

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-185-DB of 2015

Date of decision : May 25, 2015

Kuldeep Kaur

.....Appellant

Versus

State of Punjab and another

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Rakesh Bhatia, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been preferred by Kuldeep Kaur challenging acquittal of respondent No. 2 – Gurpreet Singh of the charge of offence punishable under Sections 376 and 506 IPC vide judgment dated 11.07.2014 rendered by the learned Additional Sessions Judge, Ludhiana.

Prosecution was set in motion on the statement, Ex.PA, of complainant Kuldeep Kaur to the effect that she was married to Sikander Singh about 14 years ago who has been staying in Italy for the last six years. They have a son aged about 10 years. Respondent - Gurpreet Singh, Harijan, resident of village, Rajgarh used to have an evil eye on her for the past two years. Gurpreet Singh used to ask her to develop physical relations with her otherwise he would cause

harm to her and her son. She informed about this to Panch Bagga Singh and Panch Surinder Singh. They tried to make the respondent understand but he did not desist. She averred that she was present in her house on 28.02.2013 at about 7.15 a.m. She was cleaning her house when Gurpreet Singh scaled the wall of the house and came inside, put his hand on her mouth and pushed her into a room, forcibly broke the string of her salwar and raped her. Thereafter, he left her residence on opening the outer gate of her house while threatening to kill her. She raised alarm on which Bagga Singh, Panch came to her house. She revealed this incident to him. She went to the police station to reveal this incident alongwith Panches Surinder Singh and Bagga Singh on 04.03.2013. On the basis of this statement, formal FIR No.26 dated 21.03.2013 (Ex. PW3/A) was registered. Respondent - Gurpreet Singh was arrested on 05.03.2013 and medically examined at Civil Hospital. Prosecutrix was also subjected to medical examination on 05.03.2013.

On completion of investigation, report under Section 173 Cr.P.C. was presented in Court against the said respondent. Charge was framed against Gurpreet Singh for the offence punishable under Sections 376 and 506 IPC on 08.04.2013. He pleaded innocence and claimed trial. Nine witnesses were examined by the prosecution to prove its case. While denying incriminating material put to him, respondent - Gurpreet Singh in his statement under Section 313 Cr.P.C. pleaded innocence and false implication. It was specifically averred that there were cordial relations between his family and the family of the prosecutrix, who had even attended his ring ceremony

and marriage. Prosecutrix's husband lives in Italy and they had assured him to passage to Italy and taken ₹1,75,000/- for the same. He was not sent to Italy. Consequently, he had been demanding back his money but the prosecutrix used to put him off on one pretext or the other. There was a quarrel between prosecutrix and his mother on 28.02.2013 at about 7.00 a.m. as his mother demanded money. They both were injured and medically examined at Civil Hospital, Payal. No rape was ever committed by him. He also stated that he was being implicated due to party faction. Surinder Singh and Bagga Singh belong to the Congress party and the prosecutrix was very close to them. Both the said Panches were annoyed with him as he supported the rival party. They in connivance with each other have sought to implicate him after due deliberation and consultation. He is happily married and lives with his family including his old parents. Four witnesses were examined in defence as well as placing certain documents on record.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the prosecution had failed to prove its case against the accused consequently acquitting him of the charges against him.

The appellant being aggrieved of the acquittal of accused - Gurpreet Singh has preferred the present appeal.

Learned counsel for the appellant has vehemently argued that the learned trial Court has grossly erred in acquitting Gurpreet Singh for the reason that the prosecutrix has clearly deposed about factum of rape committed upon her by Gurpreet Singh on

28.02.2013. Her statement by itself is enough for conviction of the accused. It is not necessary to look for any corroboration of her statement as she is admittedly the victim in this case. It is also averred that the medical evidence on record proves the commission of offence by respondent - Gurpreet Singh.

We have heard learned counsel for the appellant and gone through the record.

It is a matter of record that the alleged occurrence is stated to have taken place on 28.02.2013 whereas it is reported for the first time on 04.03.2013. Delay by itself may not be material in a given case. However, the peculiar facts of this case indeed cast a doubt upon the prosecution version. Prosecutrix while testifying before the Court sought to explain the delay by saying that effort was being made to effect a compromise between the parties. The matter had been brought before the Panchayat but there is nothing on record to suggest that any Panchayat was ever convened. No detail whatsoever has been revealed as to when and where the Panchayat was convened and who were the members present.

Another glaring fact is that the prosecutrix was medico legally examined on 28.02.2013 at about 8.15 a.m. by DW3, Dr. Satyenderpal Singh, Medical Officer, Civil Hospital, Payal. Two injuries were present i.e. lacerated wound of 0.5 cm x 0.1 cm present over left side of the upper lip and mild ooze present. Another lacerated wound of 0.5 cm x 0.1 cm present over the left side of lower lip and mild ooze present. Duration of injury was disclosed to be within six hours, injuries being simple. Copy of the medico legal

report of 28.02.2013, Ex. D W3/A, was duly proved by DW3. It is revealed that the prosecutrix never disclosed anything with regard to the commission of rape upon her on 28.02.2013. Medico legal report, Ex. DW4/A has been proved by DW4, Dr. Paramveer Singh in respect to examination of Mohinder Kaur, mother of the accused respondent Gurpreet Singh. Application, Ex.DW4/C moved by Head Constable Harbans Singh of Police Station Doraha on 28.02.2013 for recording the statements of prosecutrix and Mohinder Kaur has also been proved on record wherein it is recorded that both the patients have left the hospital without medical advise. There is no explanation as to why these material facts were not revealed at the very first instance by the prosecutrix. There is not even a whisper of any of these relevant material facts either in her statement Ex. PA or her testimony before the Court. While admitting her signature on the medico legal report dated 28.02.2013 she paradoxically states that she had not visited Civil Hospital, Payal for any purpose a week prior or within a week before 05.03.2013. Concealment of such material facts does not augur well for the prosecution case.

It is in such circumstances that corroboration of the statement of the prosecutrix was rightly sought from the evidence on record. Such corroboration is conspicuous by its absence.

Learned trial Court has rightly taken note of material discrepancies and contradictions in evidence of the prosecution witnesses. Prosecutrix herself has given an inconsistent version. On one hand she has stated that her mother-in-law was not present in the house at the time of occurrence and her son Ramdass was away

to the house of a neighbour. In her cross examination she has stated that her mother-in-law was confined to bed as she used to remain ill suffering from Arthritis. There is no detail of the neighbour at whose house her son was present at 7.15 a.m. on 28.02.2013. Furthermore, Surinder Singh, PW4 has stated that when he reached outside the house of the prosecutrix on 28.02.2013, son of the prosecutrix was with her and her mother-in-law was lying inside the house being bedridden. Surinder Singh allegedly reached immediately after the occurrence. Prosecutrix herself has stated that both Bagga Singh and Surinder Singh reached the spot immediately.

Prosecutrix averred that she was not on talking terms with family of the accused, neither had any friendly relations with mother of the accused but she duly identified herself as well as her son in the photographs Exs.D2 and D3 alongwith respondent Gurpreet Singh and his wife. She admitted having attended the engagement ceremony of Gurpreet Singh alongwith her son. In her statement under Section 164 Cr.P.C. as well as in her initial statement she, however, states that she left her village due to harassment meted out by Gurpreet Singh and started residing with her sister-in-law and used to take shelter in the house of neighbour Ranjit Singh as well. This version is not recorded in her testimony before the trial Court and neither has her sister-in-law and Ranjit Singh, her neighbour been examined. It is relevant to note that in the statement recorded under Section 164 Cr.P.C. she declared that the accused had torn her shirt but in the testimony before the Court she deposed that her shirt was never torn by the accused. No said torn shirt was produced

as case property. Therefore, the credibility of the prosecution version is indeed suspect.

Statements of the prosecution witnesses Bagga Singh and Surinder Singh are equally suspect. Bagga Singh, PW2, has admitted that he contested the election of Panch being the member of the Congress party. He admits that accused and his family are related to Akali party in the village. It is also admitted that his house is situated four houses away from that of the prosecutrix. There are families residing in all these houses. Bagga Singh went to the house of the prosecutrix on hearing noise but none of the other neighbours have been examined. Surinder Singh, PW4, was also a candidate of the Congress party and the accused and his family were supporters of the opposing ruling party. Accused is a supporter of Gurpreet Singh alias Gopi and uncle of the accused against whom Bagga Singh had contested elections and lost. PW4, Surinder Singh has admitted to litigation with one Sukhdev Singh @ Dev another uncle of Gurpreet Singh. Sukhdev has admitted to have attended each and every hearing of the present case on behalf of accused persons. Surinder Singh states that they had visited the police station on 28.02.2013 whereas Bagga Singh has denied ever visiting the police station on 28.02.2013. Prosecutrix specifically admitted to having voted for Bagga Singh Panch. No reliance can be placed on the testimony of such like witnesses.

Investigating officer, SI Manjit Singh, PW3 has specifically deposed that the prosecutrix met him for the first time on 04.03.2013 and had never reported about the alleged occurrence prior thereto.

There is nothing on record to doubt the testimony of this official witness and neither is it the case of the prosecutrix that the police had not recorded her statement earlier. No mala fides have been alleged much less proved against the police officials in this report.

In respect to the report of the Chemical examiner, learned trial Court has observed as under:-

“ With regard to the report of chemical examiner, it is very relevant to mention here that as per version of the prosecutrix the rape has been allegedly committed upon the prosecutrix on 28.02.2013 and medical examination of the prosecutrix was conducted on 05.03.2013 after a gap of six days. With regard to the medical examination of the prosecutrix, the prosecution has examined Dr. Meera who deposed that the patient has narrated about the sexual intercourse with her by the accused at about 7.15 a.m. thereafter she had taken bath many times and had changed her clothes once. Her LMP was 03.03.2013. Doctor has taken swabs from the introitus, anterior fornix and posterior fornix of the prosecutrix and kept the same in vials no. 2, 3 and 4 respectively along with clothes allegedly worn by the prosecutrix at the time of incident as stated by her, were sent to the chemical examination for presence of semen and she has proved carbon copy of the MLR as Ex. PW8/A and chemical examiner report Ex. PW8/B. From the perusal of report of chemical examiner Ex. PW8/B spermatozoa were detected in the contents of swabs no. III, IV and salwar of the prosecutrix. It reveals that according to the MLR the LMP which has been disclosed by the prosecutrix was 03.03.2012 and her MLR was conducted on 05.03.2013 then in such eventuality, it is highly improbable to detect the spermatozoa in the vaginal swabs of the prosecutrix

taken on 05.03.2013 which creates doubt even with regard to even authenticity of the report of the chemical examiner."

There is no infirmity with the abovesaid finding returned by the trial Court.

Keeping in view the entirety of the facts and circumstances of the case, it would indeed be dangerous to convict the accused on the sole testimony of the prosecutrix, which as noted above, is not free from suspicion. Evidence on record does not point to an unequivocal hypothesis of guilt of the accused respondent. Prosecution has failed to prove the charges against him beyond reasonable doubt. Learned trial Court has rightly acquitted respondent - Gurpreet Singh of the charges against him. It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal.

Learned counsel for the appellant is unable to point out any infirmity or illegality in the impugned judgment, which would warrant interference by this Court.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

May 25, 2015
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