standing at the gate of the hospital.

Dheeraj (respondent No.2) closed her mouth and Sandeep @ Dada (respondent No.3) by catching her from the waist forcibly took her inside a room of the hospital. Then Dheeraj (respondent No.2) committed a wrong act with her. Thereafter, Sandeep @ Dada (respondent No.3) also committed a wrong act with her. Then both of them held out threats to her that if she informed anyone, they would kill her. Then the complainant returned to her home and she informed everything to her mother. Then she was waiting for her father, who used to stay out, to return. She had come to lodge a report and she asked for justice being imparted to her. The application was signed by the prosecutrix.

Police proceedings were recorded by Lady SI Hira Mani, Police Station Khol (PW-10) to the effect that she was present at the Police Chowki when the complainant along with her mother Smt. Nisha Devi (PW-12) came present at the Chowki and submitted the above application (Ex.PS). From the contents of the application, a case for the commission of offences under Sections 376-D and 506 IPC were found to be made out. The complaint was

being sent through Constable Rakesh Kumar to the Police Station for registration of a case. The special report of the case were asked to be sent to the Senior Officers and the learned Illaqa Magistrate. The Lady SI along with Lady Head Constable Priyanka (PW-9) were proceeding to General Hospital, Rewari for getting the medical examination of the complainant conducted. The proceedings were recorded by SI Hira Mani (PW-10) on 30.03.2014 at 6.45 p.m. At Police Station Khol, case FIR No.51 dated 30.03.2014 for the offences under Sections 376-D and 506 IPC was registered.

The case was investigated by SI Hira Mani (PW-10) who was posted as Lady SI PS Khol on 30.03.2014. On that day, the complainant along with her mother Nisha Devi (PW-12) had reached Police Post Dhahina and moved the complaint (Ex.PS). She (PW-10) recorded police proceedings Ex.PN on the complaint and sent the same through Constable Rakesh Kumar to Police Station Khol for registration of formal FIR. She (PW-10) then reached at the spot i.e. the place of occurrence and prepared rough site plan (Ex.PO). Then an application (Ex.PP) was submitted to the Medical Officer Government Hospital, Rewari for medico legal examination of the prosecutrix. The doctor after conducting the examination handed over the sealed parcel containing underwear of the prosecutrix, four slides, two swabs, one original MLR (Medico Legal Report), one envelope addressed to the Director Forensic Science Laboratory (FSL), Madhuban and one sample seal. The sealed parcels were sealed with the seal impression 'SS'. The said case properties were taken in possession vide memo Ex.PK. Lady Head Constable Priyanka (PW-9) signed the same as an attesting witness.

Both the accused (respondents No.2 and 3) were arrested on the

same day and applications Ex.PQ and Ex.PQ/1 were submitted for conducting their medico legal examination. The doctor after examining them handed over two sealed parcels containing the underwear of the accused persons (respondents No.2 and 3), one envelope and one sample seal along with medico legal reports. The sealed parcels were sealed with seal impression 'DV'. The case property was taken in possession in terms of memo Ex.PH. ASI Manoj Kumar signed the same as an attesting witness. During interrogation, the accused Dheeraj and Sandeep (respondents No.2 and 3) suffered disclosure statements (Ex.PL and Ex.PN). During trial these were objected to. Lady Head Constable Priyanka (PW-9) signed the disclosure statements as an attesting witness.

A perusal of the disclosure statements Ex.PL and Ex.PN of Dheeraj and Sandeep, would in fact show that they in a way reiterate the prosecution case. The said statements do not lead to the discovery of any fact and would, therefore, be inadmissible in evidence being admissions made before the police.

SI Hira Mani (PW-10) then on 31.03.2014 submitted an application (Ex.PR) to the learned Illaqa Magistrate for recording the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure (Cr.P.C. - for short). After the statement (Ex.PT) had been recorded, she (SI Hira Mani PW-10) obtained carbon copy of the same. The scaled site plan was got prepared by SI Hira Mani (PW-10) from ASI Naresh, Draftsman.

The statement (Ex.PT) of the prosecutrix was recorded by the learned Illaqa Magistrate Shri Harish Sabbarwal i.e, the Judicial Magistrate Ist Class, Rewari on 31.03.2014. Investigation in the case was completed by Inspector Surender Singh, SHO PS Khol

(PW-4) on 12.04.2014. He prepared the final report under Section 173 Cr.P.C. After completion of investigation, police report (challan) was submitted in the Court of the learned Judicial Magistrate Ist Class, Rewari on 17.04.2014. The learned Magistrate after perusing the report under Section 173 Cr.P.C. along with the documents and hearing learned Assistant Public Prosecutor for the State and learned counsel for the defence was of the view that the offence under Section 376-D IPC alleged to be committed by the accused was exclusively triable by the Court of the learned Sessions Judge. Accordingly, the case was committed to the said Court vide order dated 20.05.2014.

The learned Additional Sessions Judge, Rewari to whom the case was assigned on 30.05.2014 charge-sheeted the accused (respondents No.2 and 3) on the allegations that on 28.03.2014 at Government Hospital village Nangal they both committed gang rape forcibly with the prosecutrix and thereby committed an offence punishable under Section 376-D IPC; besides, on the same date and place, they threatened to kill the prosecutrix in case she disclosed the occurrence of rape with her to anybody and thereby committed an offence punishable under Section 506 IPC. The respondents No.2 and 3 were directed to be tried by the Court of learned Additional Sessions Judge, Rewari on the aforesaid charges. The respondents No.2 and 3 heard and understood the charge. They pleaded not guilty to the charges and claimed trial.

The prosecution in order to establish its case examined twelve witnesses including the prosecutrix herself as PW-11 and her mother Nisha Devi as PW-12. The prosecutrix (PW-11) and her mother (PW-12) did not support the prosecution case and were

declared hostile. The prosecutrix in her deposition as PW-11 stated that she was present at Rewari Dhahina Road where she was apprehended by the police. They asked her as to why was she there. She could not, however, furnish any explanation. Thereafter a lady Police officer asked her to write application (Ex.PS) and she wrote the same on her dictation. It is stated that the contents of the application were not correct. It is further stated that she was not sexually assaulted by the accused (respondents No.2 and 3), who were present in Court. The statement (Ex.PT) of the prosecutrix recorded under Section 164 Cr.P.C. was put to her. She identified her signatures on the said statement Ex.PT and voluntarily stated that the said statement was made on the asking of the Lady Police Officer, who had brought her before the Judge in the Court. She had threatened to implicate her and her family in some criminal case if she did not adhere to her commands. The statement, it is stated, was not voluntarily made by her. She did not identify any of the accused (respondents No.2 and 3) present in the Court on that date. She was got declared hostile at the said stage and cross examined by the public prosecutor. However, nothing favourable from the prosecution case could be brought out. The learned counsel for the defence did not cross examine her despite opportunity.

Nisha (PW-12), mother of the prosecutrix stated that she did not know anything about the case. She heard the contents of her statement (Ex.PU). She stated that she never made any such statement to the police. She did not identify the accused (respondents No.2 and 3) present in Court on the day she was deposing i.e. 30.07.2014. She was also got declared hostile and

cross examined by the learned public prosecutor. However, nothing favourable for the prosecution case could be brought out from her, which would be of any help to the prosecution case.

The prosecutrix and her mother, therefore, do not support the allegation of rape being committed on the prosecutrix (PW-11).

According to learned counsel for the appellant at the time of deposition, the prosecutrix was in fact misled by her counsel and it was stated by him that if she would depose this i.e. in the manner the prosecutrix and her mother had deposed, then both the accused would be convicted. The prosecutrix and her mother had deposed hostile statements as per their counsel but when they came to know that their depositions had helped respondents No.2 and 3 to secure their acquittal then the prosecutrix got a big shock.

Learned counsel appearing for the appellant has also contended that in any case, the medical evidence on record clearly establishes the case against respondents No.2 and 3. A reference has been made to the statement of Dr. Seema Devi Singh, Medical Officer, General Hospital, Rewari (PW-1). It is submitted that the said statement by itself is sufficient to record a finding of guilt against respondents No.2 and 3.

The contention of the learned counsel that the prosecutrix was misled by her counsel to depose in the manner she had deposed cannot be said to be the correct position. It is to be noticed that the prosecutrix has written the application (Ex.PS) and she is a student of B.Com Part-I. Therefore, it cannot be accepted that she was misled into making a statement so as to secure the acquittal of respondents No.2 and 3. In fact in the order

sheet of the learned Additional Sessions Judge, no counsel is shown to have appeared for the complainant. She does not even name as to who her counsel was. Therefore, the said allegation is absolutely baseless and devoid of any merit.

Dr. Seema Devi Singh, Medical Officer, General Hospital, Rewari (PW-1) tendered in evidence her duly sworn affidavit (Ex.PB). In the affidavit it has been deposed by Dr. Seema Devi Singh that she had medico legally examined the prosecutrix aged 19½ years on 30.03.2014. It was a case of alleged history of sexual assault by two persons named Dheeraj and Sandeep (respondents No.2 and 3) at Government Hospital, Nangal on 30.03.2014. The prosecutrix, it is stated, was wearing green colour 'salwar' and 'kurta' with design of multiple flowers in leaves. On examination, she (prosecutrix) was conscious, oriented. Her pulse was 80 per minute and Blood Pressure was 120/80. LMP is mentioned as 08.03.2014. She was unmarried and UPT was negative. On examination, light scratch marks on front part of neck. Mild redness in linear form over right lumbar region. Secondary sexual character were found well developed. On local examination, pubic hair was present. Hymen was ruptured raw area present over 6 o'clock position. Sample was taken and handed over to the police.

In the opinion of Dr. Seema Devi Singh (PW-1), possibility of forceful penetration could not be ruled out. However, further report could be given after FSL report. The underwear (Ex.P1) was seen by Dr. Seema Devi Singh and she stated that this was the same which she had taken in possession during medico legal examination of the prosecutrix.

The FSL report (Ex.PZ) was put to Dr. Seema Devi Singh (PW-1) and after perusal of the same, she stated that she was of the considered opinion that sexual intercourse had taken place with the patient (prosecutrix). In cross examination, she stated that she had not noticed any marks of struggle or tearing on the 'salwar'/'kurta' worn by the patient at the time of medico legal examination. She (PW-1) had not depicted the scratch marks on the skigram on the MLR. The scratch marks noticed were possible by striking through shrubs etc. These were superficial in nature. No other mark of injury was observed. She had not examined the fingers of the prosecutrix for the purpose of detecting the presence of any foreign flesh. It is voluntarily stated that nothing was apparently visible. She (PW-1) was questioned as to what was the basis of her opinion which read, "Possibility of forceful penetration cannot be ruled out"? She (PW-1) stated as follows:-

"There was nothing suggestive of otherwise so, I had opined that 'possibility of forceful penetration cannot be ruled out'; However I had deferred my final opinion till the receipt of FSL report. This opinion of mine was in primary nature and was based on the examination which revealed that the hymen was ruptured and raw area was present on 6 o'clock position. It is correct that hymen can be ruptured and presence of raw area can be there even there during performance of natural chores by a female. The sexual intercourse as opined by me could have

taken place with consent. I cannot tell the probable time that might have elapsed between the alleged sexual intercourse and my examination of the patient. Volunteered the patient had told that she was sexually assaulted (sic. assaulted) at 4.30 p.m. on 30.3.2014. As per my opinion, human semen is detectable on a cloth, for about one year if the cloth is properly conserved. I draw this opinion from Reddy's book. I cannot say whether as per Modi's medical jurisprudence the life of Human semen for the purpose of detection on cloth is 180 hours. It is wrong to suggest that I have given a wrong opinion. I had not used any preservative while handing over the sealed parcel to the police. I had not opined for DNA Extraction. I cannot say whether the same is mandatory on part of a medical officer conducting medico legal on a patient having history of sexual assault."

The FSL report (Ex.PZ) mentions the laboratory examination that were carried out to detect the presence of semen/ blood on the exhibits performing chemical tests and microscopy. Based upon these examinations, the results were given as follows:-

"1. Human semen was detected on exhibit-1a (slides), exhibit-1b (vaginal swab), exhibit-1c (underwear), exhibit-2 (underwear) and exhibit-3 (underwear).

2.Blood too small for serological testing (sic. and nothing) was detected on exhibit-1c (underwear) and exhibit-3 (underwear). However, blood could not be detected on rest of the exhibits mentioned above."

A perusal of the above report shows that human semen was detected on exhibit-1a (slides), exhibit-1b (vaginal swab), exhibit-1c (underwear), exhibit-2 (underwear) and exhibit-3 (underwear). Besides, blood was found "too small for serological testing was detected on exhibit-1c (underwear) and exhibit-3 (underwear). However, blood could not be detected on rest of the exhibits mentioned above".

It may, therefore, be noticed that Dr. Seema Devi Singh (PW-1) states that there was nothing suggestive of otherwise of rape so, she had opined that 'possibility of forceful penetration cannot be ruled out.' Even if it is to be taken that the prosecutrix was subjected to rape, in that case the same cannot be attributed to respondents No.2 and 3 as the prosecutrix did not identify any of the accused who were present in Court on the date of her deposition while appearing as PW-11 on 30.07.2014. The inference of the deposition of the prosecutrix in Court is that respondents No.2 and 3 were not the persons who had committed rape with her.

Even otherwise, the medical evidence is only corroborative in nature and when the complainant/victim has herself resiled from the complaint (Ex.PS) made by her and her earlier statement Ex.PT recorded by the learned Judicial Magistrate Ist Class and the learned trial Court has not accepted the position that rape had been committed on the prosecutrix, the same would not

warrant any interference by this Court in an appeal against acquittal merely because another view may be possible.

Interference in an appeal against an order of acquittal would be warranted in case the order acquitting the accused was based on no material or was otherwise perverse, besides, the view taken by the learned trial Court was wholly unreasonable or there had been non consideration of any evidence. The learned Additional Sessions Judge in her impugned judgment and order has considered all the facts and circumstances and has acquitted respondents No.2 and 3 by recording sound reasons and, in any case, it is a reasonable and a possible view. In an appeal against acquittal of an accused where a reasonable and a possible view in acquitting the accused has been taken, the same is not liable to be lightly interfered with merely because another view may be possible. Interference with an order of acquittal would be warranted only if the order is otherwise perverse, against the evidence and material on record and rendered in complete breach of the settled principles. Therefore, no ground is made out for interfering with the well reasoned order of the learned trial Court.

Consequently, there is no merit in the appeal and the same is accordingly dismissed.

(S. S. Saron)  
Judge

(Surinder Gupta)  
Judge

17.03.2015  
A.Kaundal